

Explanatory Memorandum to the Valuation Tribunal for Wales (Amendment) Regulations 2017

This Explanatory Memorandum has been prepared by Local Government Strategic Finance Division and is laid before the National Assembly for Wales 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 Valuation Tribunal for Wales (Amendment) Regulations 2017. I am satisfied that the benefits outweigh any costs.

Mark Drakeford
Cabinet Secretary for Finance and Local Government
27 September 2017

Description

1. The Valuation Tribunal for Wales (VTW) is a Welsh Government Sponsored Body. It is independent of the Welsh Government and the Valuation Office Agency. VTW provides a free service to the public, dealing with appeals concerning council tax, non-domestic rates (NDR) and drainage rates.
2. The Valuation Tribunal for Wales (Amendment) Regulations 2017 (“the 2017 Regulations”) amend the Valuation Tribunal for Wales Regulations 2010 (“the 2010 Regulations”). The purpose of the amendments is to reform the structure and organisational procedures of the Valuation Tribunal for Wales by:
 - Removing unnecessary bureaucracy and simplify administrative procedures to allow the Valuation Tribunal for Wales to work more efficiently;
 - Strengthening governance arrangements to ensure the independence and accountability of the organisation; and
 - Facilitating future reforms to the non-domestic rates appeals process.
3. The 2017 Regulations will also amend the Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) Regulations 2005 (“the 2005 Regulations”) to allow the VTW to dispose of an appeal without a hearing where there is agreement between the parties. This is intended to improve the efficiency of the non-domestic rates appeals process.

Matters of special interest to the Constitutional and Legislative Affairs Committee

4. None.

Legislative background

5. The relevant legal powers for this instrument to be made are conferred upon the Welsh Ministers by the Local Government Finance Act 1988 (sections 140(4), 143 (1) and (2) of, and paragraphs 1, 5 , 6, 7A, 8 and 11 of Schedule 11).
6. These powers were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999. The powers were subsequently transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.
7. The 2017 Regulations are subject to the negative resolution procedure.

Purpose and intended effect of the legislation

8. The 2010 Regulations set out the operating procedures which the VTW is required to follow. They include provisions in relation to the operation of the appeals service, the appointment of members, the president, regional

representatives and chairpersons, as well as provisions related to administration, accommodation and equipment.

9. The 2017 Regulations amend the 2010 Regulations for the purpose of reforming the structure and organisational procedures by:
 - strengthening the governance arrangements;
 - ensuring appointment processes for members and chairpersons adhere to best practice; and
 - simplifying the administration processes.

Strengthening the Governance Arrangements

10. The 2010 Regulations require that the Governing Council of the VTW comprises the president, one Welsh Government appointee and four regional representatives. They also require that four deputy regional representatives are appointed to cover for absences.
11. The 2017 Regulations will amend the 2010 Regulations to:
 - increase the number of Welsh Government appointments on the Governing Council from one to up to three;
 - change the role of regional representatives to national representatives and reduce the number appointed from four to three (such representatives will continue to be elected by members but will be subject to national elections as opposed to regional elections);
 - increase the appointment term for the new national representatives and the president from two to three years; and
 - abolish the role of deputy regional representative and instead introduce a provision that, to be quorate, at least four members of the Governing Council must be in attendance.
12. These amendments are intended to strengthen the current governance arrangements and reflect good practice. The changes will:
 - ensure there is an appropriate balance on the Governing Council between Welsh Government appointees and representation from the membership. The Welsh Government appointees are public appointments whose role is to provide external scrutiny and challenge;
 - increase the term length for the president and the national representatives to ensure there is a greater degree of stability and continuity in the membership on the Governing Council;
 - reinforce that the VTW is a pan-Wales organisation and should operate as such; and
 - reduce the administrative overheads for the VTW by reducing the frequency of elections.

Ensure appointment processes for members and chairpersons adhere to best practice

13. Appeals are heard and determined by volunteer members. A tribunal panel is made up of three members, one of whom must be a chairperson who takes

a leading role in the appeal proceedings. The 2010 Regulations outline how these positions are to be filled.

14. Currently, the president and local authorities are jointly responsible for appointing members. This was a specific concern raised by the previous Committee for Administrative Justice and Tribunals for Wales (CAJTW). CAJTW recommended that the VTW should demonstrate greater independence from Welsh local authorities which have a vested interest in the Tribunal's decisions.
15. The 2010 Regulations prescribe a minimum and maximum number which can be appointed in relation to each local authority. Currently, across Wales, the minimum number is set at 65 and the maximum is set at 184. Members are appointed for a six-year term. There is no overall limit on the number of times they can be reappointed.
16. The 2010 Regulations stipulate the positions of president, regional representatives and chairpersons should be elected by the membership of the VTW. The number of chairpersons appointed is not fixed in the legislation and they are appointed by VTW according to need.
17. The 2017 Regulations will amend the 2010 Regulations to:
 - remove the role of local authorities in the appointment process;
 - remove the current election process for chairpersons;
 - introduce selection panels for members and chairpersons (selection panels will be composed of members of the Governing Council);
 - introduce a membership number range for Wales as a whole. The minimum number of members will be set at 16;
 - introduce a maximum number of members which will be reduced over a period of years as follows – 145 from when the 2017 Regulations come into force; 135 from 1 April 2018; 120 from 1 April 2019 and 105 from 1 April 2020.
 - implement a maximum ten-year term for the membership for new members (two five-year terms);
 - stipulate that existing members who were appointed before these Regulations come into force, **would** be eligible for reappointment once their current term ends (even when they have served over ten years). However, they could only be reappointed for one further five-year term;
 - introduce selection panels for members and chairpersons to ensure that appointment procedures are in line with best practice and the 'merits based principle';
 - stipulate at least one Welsh Government appointee should be on the selection panels for members; and
 - stipulate a record of the appointment process for members and chairpersons will need to be kept.
18. These amendments are intended to strengthen the current governance arrangements, ensuring the membership is regularly refreshed through transparent appointment processes and reflects the diversity of the population. The changes will:

- implement a ten-year appointment term for new members which is in line with best practice;
- implement formal appointment panels for members and chairpersons which is in line with best practice;
- allow existing members to be appointed for a further five years to retain valuable skills and experience that might otherwise be lost; and
- as part of a longer term vision, allow resources to be better utilised and focused on providing high quality training to a smaller membership.

Simplifying election procedures to enable efficiency savings

19. Schedule 2 of the 2010 Regulations sets out very detailed and protracted election procedures for the president, regional representatives, deputy regional representatives and chairpersons. There is consensus that the current election procedures are cumbersome and are not appropriate for a public body such as the VTW.
20. The VTW is currently required to:
 - provide at least 56 days notice for the election day for a vacancy to all eligible candidates and nominations to fill the vacancy;
 - fix a date by which to receive nominations, which must be at least 35 days before the election day;
 - send a notice of the poll to the whole membership at least 21 days before the election day; and
 - ensure the membership can vote for their preferred candidate on election day.
21. The VTW is also required to ensure it follows detailed instructions in respect of:
 - the format of the voting paper;
 - procedures for electronic voting;
 - procedures if a candidate withdraws from the process or if there is notification of their death; and
 - circumstances in which it should be considered if a voting paper has been spoilt or incorrectly completed.
22. The 2017 Regulations will aim to simplify election procedures by:
 - removing the requirement for chairpersons to be elected (these posts will now be appointed via selection panels);
 - removing the requirement for deputy representatives to be elected (these posts will be removed);
 - removing the detailed election procedures in relation to the president and the new national representatives (as outlined in paragraphs 19 and 20); and
 - introducing a broader requirement that appropriate arrangements for the election of the president and national representatives be put in place to ensure:
 - eligible candidates have adequate time to put themselves forward for election if there is a vacancy;

- eligible candidates submit a statement (between 250-500 words) on why, based on their skills and experience they are suitable for the job; and
- eligible members have a sufficient opportunity to vote in each election.

Determining an appeal without a hearing where agreement has already been reached

23. The 2005 Regulations concern the alteration of local and central non-domestic rating lists (which are compiled under the Local Government Finance Act 1988). They include provisions which cover appeals to a valuation tribunal where there is disagreement about a proposal between the valuation officer and another party.
24. The Welsh Government wishes to provide the VTW with the ability to dispose of an appeal without a hearing where there is agreement between the parties. This is intended to improve the efficiency of the non-domestic rates appeals process.
25. There are significant costs associated with arranging a tribunal panel meeting. In some cases, these are held unnecessarily as agreement between the parties has already been reached but the VTW has not been able to cancel the appeal as it was not informed in time.
26. In cases where agreement has already been reached between two parties, the proposed amendments would allow the VTW to dispose of the appeal without a hearing.
27. Before disposing of an appeal, the clerk must send notice to all parties outlining that the appeal may be disposed and the decision the Tribunal is minded to take.
28. Each party will have four weeks to request that the appeal not be disposed of without a hearing. In such a case, the Tribunal can either take it to a hearing or can use postponement powers to wait for an agreement to be reached. This provision will only apply if there is agreement amongst the parties. If any party disagrees with the decision the Tribunal is minded to take, the case cannot be disposed of without a hearing.
29. The new powers of the VTW under this provision may be discharged by the clerk rather than a full Tribunal panel.

REGULATORY IMPACT ASSESSMENT (RIA)

Options

Option 1 – Do nothing

30. No change to the structure and organisational procedures of VTW would take place.

The Governing Council

- The make-up of the Governing Council would remain unchanged and comprise the president, four regional representatives and one externally appointed member.
- The roles of the four regional representatives and four deputy regional representatives would remain in place.
- The terms of the president, regional representatives and deputy regional representatives would be two years.

Appointment of Members and Chairpersons

- The minimum number (65) and the maximum number (186) of members would remain unchanged.
- The appointment term of members would continue to be six years and there would be no restriction on the number of times members can be reappointed.
- Local authorities and the president would continue to be jointly responsible for appointing members.

Election Procedures

- The current election procedures would remain in place to appoint the president, four regional representatives, four deputy regional representatives and chairpersons.
- VTW is currently required to
 - provide at least 56 days notice for the election day for a vacancy to all eligible candidates and nominations to fill the vacancy
 - fix a date by which to receive nominations, which must be at least 35 days before the election day.
 - send a notice of the poll to the whole membership at least 21 days before the election day.
 - ensure the membership can vote for their preferred candidate on election day.
- VTW is also currently required to adhere to detailed provisions in relation to the:
 - format of the voting paper;
 - procedures for electronic voting;

- procedures if a candidate withdraws from the process or if there is notification of their death; and
- circumstances in which it should be considered a voting paper has been spoilt or incorrectly completed.

Non-Domestic Rate Appeals

- The VTW would not be able to dispose of or adjourn an appeal without a hearing when agreement has already been reached between two parties.

Option 2 – Make amending Regulations

31. The structure of the VTW and organisational procedures would be amended as follows.

The Governing Council

- The make-up of the Governing Council would comprise the president, up to three external Welsh Government appointees and three national representatives. The appointment term of the president and the national representatives would be three years.
- Up to three Welsh Government appointees would be made via the public appointments process in line with the Commissioner for Public Appointments Code of Practice. The appointment period would be up to a maximum of ten years.

Appointment of Members and Chairpersons

- The minimum number of members would be set at 16. The maximum number of members would be reduced over a period of years as follows: 145 from when the Regulations come into force; 135 from 1 April 2018; 120 from 1 April 2019 and 105 from 1 April 2020.
- A member's term of appointment would be five years. Existing members could be reappointed for one further five-year term (a maximum ten-year term).
- New members appointed under the 2010 Regulations could only serve for a maximum of ten years.
- Selection panels would appoint members. These would comprise three members of the Governing Council, one of whom must be an external Welsh Government appointee.
- Selection panels would appoint chairpersons. These would comprise three national representatives or two national representatives and the president.
- Appointment panels would be required to record minutes of their meetings.

Election Procedures

- The president and the national representatives would be elected by the membership.
- A simplified election procedure would be put in place.

Non-Domestic Rate Appeals

- The VTW would be able to dispose of appeals without a hearing when notified that agreement has been reached between the parties.

Costs and Benefits

Option 1 – Do nothing

Costs

Governance Arrangements

32. If no changes are made to strengthen the governance arrangements, there would be an insufficient level of external scrutiny to monitor and report on the operational procedures and accountability for decision-making within the VTW. It is considered that the current make-up of the Governing Council does not reflect best practice in public services and that this may have a detrimental effect on its ability to provide the public with a quality service.
33. If the four regional representatives and four deputy representatives remain in place, this will reinforce an inflexible regional structure and may hinder the VTW progress towards a pan-Wales service. In addition, the VTW will continue to incur costs in supporting these eight positions, for example administering the election process and for travel and subsistence.

Appointment of Members and Chairpersons

34. If the role of local authorities is not removed from the process of appointing members, concerns about the independence of the organisation would not be addressed. It would mean the administrative burden on local authorities in respect of their role in the appointment process would remain. In addition, the administrative burden for the VTW in conducting elections for chairpersons would remain.
35. If selection panels are not introduced for members and chairpersons, the election procedures would remain in place, which do not align with best practice or the 'merits based' principle.
36. If changes are not made to the minimum and maximum numbers of members and a maximum ten-year term appointment term is not implemented, the VTW will not be sufficiently flexible to adapt to future workload changes. The size of the membership will be too high in proportion to workload and it will be difficult for VTW to provide adequate training and support for all members.
37. Not implementing a ten-year appointment term for new members would not align with the good practice in place for similar public appointments. It would make it more difficult for the VTW to meet its equality and diversity obligations and limit its ability to ensure the membership reflects the user population.

Election Procedures

38. If changes are not made to simplify the election procedures, the opportunity to make administrative savings will be lost. The VTW would be obliged to follow the existing election procedures for chairpersons, regional representatives and deputy regional representatives.

Determining an appeal without a hearing where initial agreement has already been reached

39. The VTW would not be able to dispose of an appeal without a hearing where agreement has already been reached between the parties. This would limit the ability of the organisation to deal with appeals in the most efficient and effective manner.

Benefits

40. There would be some minor cost savings from not appointing additional external members to the Governing Council. The appointees would be unpaid but would be entitled to claim travel and subsistence. The Welsh Government resource cost associated with the appointment process would also be saved. However, these savings would be more than outweighed by the potential benefits and savings that the proposed changes would make as a whole.

Option 2 – Make amending Regulations

Costs

41. There would be minor costs in relation to the appointment of up to two additional external members to the Governing Council. The appointees would be unpaid but would be entitled to claim travel and subsistence. There would also be an additional administrative burden placed on members of the Governing Council who will sit on the selection panels. However, these costs would be more than outweighed by the potential benefits and savings the changes would make as a whole.

Benefits

Governance Arrangements

42. The changes would ensure there is an appropriate balance on the Governing Council between external appointees and representation from the membership. They would provide assurance that the VTW is making the operational adjustments which are needed to achieve efficiencies and provide the public with a quality service within the budget constraints.
43. If the four regional representatives are replaced by three national representatives, this will help the VTW to progress from a regional structure

to provide an effective pan-Wales service. Decisions about the future structure of the organisation would determine how cost savings can be made.

Appointment of members and chairpersons

44. The introduction of selection panels for members and chairpersons would ensure that appointment procedures are in line with good practice and the 'merits based principle'. It would also completely remove the administrative burden (and cost) from local authorities. The overall administrative burden for the VTW arising from the protracted election procedures would be reduced and, for would be removed altogether for chairperson elections. The savings made would depend on the processes put in their place.
45. Setting the minimum number of members at 16 and reducing the maximum number of members would gradually increase the flexibility of the VTW and enable it to focus training and support resources more effectively.
46. The ten-year maximum term for new members is in line with best practice. It would also provide an opportunity for VTW to ensure that the membership better reflects the user population.
47. All existing members whose term is ending would be eligible to apply for reappointment for a further five years. This would mitigate the risk that existing members with valued knowledge and experience will be lost too quickly.

Election Procedures

48. The role of deputy regional representatives would be abolished and no elections would be needed for these positions. No elections would take place for chairpersons as selection panels would be responsible for appointing these.
49. The elections for the president and the national representatives would remain. However the simplified election procedures would mean that the VTW would have much more flexibility to conduct elections in the most efficient and effective manner.

Non-Domestic Rates Appeals

50. The VTW would be able to dispose an appeal without a hearing when agreement has been reached between the parties. This would increase the flexibility of the organisation to deal with NDR appeals in the most efficient way.

Sectors

51. This legislation affects the operational procedures of the VTW and therefore the main impacts will be on the organisation itself. It will have a modest positive impact on local government, in that authorities would no longer have

a role in appointing VTW members. It will also have a positive impact on the VOA in respect of how the VTW deals with non-domestic rates appeals.

52. This legislation will have an impact on taxpayers in Wales and specifically those who pay council tax, non-domestic rates and drainage rates. It will ensure the VTW operational procedures align with good practice in administrative justice, ensuring that it delivers value for money.

Duties

53. In drafting these Regulations, consideration has been given to Welsh Ministers' duty to promote equality and eliminate discrimination. The provisions which relate to the membership of the VTW will increase the external scrutiny and accountability of the organisation and strengthen its ability to ensure the membership better reflects the user population.
54. The VTW must comply with relevant Welsh Language Standards and Sustainable Development duties.
55. The policy supports the principles in the Well-being of Future Generations (Wales) Act 2015. Ensuring VTW operational procedures align with good practice in administrative justice will help to contribute to the wellbeing objectives of a prosperous Wales and a more equal Wales.

Competition Assessment

56. This has been scored against the competition filter test which indicated that there will be no detrimental effect on competition.

Consultation

57. An eight-week public consultation took place between 20 February and 16 April 2017. 16 responses were received. These included a detailed response from the Governing Council of the VTW and eight additional responses from members and staff. Responses were also received from the Valuation Office Agency, the Royal Institution of Chartered Surveyors (RICS), Institute of Revenues, Rating and Valuation (IRRV), a rating agent, the Association of Convenience Stores (ACS), a local authority councillor and one anonymous response.
58. As a result of the consultation, the Welsh Government has modified its proposals. The modifications include:
- limiting the number of external appointments to the Governing Council to 'up to three' (instead of three).
 - inserting a new provision relating to the maximum ten-year term for existing members (as detailed in paragraph 16).
 - removing the strike-out powers for the VTW. Changes have been made which will allow the VTW to dispose of an appeal without a hearing where there is agreement between the parties.

- removing the requirement for an external appointee to be consulted in relation to the appointment of chairpersons
- removing the requirement for at least one Welsh Government appointee to be present for the Governing Council to be quorate. The requirement for four members to be present to be quorate will remain.

59. A summary of responses, incorporating the Welsh Government's response, has been published on the Welsh Government website at:
<https://consultations.gov.wales/>.

Post implementation review

60. The VTW is a Welsh Government Sponsored Body. A review of the implementation of these regulations will be included as part of normal monitoring arrangements