

Explanatory Memorandum to The Valuation Tribunal for Wales (Amendment) Regulations 2023

This Explanatory Memorandum has been prepared by Local Government Finance Reform Division 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 Valuation Tribunal for Wales (Amendment) Regulations 2023. I am satisfied that the benefits justify the likely costs.

Rebecca Evans MS
Minister for Finance and Local Government
12 July 2023

PART 1: EXPLANATORY MEMORANDUM

Description

1. The Valuation Tribunal for Wales Regulations 2010 (“the 2010 Regulations”) provide for the establishment, membership and administration of the Valuation Tribunal for Wales (VTW), as well as the procedures for council tax appeals.
2. The Valuation Tribunal for Wales (Amendment) Regulations 2023 (“the 2023 Regulations”) amend the 2010 Regulations and make changes in relation to administration of the Governing Council, membership terms and the administration of council tax appeals, in order to help the VTW to modernise its administrative practices and maintain a sustainable tribunal membership.

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

3. None.

Legislative background

4. Schedule 11 to the Local Government Finance Act 1988 (“the 1988 Act”) enables the Welsh Ministers to make regulations providing for the establishment of valuation tribunals. The 2023 Regulations are made under relevant powers in sections 140(4) and 143(1) and (2) and paragraphs 1, 5(1), 8(1), (2), (3) and (6) of Schedule 11 to the 1988 Act. The powers under that Act expressed as being exercisable by the Secretary of State are now vested in the Welsh Ministers by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.
5. The 2023 Regulations are subject to the negative procedure by virtue of section 143(3) of the 1988 Act.

Purpose and intended effect of the legislation

6. The purpose of these Regulations is to help the VTW to modernise its administrative practices and to maintain a sustainable tribunal membership. The Regulations make amendments in three specific areas, namely the administration of the Governing Council, membership terms and administrative arrangements for council tax appeals.

Governing Council administration

7. The VTW Governing Council is constituted of the elected President and national representatives, with an additional member appointed by the Welsh Ministers. While the Welsh Ministers may appoint up to three members, only one is currently appointed.

8. A number of provisions in the 2010 Regulations were identified as constraining the efficient administrative functioning of the Governing Council. The requirement for four or more members to be present to hold a quorate Governing Council meeting did not take account of vacancies or potential absentees. This led to delays in convening quorate meetings. Three members is considered to be a sufficient quorum for the business of the Governing Council.
9. The VTW considers that constituting an appointments panel could be subject to increased administrative burden and delays, due to the Welsh Ministers' appointees to the Governing Council being prevented from sitting on appointments panels to elect chairpersons. This also created disparity between Governing Council members as they did not all have equal standing and responsibility. Further, the provision that a member must be a chairperson to be considered for election as a national representative, even though the same constraint does not exist with respect to the election of the President, was considered to be unnecessary.
10. In relation to Governing Council administration, the 2023 Regulations therefore:
 - a. allow Governing Council meetings to be held with three members;
 - b. allow the Welsh Ministers' appointees on the Governing Council to sit on appointment panels to elect chairpersons; and
 - c. enable any member to be considered for election as a national representative.

Membership terms

11. Under previous provisions in the 2010 Regulations, tribunal members were appointed for a fixed period of five years. This could be renewed once for a further period of five years. Once a member had served a total of 10 years, they could not be re-appointed. In recent years, this has led to an erosion of membership, the loss of experienced members and increase pressure and costs associated with the recruitment and training of new members. If this trend continues, there is a risk it will impact on service delivery in the future. The 2023 Regulations remove this restriction to help the VTW to maintain sustainable membership numbers and retain experienced members. Greater flexibility in the length of membership terms, up to the existing fixed duration of five years, will also help by enabling, for example, shorter initial memberships for new members who may not feel ready to commit to a full five-year term.
12. Appointment provisions for the VTW Governing Council in the 2010 Regulations were identified as restrictive in their interaction with membership terms. Governing Council appointments were considered to lose their Governing Council positions when their membership came up for renewal, which triggered a reappointment process, creating an unnecessary administrative burden.
13. In relation to membership terms, the 2023 Regulations therefore:
 - a. remove the existing 10-year limit on membership duration;

- b. allow for greater flexibility in the length of membership terms, up to five years; and
- c. clarify that, for the purpose of Governing Council appointments, membership does not cease if a new term of appointment immediately follows an expiring term.

Administrative changes to council tax appeals

14. Recent reforms to the non-domestic rating (NDR) appeals system provided an opportunity to make selected improvements to support the administrative efficiency of the VTW's procedures and modernise ways of working. The 2023 Regulations replicate relevant provisions for NDR appeals, ensuring the same arrangements can be applied to the administrative arrangements for council tax appeals.
15. In relation to appeal hearings, the VTW has adopted a hybrid approach where some members and staff attend a physical office location with other parties connecting via video-conferencing facilities. A definition of 'hearing' has been inserted into the Regulations to confirm that the VTW may conduct hearings in person, on a hybrid basis, and on a fully remote basis with all parties joining by way of facilities such as video-conferencing. This will enable the VTW to conduct hearings more efficiently and reduce administrative costs. Provisions related to the display of notices of appeal hearings are also updated to reflect current use of websites.
16. In relation to process and procedure, the VTW provides users of the service with advisory 'best practice protocols'. If users do not follow the advised best practice, it can result in delay and unnecessary complication in the processing and hearing of appeals. To support the VTW in securing compliance, provision is made under which the VTW may regulate its own procedures where they are not prescribed in legislation.
17. In relation to the administrative arrangements for council tax appeals, the 2023 Regulations therefore:
 - a. define a 'hearing' to confirm the VTW's ability to conduct hybrid and fully virtual hearings;
 - b. update the requirements for the display of notices of appeal hearings to include the VTW's office and website; and
 - c. provide for the VTW to regulate its own procedures where they are not prescribed in regulations.

Consultation

18. No public consultation has been undertaken as the 2023 Regulations only affect the operation of the VTW. The requirements for the 2023 Regulations were developed in collaboration with the VTW executive team, who were consulted informally on a draft of the 2023 Regulations. They confirmed that the draft Regulations addressed all issues identified as requiring amendment.

PART 2: REGULATORY IMPACT ASSESSMENT

Options

This Regulatory Impact Assessment (RIA) presents two options in relation to VTW administration, membership and council tax appeal administration. The options considered are as follows.

- **Option 1 – Do nothing.** Retain the existing arrangements, with no administrative improvements or changes to membership terms.
- **Option 2 – Make the Regulations.** Legislate to support and modernise the administrative efficiency of the VTW and to maintain sustainable membership levels.

Costs and benefits

Option 1 – Do nothing

Option 1 would not require any legislative change. There are no other benefits associated with this option. However, there would be disadvantages for the VTW in not being able to realise the identified improvements. Retaining the existing maximum membership term, in particular, would risk a continued reduction in the number of members and there is a risk that this would compromise service delivery. This would affect users and could compromise the effective delivery of Welsh Government policy with respect to plans for more frequent NDR and council tax revaluations.

This option would continue to give rise to administrative costs for the VTW, where the identified improvements would otherwise give rise to efficiencies. There would also be an opportunity cost, as the identified improvements to support the effective and efficient administration of the VTW could not be made.

Option 2 – Make the Regulations

Option 2 would be to make the Regulations to deliver the identified improvements. The benefits associated with this option include, in particular, the maintenance of sustainable tribunal membership and the retention of experience. This will help to ensure VTW service delivery is not compromised, including in the context of the Welsh Government's plans for more frequent NDR and council tax revaluations.

The VTW Governing Council will operate more effectively, with changes to help prevent vacancies and absences from hindering routine business and appointments. Enabling any member to be considered for election as a national representative will help to ensure future appointments are not unduly restricted.

Arrangements for council tax appeal hearings will benefit from improvements already made in relation to NDR, ensuring a consistency of approach where appropriate. The ability to hold fully virtual hearings is an important area for consistency, with respect to modernising the operations of the VTW.

There are no additional costs associated with this option, but it would support administrative efficiencies for the VTW. For example, administrative savings will arise from avoiding unnecessary reappointments to the Governing Council when VTW membership comes up for renewal and from the ability to hold fully virtual hearings. There will also be savings from reduced recruitment and training costs, due to improved retention and lower turnover of members.

Option selection

The benefits of Option 2 are considered to outweigh the benefits of Option 1. Option 2 is, therefore, the Welsh Government's preferred option.

Duties

Well-being of Future Generations (Wales) Act 2015. Maintaining the local taxation appeals system contributes towards the wellbeing goals of a prosperous Wales and a more equal Wales.

UNCRC. No particular impact on the rights of children has been identified.

Welsh language. No effect on the opportunities to use the Welsh language or the equal treatment of the language has been identified.

Equalities. No specific impacts, positive or negative, on persons who share a protected characteristic (as determined by the Equality Act 2010) have been identified.

Voluntary sector. No specific impacts on the voluntary sector have been identified beyond the intended effects on the VTW itself.

Justice. Improvements to existing VTW administrative practices and the maintenance of service delivery will have a negligible impact on the justice system.

Competition assessment

The 2023 Regulations will only affect VTW administrative practices and, as such, no competition impacts have been identified.

Post-implementation review

The VTW is a Welsh Government Sponsored Body. A review of the implementation of the 2023 Regulations will be included as part of normal monitoring arrangements.