

Explanatory Memorandum to the Local Government Officers (Political Restrictions) (Amendment) (Wales) Regulations 2023

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 Regulations 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 Officers (Political Restrictions) (Amendment) (Wales) Regulations 2023

Rebecca Evans MS
Minister for Finance and Local Government
1 September 2023

1. Description

The Local Government Officers (Political Restrictions) (Amendment) (Wales) Regulations 2023 (“the 2023 Regulations”) amend the Local Government Officers (Political Restrictions) Regulations 1990 (“the 1990 Regulations”) by adding Corporate Joint Committees (“CJCs”) established by regulations made under Part 5 of the Local Government and Elections (Wales) Act 2021 (“the 2021 Act”) to the definition of “local authority” to place the same restrictions on the political activities of officers of CJCs as officers holding equivalent posts in county and county borough councils.

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

The Legislation, Justice and Constitution Committee may wish to note that this Statutory Instrument forms part of a package of instruments which underpin the establishment of CJCs and which seek to ensure CJCs are subject to the same administrative and governance requirements as local government.

2. Legislative background

The 2021 Act provides for a framework for regional collaboration between local authorities in Wales. Individual sets of Establishment Regulations made under Part 5 of the 2021 Act were approved by the Senedd to create four CJCs from 1 April 2021 which are coterminous with Wales’ city and growth deal areas.

Section 1(5) of the Local Government and Housing Act 1989 (“the 1989 Act”) provides that regulations may be made to prescribe the requirements for the restriction of political activities deemed to be incorporated in the terms and conditions of employment of every person holding a politically restricted post in a county or county borough council.

Section 1(6) provides that regulations made under subsection (5) may contain such incidental, consequential and transitional provision in connection with their other provision as the Welsh Ministers consider appropriate.

Section 1(12) applies subsection (5) to (8) to a CJCs as they apply to a county or county borough council. The power in section 1(5) and (6) was exercised to make the 1990 Regulations and is relied upon to make the amendment to those Regulations.

The powers of the Secretary of State were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 and now vested in the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

These Regulations are subject to the negative procedure by virtue of section 190 (2) of the 1989 Act.

3. Purpose and intended effect of the legislation

CJCs are corporate bodies, established via regulation, and consist of those county and county borough councils in Wales which are specified in the establishment regulations. In some circumstances National Park authorities in Wales are also members of a CJC; where this is the case this is also set out in the relevant CJC establishment regulations.

These Regulations add CJCs established by regulations made under Part 5 of the 2021 Act to the definition of a local authority in the 1990 Regulations. This will impose the same restrictions on the public political activities of officers of CJCs who are holders of politically restricted posts for the purposes of Part 1 of the 1989 Act as apply to officers holding politically restricted posts in county and county borough councils. The restrictions are then deemed to be incorporated into those officers' terms and conditions of employment.

The 2023 Regulations are part of a package of amendments to legislation that underpin all CJCs and put in place the necessary legislative framework for the effective administration and governance of CJCs.

The overall intent is that a CJC will be treated as part of the "local government family" and will be largely subject to the same or similar powers and duties as local authorities in the way they operate and are governed.

Some CJCs have advised that they intend to appoint officers including those who may hold politically restricted posts in the first weeks of October. It is imperative therefore that these Regulations are in place before those officers take up their roles to ensure that the provisions do not need to act retrospectively in respect of those officers' terms and conditions of employment.

4. Consultation

The overall approach to the development of the legislative framework which underpins CJCs and the duties which should apply has been co-developed with Local Government, the Welsh Local Government Association, and a number of professional networks, including, for example, Lawyers in Local Government and the Society of Welsh Treasurers.

The consultation on the Corporate Joint Committee (General) (Wales) Regulations 2022 between 10 November 2021 and 22 December 2021 set out the intention to apply section 1(5)-(8) of the 1989 Act to CJCs and to amend the 1990 Regulations to add CJCs to the definition of local authorities.

6. Regulatory Impact Assessment (RIA)

A separate regulatory impact assessment has not been prepared in respect of these Regulations. However, the regulatory impact assessment to accompany the Mid Wales Corporate Joint Committee Regulations 2021, the North Wales Corporate Joint Committee Regulations 2021, the South East Wales Corporate Joint Committee Regulations 2021 and the South West Wales Corporate Joint Committee Regulations 2021 assessed the potential costs and benefits associated with establishing the CJsCs through regulations. In assessing the potential costs and benefits the RIA considered the overarching policy intent that Corporate Joint Committees should be treated as part of the 'local government family'. The costs associated with the application of the 1990 Regulations to CJsCs was considered therefore as part of the regulatory impact assessment on the establishment regulations themselves.

A copy of the [RIA](#) to accompany the Mid Wales Corporate Joint Committee Regulations 2021, the North Wales Corporate Joint Committee Regulations 2021, the South East Wales Corporate Joint Committee Regulations 2021 and the South West Wales Corporate Joint Committee Regulations 2021 is available as part of the relevant documentation to accompany those Regulations.