

## **REGULATORY APPRAISAL**

### **LOCAL GOVERNMENT, WALES**

#### **THE LOCAL AUTHORITIES (EXECUTIVE ARRANGEMENTS) (DECISIONS, DOCUMENTS AND MEETINGS) AND THE STANDARDS COMMITTEES (WALES) (AMENDMENT) REGULATIONS 2007**

##### **Background**

1. The Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001 apply to county and county borough councils in Wales, which are operating executive arrangements under Part II of the Local Government Act 2000. They make provision relating to public access to meetings, decisions and documents of local authority executives and their committees. The Regulations were amended by The Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) (Amendment) Regulations 2002 to enable the chair of a meeting of the executive, or a committee of the executive, of a local authority to make late additions to the agenda under special circumstances.
2. Regulation 10 of the 2001 Regulations concerns the additional rights of access for members of a local authority to documents in the possession, or under the control, of the executive of that authority. In particular it sets out the circumstances in which any such document shall be available for inspection by any member of a local authority and, by reference to Part 1 of Schedule 12A to the Local Government Act 1972, the circumstances in which it shall not be made so available.
3. Schedule 12A of the Local Government Act 1972 sets out the categories of information, which principal councils (i.e. county and county borough councils, National Park Authorities and Fire and Rescue Authorities in Wales) should regard as “exempt information” and, therefore, may not be available for public access in respect of their meetings and documents, their committees and sub-committees. The types of information included in Schedule 12A concern in the main information about individual employees, tenants or other members of the public, children, commercial contracts and negotiations, legal advice, crime and informants.
4. Legislative provisions regarding access to meetings and documents of local authorities are included in Part VA and Schedule 12A to the Local Government Act 1972. These provisions were added to the Local Government Act 1972 by the Local Government (Access to Information) Act 1985 and provided for greater public access than was previously the case.
5. The Standards Committees (Wales) Regulations 2001 (as amended) apply to county and county borough councils, National Park Authorities and Fire and Rescue Authorities in Wales. They make provision with respect to, inter alia, public access to meetings and with respect to the production of agendas for, or records of such meetings. Regulation 26 of these Regulations applies a number of the provisions of Part VA of the Local Government Act 1972 (including the

descriptions of exempt information in Schedule 12A to the Local Government Act 1972) to meetings of standards committees and sub-committees of standard committees.

6. The Local Government (Access to Information) (Variation) (Wales) Order 2007, which is travelling with this Instrument and must be made in advance of it, will replace some of the descriptions of information listed in the existing Schedule 12A to the Local Government Act 1972 with simpler and clearer descriptions. The Order will also update some definitions, whilst removing others. Certain of the qualifications, which currently relate to descriptions of “exempt information” listed in Schedule 12A, will be replaced by a single public interest test. The Order will apply to “principal councils” i.e. county and county borough councils, National Park Authorities, Fire and Rescue Authorities and also Police Authorities in Wales.

### **Purpose and intended effect of the measure**

7. These Regulations will alter the paragraph numbering of Regulation 10 of the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001 (as amended). This is necessary as The Local Government (Access to Information) (Variation) (Wales) Order 2007 (which is to be made on the same day but in advance of these Regulations) will amend Schedule 12A to the Local Government Act 1972 and, in so doing, will alter the paragraph numbers in Schedule 12A.
8. These changes will not, in any way, affect the additional rights of access councillors have, under Regulation 10, to documents of the executive. (There are no equivalent Regulations for those authorities operating Alternative Arrangements. The additional rights of access for members of authorities operating Alternative Arrangements are contained in section 100F of the Local Government Act 1972.)
9. The Regulations also amend The Standards Committees (Wales) Regulations 2001 (as amended) as Regulation 26 makes reference to Schedule 12A.
10. The Regulations enable Standard Committees, and their sub-committees, established under the provisions of Part 3 of the Local Government Act 2000, to exclude the public (subject to a public interest test) when considering the following:
  - Information, which is subject to any obligations of confidentiality;
  - Information, which relates in any way to matters concerning national security; and
  - the deliberation of Standards Committee or their sub-committees, in reaching any finding in relation to allegations of misconduct by local government members.
11. The effect of this will be to enable Standards Committees and their sub-committees, when considering matters relating to the alleged misconduct by

members, to exclude members of the public when considering information, which falls within any one of the three categories of information listed in paragraph 10 above.

### **Risk Assessment**

12. These amendments are required as a consequence of the making of The Local Government (Access to Information) (Variation) (Wales) Order 2007, which is being made in tandem with these Regulations and, which will alter the paragraph numbers of Schedule 12A to the Local Government Act 1972. If these Regulations were not made the references in existing Regulations (Regulation 10 of the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001 (as amended) and Regulation 26 of the Standards Committees (Wales) Regulations 2001 (as amended)) to specific paragraphs in Schedule 12A would no longer be correct.
13. The Regulations will also enable Standard Committees, and their sub-committees, when considering matters relating to the alleged misconduct by members, to exclude members of the public when considering certain categories of information, subject to a public interest test. If the Regulations were not made the situation would be more open to interpretation and challenge.

### **Options**

#### Option 1: Do Nothing

14. Failure to make these Regulations would result in principal councils having to work with Regulations, which were no longer compatible with the revised Schedule 12A to the Local Government Act 1972. Existing Regulations would continue to be out of line with the Data Protection Act 1998 and the Freedom of Information Act 2000. As such, the situation in Wales would be very different to that operating in England and this could cause embarrassment for the Assembly as principal councils, and in particular their Monitoring Officers, could be faced with operational difficulties.

#### Option 2: Make the Legislation

15. These Regulations are concerned primarily with technical matters, designed to update references in existing Regulations to accord with the revised Schedule 12A to the Local Government Act 1972.

### **Benefits**

16. These Regulations will ensure that principal councils, that is county and county borough councils, National Park Authorities and Fire and Rescue Authorities, are working with existing Regulations, which are compatible with the Data Protection Act 1998 and the Freedom of Information Act 2000.

### **Costs**

17. There are no costs for the Assembly or for principal councils as a result of the making of these Regulations.

## **Competition assessment**

18. The introduction of these Regulations will not have any impact on other sectors and no competition filter is necessary.

## **Consultation**

### With Stakeholders

19. An initial policy consultation took place between 4 November 2004 and 31 December 2004. Those consulted comprised of Chief Executives and Legal Officers of County and County Borough Councils, the Welsh Local Government Association (WLGA), the then Audit Commission in Wales, the then Local Government Ombudsman, Fire and Rescue Authorities, Police Authorities and the Information Commissioner for Wales. Owing to an administrative oversight National Park Authorities were not included in the consultation. This was rectified in a separate consultation exercise, involving National Park Authorities, from 11 May 2005 to 17 June 2005.

20. The consultation was based on the document prepared by the then Office of the Deputy Prime Minister (ODPM) on "Local Authority Access to Information – Proposed Amendments to Exemptions in Schedule 12A to the Local Government Act 1972". This document contained the recommendations of their Review Group set up to consider the changes required to Schedule 12A to ensure compatibility with the Data Protection Act 1998 and the Freedom of Information Act 2000, which was due to come into force on 1 January 2005. Recommendations also concerned the proposal that Standards Committees should have the right to operate in closed session when considering the following types of information:

- information relating to the personal circumstances of any person;
- information, which is subject to any obligation of confidentiality;
- information, which relates in any way to matters concerning national security; and
- the deliberation of standards committees or their sub-committees in reaching any finding in relation to allegations of misconduct by local government members.

21. Consultees in Wales were invited to submit comments on whether similar arrangements should be introduced in Wales.

22. In total 13 responses were received: eight from local authorities with the others from a fire and rescue authority; a National Park Authority; the Information Commissioner's Office for Wales, the Welsh Branch of the Association of County Secretaries and Solicitors (ACS&S) and a joint response from the Police Authorities of Wales. These responses were taken into consideration for the purposes of drafting the associated order, The Local Government (Access to Information) (Variation) (Wales) Order 2007. Six respondents (four local authorities, the Fire and Rescue Authority and the ACS&S) commented on the

proposals in respect of the Standards Committees, of which three (one local authority, the Fire & Rescue Authority and the ACS&S) favoured the use of the term “proceedings over deliberations”.

23. A further consultation on the Standards Committees proposals, and in particular whether the term used should be “proceedings” or “deliberations”, took place as part of a wider and more comprehensive review of the Regulations concerning Standards Committees. This consultation took place between 26 August 2005 and 25 October 2005. Those consulted comprised Chief Executives and Monitoring Officers of County and County Borough Councils, the Welsh Local Government Association, Clerks to town and community councils, Chief Officers of National Park Authorities, Clerks to Fire and Rescue Authorities, Clerks to Police Authorities, Chairs of Standards Committees, the then Audit Commission for Wales, One Voice Wales, the Society of Local Authority Chief Executives (SOLACE), the Welsh Association of National Park Authorities, the Wales Council for Voluntary Action, the Public Services Ombudsman for Wales and the Information Commissioner for Wales.
24. A total of 57 responses were received to this consultation exercise (from 16 local authorities, 37 town and community councils, two National Park Authorities and two Fire and Rescue Authorities). Of these 20 respondents provided comments on which “term” they preferred. Nine (five local authorities, three town and community councils and one Fire and Rescue Authority) favoured “deliberations”, whilst 11 (six local authorities, four town and community councils and one Fire and Rescue Authority) favoured “proceedings”.
25. Welsh Assembly Government policy officials subsequently discussed the preferred term of use with a representative of the All-Wales Monitoring Officer Group (who in turn canvassed the views of Monitoring Officer colleagues). On the basis of these discussions Regulations were drafted, which used the term “deliberations”. It was considered that the use of “deliberations”, in conjunction with the new exempt information categories being introduced under the associated Local Government (Access to Information) (Variation) (Wales) Order 2007, would enable Standards Committees to exclude the public in appropriate circumstances (subject to a public interest test). The use of the term “proceedings” was seen as having too wide an interpretation. “Deliberations” is also the term used in the comparable England Regulations (The Relevant Authorities (Standards Committee) (Amendment) Regulations 2006).
26. Draft Regulations were then issued for consultation from 1 December 2006 to 12 January 2007. Those consulted comprised of Leaders, Chief Executives and Monitoring Officers of County and County Borough Councils; the Leader and Director of Welsh Local Government Association; Chairs, Chief Executives and Monitoring Officer of National Park Authorities; Chairs Clerks and Monitoring Officers of Fire and Rescue Authorities; Clerks to Police Authorities; Chair and Chief Executive of One Voice Wales; SOLACE, Chairs of Standards Committees, the Association of County Secretaries and Solicitors (ACS&S), the Welsh Association of National Park Authorities, the Wales Audit Office, the

Public Services Ombudsman for Wales, the Information Commissioner's Office for Wales, Assembly Members and political parties.

27. Recipients' attention was drawn to the use of the term "deliberations" rather than "proceedings". Recipients were also advised that the previously proposed exemption relating to "the personal circumstances of any person", which had formed part of the original policy consultation (first bullet point in paragraph 20 refers), had not been included in the draft of these Regulations, because equivalent provision was now included in the new categories of exempt information to be inserted into Part 4 of Schedule 12A by the associated Local Government (Access to Information) (Variation) (Wales) Order 2007; this is similar to the arrangements in England.
28. Three responses were received, from two local authorities and the Information Commissioner's Office for Wales. No substantive comments were made on the draft Regulations and, as a result, no changes have been made following the consultation exercise. A summary of the consultation responses is attached at Annex A.

#### With Subject Committee

29. These Regulations were notified to the Local Government and Public Services Committee, via the list of forthcoming legislation, on 15 March 2006, (LGPS(2)-05-06(p.2)), and have remained on the list ever since. However, at that time the title of the legislation was The Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Amendment) (Wales) Regulations 2006. This title was updated, via the list of forthcoming legislation, on 23 November 2006 (LGPS(2)-16-06 (p.2), item no: LG.088), to The Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) and the Standards Committees (Wales) (Amendment) Regulations 2007. The Committee did not identify the Regulations for detailed scrutiny.
30. In addition, the Committee was sent a copy of the consultation letter of 4 November 2004 and was also included in the consultation exercise on the draft Regulations, which commenced on 1 December 2006. No comments were received in respect of either consultation.

#### **Review**

31. The impact of these policies is predictable and they are unlikely to need review in the foreseeable future.

#### **Summary**

32. These particular Regulations will impact on county and county borough councils, National Park Authorities and Fire and Rescue Authorities in Wales. They relate to Schedule 12A to the Local Government Act 1972, which has been revised to ensure compatibility with the Data Protection Act 1998 and the Freedom of Information Act 2000, and are consequential to the making of the Local Government (Access to Information) (Variation) (Wales) Order 2007.

**SUMMARY OF RESPONSES TO CONSULTATION ON THE LOCAL AUTHORITIES (EXECUTIVE ARRANGEMENTS) (DECISIONS, DOCUMENTS AND MEETINGS) AND THE STANDARDS COMMITTEES (WALES) (AMENDMENT) REGULATIONS 2007**

**Consultation Period – 1 December to 12 January 2007**

Those Consulted:-

Leaders, Chief Executives and Monitoring Officers of County and County Borough Councils  
Leader and Director of the Welsh Local Government Association  
Chairs, Chief Executives and Monitoring Officers of National Park Authorities  
Chairs, Clerks and Monitoring Officers of Fire and Rescue Authorities,  
Clerks to Police Authorities,  
Chair and Chief Executive of One Voice Wales  
Society of Local Authority Chief Executives  
Chairs of Standards Committees  
Welsh Branch of the Association of County Secretaries and Solicitors  
Welsh Association of National Park Authorities  
Wales Audit Office  
Public Services Ombudsman for Wales  
Information Commissioner's Office for Wales  
Assembly Members  
Political Parties

3 Responses Received From:-

- Cardiff City Council  
Phillip Bradshaw – Information Manager and Clerk to the Council
- Wrexham County Borough Council  
Trevor Coxon – Chief Legal and Democratic Services Officer/Monitoring Officer
- Information Commissioner for Wales  
Anne Jones – Assistant Commissioner (Wales)

1. Cardiff City Council  
No comments on the draft regulations.
2. Wrexham County Borough Council  
No substantive comments on draft regulations.  
Note that the proposed regulations mainly introduce changes which are consequential to the changes to Schedule 12A of the Local Government Act 1972. No objections to the wording of the additional categories of exempt information available to Standards Committees.

3. Information Commissioner for Wales

No substantive comments on draft regulations.

Note the correlation between proposed new paragraphs 18A and 18B within Regulation 4 and the wording of the equivalent exemptions within the Freedom of Information Act. Close alignment of the different access regimes should lead to greater clarity and less confusion for local authorities, and should as a consequence facilitate a more consistent approach to the disclosure of information.