

Local government and public services committee

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To: Business Committee From: Sue Essex AM, Minister for Finance, Local Government and Public Services

Explanatory Memorandum

Local Government, Wales, The Local Authorities (Standing Orders) (Wales) Regulations 2006

Summary

These draft regulations relate to the National Assembly for Wales' powers to introduce provisions requiring relevant authorities in Wales (ie a county or county borough council) to incorporate into their standing orders certain provisions in relation to their staff, meetings and proceedings. These would include provisions that provide a measure of protection from dismissal for Monitoring Officers and Chief Finance Officers, currently only available to Heads of Paid Service.

This Memorandum is submitted to the Assembly's Business Committee in relation to the Local Authorities (Standing Orders) (Wales) Regulations 2006 in accordance with Standing Order 24.6.

A copy of the instrument is submitted with this Memorandum.

Enabling powers

The regulations are to be made under sections 8, 20 and 190 of the Local Government and Housing Act 1989 ("the 1989 Act"), which have been devolved to the National Assembly for Wales ("the Assembly") and delegated to the Minister for Finance, Local Government and Public Services. Section 8 of the 1989 Act allows the Assembly to make regulations requiring a relevant authority's incorporate such provision as may be prescribed by the regulations in standing orders relating to their staff; and to make or refrain from making such other modifications of any such standing orders as may be so prescribed. Standing orders relate to the staff if they make provision for regulating the appointment of persons to paid office or employment under the authority or the dismissal of persons holding such office or employment and the taking of other disciplinary action against such persons. This includes provisions ensuring that recruitment procedures are fair and transparent and provisions which prevent the dismissal of specified officers without first this being recommended by an independent person. Section 20 enables the Assembly to make regulations requiring relevant authorities to incorporate such provision as may be prescribed by the regulations in standing orders for regulating their proceedings and business; and to make or refrain from making such other modifications of any such standing orders as may be so

prescribed. Section 190 enables the Assembly to make different provision for different cases and descriptions of cases.

Effect

The regulations, which apply to county and county borough councils in Wales contain provisions in respect of:

- Standing orders relating to the appointment of chief officers (Regulation 3, Schedule 1), ensuring posts are properly advertised and that the interview process is fair.
- Standing orders relating to meetings and proceedings the recording of votes and signing of minutes at extraordinary council meetings (Regulation 4, Schedule 2).
- Standing orders relating to staff – procedures for the appointment and dismissal of staff ensuring that all staff, with certain exceptions, are appointed or disciplined by the head of paid service or an officer nominated by the head of paid service. (The exceptions are the head of paid service, chief officers, deputy chief officers, political assistants, elected mayor's assistants and school staff). The regulations also make clear that the appointment or dismissal of the head of paid service must be approved by the full council and provides that for other senior staff the executive (where it exists) must be represented on the appointment/disciplinary committee but cannot be in the majority (Schedule 3).
- Standing orders in respect of disciplinary action - no disciplinary action in respect of the head of the authority's paid service, its monitoring officer or chief finance officer may be taken other than in accordance with paragraph 2 to Schedule 4 including two months suspension on full pay other than in accordance with a recommendation in a report made by a designated independent person.
- Procedures to be followed when investigating allegations of misconduct against the head of paid service, monitoring officer or chief finance officer. These include the establishment of an "investigation committee" (Regulation 9) which, if it decides there is a "case to answer", must appoint a Designated Independent Person to investigate the matter and make recommendations. Time limits are set on the deliberations of the investigation committee, the independent person and the relevant authority once it received the independent person's report.
- Existing regulations, the Local Authorities (Standing Orders) Regulations 1993, only provide the disciplinary protection of the independent person in respect of a head of paid service. The introduction of the Local Government Act 2000 placed new responsibilities on monitoring officers and chief finance officers to be the guardians of the legal and financial limitations on the council's and executive's ability to act and these regulations provide protection for these posts also. These regulations have been drafted with a view to streamline disciplinary proceedings to attempt to prevent procedures being unduly frustrated and delayed.
- Also added for the first time are the provisions delineating those staff who should be appointed (or dismissed) by the council or a council committee and those, the overwhelming majority, for whom officers should be responsible.

Target implementation

These regulations are scheduled for plenary consideration on 2nd May 2006 and would come into force two months later (in order to allow local authorities to prepare the necessary amendments to their standing orders).

Financial implications

There are no direct costs for the Assembly or local authorities implicit in the approval of these regulations.

Regulatory appraisal

A regulatory appraisal has been carried out and is attached.

Consultation;

with stakeholders

A full consultation was carried out on the policy proposals and also the draft regulations. In general fell into two camps: those representing local government as employers, led by the Employers Organisation ("EO"), who liaised with the WLGA, and local government officers, led by SOLACE Wales.

The EO welcomed the approach of the Assembly Government but believed that changes were needed to the draft regulations in order to bring them into line (as far as possible) with employment legislation. The regulations were redrafted to take this into account.

SOLACE particularly welcome the proposal to widen the coverage of the disciplinary procedure from chief executives to monitoring and chief finance officers also. However, they, questioned the need for provisions originally contained in the draft regulations which served to regulate relations between full council and the executive in the approval of plans and strategies, budget and council tax. They argued that that Welsh councils, unlike English, had been operating new structures since 2002 without these provisions. Solace did not feel there was a need to provide for relations between the two parts of the council in regulations. These provisions are not included in the final draft.

With subject committee

The subject committee is due to scrutinise these regulations on the 25th January 2006.

Recommended procedure

Subject to the views of the Business Committee, I recommend that this order proceed to plenary under

the Standard procedure.

Compliance

The legislation will (as far as is applicable):-

have due regard to the principle of equality of opportunity for all people

(Government of Wales Act 1998, section 120);

be compatible with the Assembly's scheme for sustainable development (section 121);

be compatible with Community law (section 106);

be compatible with the Assembly's human rights legislation (section 107);

be compatible with any international obligations binding the UK Government and the Assembly (section 108).

This memorandum has been cleared by the Directorate of Legal Services and by the Assembly Compliance Office.

Head of Division – John Palmer (x3609)

Drafting Lawyer – Helen Kellaway (x 5552)

Policy division contact – Frank Cuthbert (x3094)

Sue Essex JANUARY 2006

Minister for Finance, Local Government and Public Services