

Explanatory Memorandum to the Fire and Rescue Authorities (Improvement Plans)(Wales) Order 2008

This Explanatory Memorandum has been prepared by the Social Justice and Local Government Division and is laid before the National Assembly for Wales.

(i) Description

This Order will set the date by which a Fire and Rescue Authority (“FRA”) must publish their improvement plan (called a best value performance plan in the Local Government Act 1999 (‘the 1999 Act’)) and the date by which an auditors report relating to an improvement plan must be published.

(ii) Matters of Special Interest to the Subordinate Legislation Committee

No matters of special interest.

(iii) Legislative Background

The Order will be made in exercise of the powers conferred by sections, 6(3), 7(6) and 29(1) of the Local Government Act 1999 (‘the 1999 Act’).

Section 6(3) provides that an authority must publish its best value performance plan for the financial year before –

- (a) 31 March of the previous year, or
- (b) Such other date as the Secretary of State may specify by order.

Section 7(6) provides that copies of an auditors report relating to an authority’s performance plan shall be sent –

- (a) by 30 June of the financial year to which the relevant performance plan relates,
or
- (b) by such other date as the Secretary of State may specify by order.

These powers were conferred on the National Assembly for Wales by virtue of section 29 of the Act, and are now vested in the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

This instrument will follow the negative resolution procedure.

(iv) Purpose and intended effect of the legislation

This Order specifies the date by which a FRA’s improvement plan for a financial year must be published and the date by which copies of an auditor’s report relating to the plan are to be sent to the FRA, the Auditor General for Wales, and, if required, the Welsh Ministers. The Order applies only to best value authorities in Wales which are a fire and rescue authority constituted by a scheme to which section 4 of the Fire and Rescue Services Act 2004 applies.

This Order provides that

(a) Best value authorities to which the order applies must publish their improvement plan for a financial year by 31 October of the year to which the plan relates.

(b) Copies of an auditor's report relating to an improvement plan must be sent by 30 November of the year to which the plan relates.

(v) Implementation

It is intended that the Order will come into force on 29 February 2008 but will have effect in relation to the financial year 2008-2009 and subsequent financial years.

(vi) Consultation

Consultation was undertaken on 5 December for four weeks. Please refer to the RIA consultation paragraph below for further information.

(vii) Regulatory Impact Assessment

a) Options

Option 1 : Do Nothing

The 1999 Act sets out that an authority must publish its plan for the financial year before 31 March of the previous year, and that copies of an auditors report relating to an authority's performance plan must be sent by 30 June of the financial year to which the performance plan relates, or such other date as the Secretary of State may specify by Order. Interim arrangements are currently in place (which have been agreed by the Assembly Government, FRAs and Wales Audit Office ("WAO")) whereby the FRAs in Wales are using the recently published non-statutory Wales Programme for Improvement ('WPI') guidance for FRAs and publishing their improvement plans in accordance with this guidance by 31 October. Without this Order the FRAs would be under a statutory duty to comply with the requirements under the 1999 Act which is for an FRA to publish its performance plan for any financial year by 31 March of the previous financial year and for auditors to send a copy of their report relating to the plan by 30 June.

Option 2 : Make the Legislation

The Order will ensure that FRAs are under a statutory duty to publish their improvement plans by 31 October of the year to which they apply, and that WAO report on these by 30 November. This would reflect the non-statutory WPI guidance. It will bring the FRAs improvement plan process in line with that introduced for the other local authorities in Wales.

b) Benefits

The Order will enable FRAs to be compliant with the 1999 Act whilst using an approach to performance planning which reflects and furthers the shared vision of

public service improvement which reflects and furthers the shared vision of public service improvement and which is consistent with the other local authorities in Wales.

c) Costs

The cost of audit will be met by individual FRAs and will be agreed between an individual FRA and WAO on an annual basis. In addition central monies to part fund improvement inspections for FRAs (which include All Wales and specific studies resulting from the improvement process, and funding of the WAO relationship manager and Joint Risk Assessment process) is provided for centrally. Costs, which include all of the above plus the WAOs involvement in operational assurance, have been identified as £74,850.

d) Competition Assessment

Not applicable.

e) Consultation

The consultation was issued on 5 December for 4 weeks and was sent to Chief Executives of Local Authorities, Chief Fire Officers, Chairs and Clerks of FRAs, WAO and Welsh Local Government Association.

Two responses were received from Mid and West Wales FRA and South Wales Fire and Rescue Service (FRS). Details of the issues raised are set out below :-

Mid and West Wales FRA – were content with the proposal for 31 October for Improvement Plan publication and the 30 November for sending the Auditors report, and confirmed that the former date has already been included in the Authorities planning cycle.

South Wales FRS – indicated that the Order does not specifically state criteria in accordance with which the Improvement Plan should be published i.e. it does not reference the WPI guidance for FRAs. The FRS also identified that the ability of the FRA to comply with the Order in accordance with WPI guidance for FRAs is dependent upon WAO fulfilling their functions in accordance with the timetable laid out in the WPI guidance i.e. timely completion of the joint risk assessment.

The Assembly Government Response is set out below :-

- The WPI Guidance is non-statutory and it would therefore not be appropriate for this to be referred to within the Order.
- The timetable laid out in the WPI guidance is provided as an example. It was agreed during the development of the guidance that there would need to be flexibility to adapt the timetable to meet local needs. The Assembly Government does however recognise this concern and will work with the WAO to ensure that these are timetabled in an appropriate manner.

Prior to the consultation on the Order the main interested parties (WAO, FRAs, Wales Local Government Association) were all involved in the detailed development of WPI guidance for FRAs which specifically refers to the improvement plan publication date.

f) Post implementation review

This will be undertaken following any use of measure making powers to replace best value provisions in the 1999 Act .

g) Summary

This Order will set the date by which a FRA must publish their improvement plan and the date by which an auditors report relating to an improvement plan must be published.