

Explanatory Memorandum to The Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) (Amendment) Regulations 2009

(WSI 2009 No.2983 (W.260))

This Explanatory Memorandum has been prepared by the Department of Social Justice and Local Government and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

1. Description

1.1 Under Part II of the Local Government Act 2000 ('the 2000 Act') local authorities may operate under either 'executive arrangements' (leader and cabinet) or 'alternative arrangements' (involving a politically balanced board). Part II also provides that local authority functions are the responsibility of the executive (for those authorities operating 'executive arrangements') or the board (for those authorities operating 'alternative arrangements') unless otherwise specified in regulations or primary legislation. This Instrument updates and amends regulations made in 2007 which specify which local authority functions must not be, need not be or are not solely to be executive functions. Comparable regulations are being made for those authorities operating 'alternative arrangements' (The Local Authorities (Alternative Arrangements) (Wales) (Amendment) Regulations 2009).

2. Matters of special interest to the Subordinate Legislation Committee

2.1 None.

3. Legislative Background

3.1 Sections 13, 105 and 106 of the 2000 Act gave powers to the National Assembly for Wales to make regulations specifying which functions are not to be, may not be or are not solely to be the responsibility of the executive. These functions were transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 ('GOWA').

4. Purpose and intended effect of the legislation

Purpose

4.1 The National Assembly for Wales made The Local Authorities (Executive Arrangements) (Functions and Responsibilities)

(Wales) Regulations 2007 SI No 399 (W.45) in February 2007 ('the 2007 Regulations'). The 2007 Regulations consolidate regulations previously made by replacing and revoking The Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2001, and amended in 2002, 2003 and 2004. The 2007 Regulations specify the functions which:-

- must not be the responsibility of an authority's executive. These include town and county planning and development control, licensing and registration, health and safety at work and functions relating to elections and byelaws;
- may be (but need not be) the responsibility of an authority's executive (also known as "local choice" functions). These include the determination of appeals such as decisions made by, or on behalf of the authority, conducting of best value reviews, functions relating to pollution and statutory nuisances, the calculation of the council tax base and licensing functions; and
- must not be the sole responsibility of an authority's executive. These relate to plans, schemes and strategies such as the Best Value Performance Plan, the Health and Well Being Strategy and the Welsh Language Scheme.

4.2 The 2007 Regulations also set out the circumstances in which functions must not be the responsibility of an authority's executive, such as the determination of the authority's budget and their borrowing and capital expenditure.

Intended Effect

4.3 These Regulations amend the 2007 Regulations. They will continue to have the effect of making most local authority functions the responsibility of the executive. The Regulations make the following changes:

- Certain functions under the Highways Act 1980 and the Wildlife and Countryside Act 1981, which had featured in the earlier regulations, were not included in the consolidated 2007 Regulations (such as the power to create, stop up and divert footpaths and bridleways). This had the unintended effect of transferring the rights of way responsibilities from the full council to the executive. Following representations from a number of local authorities these functions are now returned to the Regulations as ones for local choice. This will enable authorities to decide for themselves whether to maintain these functions as the responsibility of the executive or return them to a committee of the full council;

- In addition a number of other related functions under the Highways Act 1980 have also been added to the Regulations as ones for local choice. These include powers concerning the stopping up and diversion of certain highways, footpaths, bridleways and restricted byways crossing railways, the making of public path extinguishment and diversion orders and agreements concerning stiles/gates for persons with mobility problems;
- The duty on local authorities to prepare and publish Rights of Way Improvement Plans (section 60 of the Countryside and Rights of Way Act 2000, which came into force in late 2007) is being included as a function which is not to be the sole responsibility of an authority's executive;
- The following functions under the Gambling Act 2005, the provisions for which did not come into force until after the 2007 Regulations were made, are being made ones for local choice:-
 - The duty to comply with a requirement to provide information to the Gambling Commission;
 - Functions relating to the exchange of information;
 - The power to exchange information; and
 - The function relating to the registration and regulation of small society lotteries.

For ease of reference the Regulations also replicate those Gambling Act functions and responsibilities which already feature in the 2007 Regulations.

- An amendment is made to reflect the replacement of the requirement to produce a Single Education Plan with one to produce a Children and Young People's Plan (The Children and Young People's Plan (Wales) Regulations 2007 SI No 2316 (W.187) refers). The function will continue to be one which is not to be the sole responsibility of an authority's executive.

5. Implementation

- 5.1 It is intended that the Regulations will come into force on 2 December 2009 alongside the Local Authorities (Alternative Arrangements) (Wales) Amendment) Regulations 2009. If the Regulations were to be annulled, local authorities would be unable to make arrangements for changing the allocation of their new responsibilities under the Gambling Act 2005. This, together with an inability to effect other changes proposed in the

Regulations, would have an adverse effect on the efficiency of local government in Wales.

6. Consultation

6.1 Local government and other interested parties have been consulted on the draft Regulations (see paragraph 7e of the Regulatory Impact Assessment).

7. Regulatory Impact Assessment

a. Options (for achieving the policy objective – as set out in paragraph 4 above)

Option 1 – Do Nothing

Not to make these Regulations would leave more functions and responsibilities in the hands of local authority executives (or boards for those authorities operating alternative arrangements) because that is the default situation if no other stipulation is introduced.

Option 2 – Make the Legislation

These Regulations capture certain items of legislation, including certain provisions of the Gambling Act 2005, not currently provided for.

b. Benefits

These Regulations allow for the better allocation of responsibilities and greater flexibility for local government.

c. Costs

There are no direct costs for either the Welsh Assembly Government or local authorities as a result of the making of these Regulations which allow for the better allocation of responsibilities for local government.

d. Competition Assessment

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

e. Consultation

- (i) The draft regulations (together with the associated Alternative Arrangements Regulations) issued for a 12 week consultation period from 6 March to 29 May 2009. Those consulted comprised Chief Executives and Monitoring Officers of County and County Borough Councils, the Welsh Local Government Association, the Society of Local Authority Chief Executives, the

Association of Council Secretaries and Solicitors, Wales Branch (ACSeS) and the Wales Audit Office.

- (ii) Consultees were advised of the proposal to reinstate into the 2007 Regulations the functions under the Highways Act 1980 and the Wildlife and Countryside Act 1981 concerning countryside and rights of way and to make these functions ones for local choice. Comments were also invited on related functions under the Highways Act 1980 also being made ones for local choice, together with functions under the Gambling Act 2005, which had not come into force until after the 2007 Regulations had been made. Consultees were also advised of the proposal to make the new duty to prepare and publish Rights of Way Improvement Plans and the requirement to produce a Children and Young People's Plan (which replaces the Single Education Plan) ones which were not to be the sole responsibility of the executive. Comments were also invited on the allocation of functions relating to the stopping up or diversion of highways (section 116 and 117 of the Highways Act 1980) and whether these should be made ones for local choice.
- (iii) Seven responses were received, from 6 local authorities and from ACSeS and all were positive in their support of the content of the amending regulations. Those that responded to the question about the allocation of functions relating to the stopping up or diversion of highways supported these functions being added to the regulations as ones for local choice. A summary of the consultation responses is available on the Welsh Assembly Government's Local Government website.
- (iv) As a result of the consultation exercise one amendment has been made to the draft regulations (and the associated Alternative Arrangements Regulations). The functions relating to the stopping up or diversion of highways have been added to the regulations as ones for local choice.

f. Post implementation review

The impact of these policies is predictable. They are likely to need reviewing from time to time. Any difficulties in administering the Regulations would be reported by local authorities. Consideration would then be given to amending the Regulations.

g. Summary

These Regulations will only impact on local authorities operating 'executive arrangements'. They are designed to improve the efficiency, flexibility and timeliness of local government decision-making.