

## **REGULATORY APPRAISAL**

### **LOCAL GOVERNMENT, WALES**

#### **THE LOCAL AUTHORITIES (STANDING ORDERS) (WALES) REGULATIONS 2006**

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

1. These Regulations relate to the Assembly's power to require relevant authorities (in this case, county and county borough councils) to adopt standing orders concerning the appointment and dismissal of staff, the conduct of proceedings and business. These include provisions which would provide a measure of protection from dismissal for Monitoring Officers and Chief Finance Officers, currently only available to Heads of Paid Service.
2. Section 8 of the 1989 Act empowers the Assembly to make Regulations, which require local authorities to make certain standing orders concerning the appointment and dismissal of staff. This includes standing orders ensuring that recruitment procedures are fair and transparent and provisions which prevent the dismissal of specified officers without this first being recommended by an independent person.
3. Section 20 enables the Assembly to make Regulations requiring local authorities to adopt standing orders concerning the conduct of their proceedings and business.
4. Section 190 is a technical provision enabling the Assembly to make Regulations, which allow different provision for different cases.
5. The subject matter of these Regulations has been the subject of lengthy consultations and discussions with local government and relevant organisations. These include: The leaders of County and County Borough Councils in Wales, the Chief Executives of County and County Borough Councils in Wales, the Welsh Local Government Association (WLGA), The Society of Local Authorities Chief Executives (SOLACE), the Association of Local Authorities Chief Executives (ALACE), the Chartered Institute of Public Accountancy and Finance, the Audit Commission, the Improvement and Development Agency (IdeA), the Commissioner for Local Government Administration, Assembly Members and political parties in Wales. 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 and, as such, it was felt that the protection should be provided for these posts also.

6. Local government representatives, however, were concerned that events surrounding the dismissal of a Chief Executive in the 1990s had revealed weaknesses in the existing provisions, particularly allowing the officer accused of misconduct to frustrate and delay processes.
7. These Regulations have been drafted in such a way as both to extend protection but also to streamline disciplinary procedures.

### **Risk Assessment**

8. These Regulations are required both in order to extend a measure of protection to two officer posts whose occupants could be particularly vulnerable to arbitrary discipline. They also introduce provisions, which ensure that there is a clear delineation between those senior officers who should be appointed by the council itself and others, the majority, whose appointment should be a matter for the Head of Paid Service or an officer nominated to act on their behalf.
9. Failure to introduce these Regulations would mean that Monitoring Officers and Chief Finance Officers in Wales would lack a level of protection enjoyed by their English counterparts. This creates the risk that some senior officers might apply for employment with English authorities where they felt more secure.

### **Options**

#### Option 1: Do Nothing

10. Failure to make these Regulations would have the effect of allowing councillors to participate in the appointment and dismissal of junior levels of staff, which is considered to be contrary to best practice.

#### Option 2: Make the Legislation

11. If these Regulations were not made, Heads of Paid Service would still enjoy the protection from dismissal provided by the 1993 Regulations. Local government employers have expressed concern that the existing Regulations allow too much opportunity to officers facing allegations of misconduct to frustrate disciplinary procedures. Although cases of discipline involving these senior officers are rare, these Regulations, which introduce timetables for action, would provide a more efficient framework in the event of such an occurrence.

### **Benefits**

12. These Regulations, as well as updating the 1993 Regulations to bring them into line with new political structures, also provide a level of protection for the first time to two officer posts considered particularly vulnerable. The Monitoring Officer has the duty to inform the council or its executive if it is acting, or intends to act, in an illegal or improper fashion. The Chief Finance Officer must inform a council or its executive if it is acting, or intending to act, in a way that is outside budgetary constraints.

## **Costs**

13. There are no direct costs for the Assembly or local authorities as a result of these Regulations. Any indirect costs arising out of disciplinary action against Monitoring Officers and Chief Finance Officers are impossible to predict. There are no costs for other bodies.

## **Consultation**

### With Stakeholders

14. A full consultation was carried out on the policy proposals and also the draft regulations from 17 June 2005 to 26 August 2005. In general responses fell into two camps: those representing local government as employers, led by the Employers' Organisation ("EO"), who liaised with the Welsh Local Government Association (WLGA), and local government officers, led by Society Of Local Authorities Chief Executives, (SOLACE) Wales.

The full list of consultees were:

Leaders of County and County Borough Councils in Wales;  
Chief Executives of County and Country Borough Councils in Wales;  
The Welsh Local Government Association (WLGA);  
The Society of Local Authorities Chief Executives (SOLACE);  
The Association of Local Authorities Chief Executives (ALACE);  
The Employers' Organisation (EO);  
The Chartered Institute of Public Accountancy and Finance;  
The Audit Commission;  
The Improvement and Development Agency (IDeA);  
The Commissioner for Local Government Administration;  
Assembly Members; and  
Political Parties in Wales

15. The Employers' Organisation 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.
16. SOLACE particularly welcome the proposal to widen the coverage of the disciplinary procedure to include Monitoring Officers and Chief Finance Officers alongside Chief Executives. 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. Their view was that Welsh councils, unlike English councils, 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. A summary of the other changes made as a result of the consultation can be found at Annex A.

### With Subject Committee

17. These Regulations were notified to the Local Government and Public Services Committee via the list of forthcoming legislation on 1 December 2004 (LGPS 11-04 (P.3), Item No. LAA-25) and have remained on the list ever since. The Committee identified the Regulations for detailed scrutiny, which took place on the 25 January 2006. The Committee recommended approval of the draft Regulations without amendment. A transcript of the discussion is attached at Annex B.

### **Review**

18. These regulations are putting into place procedures, which will be very rarely used. They have been subject to full consultation with all interested parties, and are altering the Constitutions of Councils to reflect what is considered best practice. There is no obvious necessity to consider a review process.

### **Summary**

19. The Regulations would have the effect of requiring local authorities to change their standing orders to provide Monitoring Officers and Chief Finance Officers with the special procedures for dealing with alleged misconduct which currently only applies to Heads of Paid Service. The Regulations would also introduce provisions, which restrict councillors from involvement in appointment and dismissals below a senior level of officer. Implementation of these Regulations will have no direct financial impact on the Assembly or local authorities.

**SUMMARY OF THE CHANGES TO THE REGULATIONS  
AS A RESULT OF CONSULTATION**

Regulation 1 – title etc

1. The coming into force date was stated as 31<sup>st</sup> December 2005. These regulations are now timetabled for Assembly consideration on 2<sup>nd</sup> May 2006. **The coming into force date is two months later than this, in order to give local authorities time to incorporate the changes to their standing orders, i.e. 3<sup>rd</sup> July 2006**

Regulation 2 – Interpretation

2. Ceredigion County Council pointed out that disciplinary procedures for school staff is covered in the Schools Standards and Framework Act 1998. The Minister agreed with the recommendation that there should be a specific exclusion added for these staff.

Regulation 3 – Standing Orders for Chief Officers

1. Society of Local Authorities Chief Executives (SOLACE) , Denbighshire and Ceredigion pointed out that, as worded, this regulation provides for an authority to adopt standing orders concerning the appointment of chief officers and then restricts their ability to modify them as set out in Part 2 of Schedule 1. The effect of this gives authorities a narrower scope when considering amendments to their standing orders. The Minister agreed this was unnecessarily restrictive and the regulation should be amended so as to allow amendments provided for in draft regulation 3(a).

Regulation 6 – Alternative Arrangements

2. This regulation is similar to regulation 5, in that it provides for appointment and dismissal of local authority staff, but applies to those councils (Powys, Merthyr Tydfil and Gwynedd) operating alternative arrangements. Gwynedd have responded but most points related to Schedule 3 (see below). They also made the point that the content of the regulation – apart from the heading – fails to state that this regulation only applies to authorities operating alternative arrangements. The Minister agreed that this may be corrected by stating such as “a relevant authority operating alternative arrangements” within the regulation.

Regulation 9 – Investigation of Alleged Misconduct

3. This is the main regulation which addresses the working of the disciplinary procedure, tightening up existing provisions and incorporating some provisions currently contained in the Joint Negotiating Committee for Executives of Local Authorities (JNC) Handbook only. In relation to the comments above on regulation it was proposed that the phrase “which

could lead to disciplinary action” is inserted after the term “allegation of misconduct”. This links the position back to the definition of “disciplinary action” and captures the various situations which come under that heading. A number of respondents were concerned at this lack of clarity. The Minister agreed with this proposal.

4. The Employers Organisation (EO) questioned regulations 9(2) and 9(3) whereby the executive leader/ elected mayor appoints the panel. Although this proposal follows what exists in the JNC Handbook, they considered this function would be more correctly performed by the relevant authority or a committee of the council - a view also supported by Association of Local Authorities Chief Executives (ALACE). SOLACE was also concerned that the draft regulations gave too much power to the leader and the executive. They would prefer the appointment be made by the council Chair but this appears to be too important a function to rest with that person. The Minister agreed with the proposal that sub-paragraphs (2) and (3) be altered so that the relevant authority appoints the panel.
5. The draft consultative regulations proposed the continuation of the existing provision which allow an authority to suspend an officer under investigation for two months. The EO pointed out that the draft regulations give the investigating panel a maximum of three months to report back. They suggested this is too long and could exceed the period of suspension. This point was echoed by Wrexham, Conwy and Ceredigion. The Minister agreed that the panel have a maximum of one month to produce their report.
6. The EO believed the power proposed for the Independent Person to require any member of staff to answer questions should be widened to include any person. A number of respondents made a similar point. The Minister agreed the regulations be altered to include the wording “any person”
7. Pembrokeshire believed that the proposed limit of one month for the authority to consider the Independent Person’s report was too short. This would now become a function of the Disciplinary Committee and one month appears reasonable. Following legal advice, the Minister agreed the full council should have a further maximum of one month to deal with any recommendation of the Disciplinary Committee in relation to a Head of Paid Service and an Appeals Committee have a maximum of one month to hear any appeal from a monitoring officer or chief finance officer.

#### Schedule 1 – Standing Orders for Chief Officers

8. Pembrokeshire pointed out that the draft provision forcing local authorities to re-advertise a post when no qualified person applies may not always be necessary if the authority has an alternative solution. They proposed that “must” be changed to “may”, The Minister agreed that the schedule be redrafted to provide that, should an authority decide it needs

to re-advertise, it must do so in accord with the standing orders (i.e. in such a way as to bring it to the attention of suitably qualified people).

#### Schedule 3 – Standing Orders in relation to Staff

9. The EO was of the view that the provision regarding the appointment or dismissal of the head of paid service is superfluous as it is already dealt with in regulation 7. Regulation 7 deals with standing orders relating to staff and officials will consider whether some or all of Schedule 3 replicates all or part of Regulation 7 and ensure there is no unnecessary duplication. The Minister agreed to this.
10. The Schedule introduces provisions that are already in force in England which enable the delay of a dismissal (or appointment) of an officer until such time as the appointing or dismissing body have investigated any objections from the executive of the authority. The EO felt this is an unnecessary provision that causes delays in England. SOLACE believed that the whole question of allowing the executive to be involved in appointments and dismissals is unnecessary and open to potential abuse. They believed that authorities have operated perfectly well since 2002 without these provisions. This position is supported by Ceredigion, Pembrokeshire, Denbighshire and Conwy. The Minister agreed these provisions should be removed.
11. SOLACE supports the provisions relating to appointment and dismissal of staff, other than certain senior or special officers, being a function of the head of paid service or his representative, subject to the right of appeal to a committee of the authority. However, they opposed the inclusion of the provision which would enable an appeals committee, i.e. councillors, to receive appeals from individuals not appointed to posts as it brings about councillor involvement in staff appointments. The Minister agreed to the removal of this provision as individuals already have avenues of appeal if they feel they have been unfairly discriminated against.
12. Further, SOLACE agreed with the provision that any committee of a council dealing with the appointment or dismissal of a senior officer should include at least one member of the executive. However, they would welcome a provision which prevented the executive having a controlling influence on such a committee. The Minister agreed to adding a provision preventing a majority of such committee members being members of the executive.

#### Schedule 4 – Standing Orders on Proceedings and Business

13. SOLACE questioned the need for these provisions (and that part of regulation 5 which links to the Schedule) on the basis that Welsh councils, unlike English, have been operating new structures since 2002 without them. The Schedule introduces provisions which regulate relations between full council and the executive in the approval of plans and

strategies, budget and council tax. SOLACE does not feel there is a need to provide for relations between the two parts of the council in regulations.

14. They also raised an issue concerning a date included the Schedule whereby the executive should submit council tax estimates to the authority by 8<sup>th</sup> February each year. Practice in Wales is to ensure that such matters are dealt with by 10<sup>th</sup> March and this appears to be an English provision which would go against existing practice in Wales. This point has also been raised by the Welsh Local Government Association finance officer and the Assembly's Local Government Finance department as an anomaly, as well as other consultees. SOLACE also points out that provisions concerning precepts should not apply here, as Welsh unitaries are not major precepting authorities.
15. All of Solace's arguments were supported by Ceredigion and Denbighshire. There appears to be no support for the inclusion of the provisions in Schedule 4. The other provisions and existing practice seems to deal with matters satisfactorily. The Minister agreed to delete Schedule 4 and part of Regulation 5 from the draft Regulations.



**The Local Government and Public Services  
Committee - Wednesday, 25 January 2006**

**The Local Authorities (Standing Orders) (Wales) Regulations 2006**

**Ann Jones:** The committee asked to look at this piece of subordinate legislation. No amendments or issues have been raised with me. Do Members have any points for clarification? I see that they do not. We will move on to the next item.