

## **Explanatory Memorandum to the Valuation Tribunal for Wales Regulations 2010**

This Explanatory Memorandum has been prepared by Local Government Finance Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Valuation Tribunal for Wales Regulations 2010. I am satisfied that the benefits outweigh any costs.

*Carl Sargeant*

**Minister for Social Justice and Local Government**

**9 March 2010**

## **1. Description**

These regulations provide for the establishment of a single Valuation Tribunal for Wales to replace the four existing regional Valuation Tribunals in Wales.

## **2. Matters of special interest to the Constitutional Affairs Committee**

None

## **3. Legislative Background**

Paragraphs 1 and 4-8 of schedule 11 to the Local Government Finance Act 1988 provide the powers for the making of regulations in connection with the structure, membership, staff, accommodation, equipment, procedure and other matters relating to valuation tribunals.

The relevant functions from the 1988 Act, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 and have now been transferred to the Welsh Ministers by virtue of section 162 and paragraph 30 of schedule 11 to the Government of Wales Act 2006.

The Regulations follow the negative resolution procedure.

## **4. Purpose and intended effect of the legislation**

These regulations provide for the following:

- A single Valuation Tribunal for Wales to be established.
- Members of the new tribunal to be appointed using the same mechanism as now i.e. a specified number will be appointed in each local authority and the appointment will be made jointly by the President of the Valuation Tribunal and the relevant local authority.
- The number of members of the Valuation Tribunals to be reduced from 238 to 186.
- The transfer of all current members of the four existing tribunals to the new Valuation Tribunal. Where current numbers of members exceed the number specified in the regulations, no further appointments may be made by the relevant local authority until the number drops below that specified
- The appointment of Chairpersons of the Tribunal. The number of Chairpersons will be determined by the Valuation Tribunal and they will be appointed following election by and from the members of the Valuation Tribunal in a postal ballot.

- The transfer of Chairpersons of the four current Valuation Tribunals to be Chairpersons of the new Tribunal.
- A President to be elected by and from the Members of the new Valuation Tribunal. Each member will have one vote in a postal ballot to be held within 3 months of the establishment of the new Tribunal, and thereafter within 3 months of a vacancy occurring.
- A regional representative and deputy to be elected for each of 4 regions in Wales, the regions to be consistent with the current boundaries for the 4 existing Valuation Tribunals. These elections will also be conducted via a postal ballot within 3 months of the establishment of the new Tribunal, and thereafter within 3 months of a vacancy occurring. The Deputy Regional Representative will stand in for the Regional Representative in cases of sickness or absence for any other reason.
- A Governing Council to consist of the President, 4 regional representatives, and an independent member to be appointed by Welsh Ministers. The Governing Council will carry out the functions of the Valuation Tribunal with regards to staff employment and appointments, budget management, planning and reporting, personnel issues, and training.
- The Chief Executive of the Tribunal to be the Clerk to the Tribunal. The functions of the Chief Executive may be delegated to other employees of the Valuation Tribunal as the Chief Executive so determines.
- The transfer of appeals from the four current Valuation Tribunals to the new Tribunal.
- The transfer of staff, property, rights and liabilities to the new Tribunal.
- The conduct of council tax appeals to the Valuation Tribunal with amendments made to reflect the changes to the structure of the Valuation Tribunal and to provide for the electronic transfer of information relating to council tax appeals.
- Consequential amendments to other regulations which make provisions concerning appeals to the Valuation Tribunal.

The proposal to establish a single Valuation Tribunal arose from the recommendations in the Rolph Report, which examined the structure and functions of Valuation Tribunals in Wales. The proposal was the subject of public consultation between September and November 2008.

Possible loss of local identity was the main issue that came out from that consultation and, to address this concern, the Minister for Social Justice

and Local Government decided to proceed with the proposal to establish a single Valuation Tribunal for Wales with Wales-wide membership but providing for regional representation on the Governing Council.

The effect of the Regulations will be to establish a single body with a national President providing clear leadership, while maintaining a base of local knowledge and expertise. There will be regional representation on the Governing Council so that local concerns will be brought to the attention of the Governing Council.

The reduction in the number of members will give members the opportunity to sit at more appeal hearings, gaining more experience and developing their skills.

The establishment of one Tribunal removes the need for a separate Service to carry out the four former Tribunals' administration.

If the Regulations were to be annulled, the four existing tribunals will remain in place, and the expected benefits of the establishment of a single body with a clear leadership, in terms of consistency and effectiveness, will not be realised.

## **5. Consultation**

The details of the consultation undertaken are included in the RIA below. As a result of the consultation changes were made to the draft regulations to provide for:

- The number of members allocated to Powys to be increased to 12 (4 of whom may be councillors in the local authority);
- The eligibility for appointment to Regional Representative to be restricted to serving Chairpersons; and
- A minor change relating to the appeals process so that the grounds on which a person may ask an Appeal panel to review its decision are expanded to include a ground based on "the interests of justice" .

## **Regulatory Impact Assessment –**

### **6. Options –**

- (i) To maintain the status quo in which case there would be no provision for a single Valuation Tribunal for Wales, and the benefits at paragraph 7 below would not be realised.
- (ii) Make the Regulations as drafted in order to realise the benefits in paragraph 7 below

## **7. Costs and Benefits**

**Costs** - There are no costs to local authorities, businesses, voluntary organisations, or members of the public. There are no additional costs to the Welsh Assembly Government. The costs of revised stationery, letterheads etc can be met from within the existing Valuation Tribunal running costs budget.

**Benefits** – The creation of a single Valuation Tribunal will provide better judicial leadership and promote improved standards of decision-making, consistency of approach and allow for easier dissemination of best practice. In the longer term, efficiency savings should result from the amalgamation of the four tribunals as there will be a centralised administration service to support the new tribunal, rather than the four separate offices that currently provide this service to the separate Tribunals.

## **8. Consultation Responses**

A copy of the draft Regulations was sent to:  
All Members of Valuation Tribunals in Wales  
All Staff of the Valuation Tribunal Service for Wales  
Chief Executives, County and County Borough Councils in Wales  
Wales Valuation Office Agency  
Welsh Local Government Association  
Institute of Revenues, Rating and Valuation  
Public Services Ombudsman for Wales  
Administrative Justice and Tribunals Council  
Members of the National Assembly for Wales

They were also published on the Welsh Assembly Government website. Thirteen responses were received and a summary of consultation responses is included at Annex A.

## **9. Competition Assessment**

This has been scored against the competition filter test which indicated that there will be no detrimental effect on competition.

## **10. Post implementation review**

This will be periodically reviewed during our regular meetings with the Valuation Tribunal for Wales.

## Valuation Tribunal for Wales Regulations 2010 Consultation Responses

We received thirteen responses to the consultation on the draft regulations, as follows:

- 4 from individual Valuation Tribunal members,
- 3 from Valuation Tribunals on behalf of their members,
- 3 from local authorities,
- 1 from the Governing Council of the Valuation Tribunal Service for Wales,
- 1 from the Welsh Committee of the Administrative Justice and Tribunals Council (AJTC), and
- 1 from the Royal Institution of Chartered Surveyors Wales.

### **Q1 Do you agree that the number of members should be reduced?**

There was unanimous agreement that the number of members should be reduced. Comments included 'this will result in members sitting more frequently and gaining more practical experience in hearing appeals'. The Valuation Tribunals and the Governing Council commented that the new regulations should continue to allow the Tribunal the flexibility to appoint less than the maximum number of members when workloads permit.

### **Q2 Do you agree with the numbers proposed for each local authority?**

Nine responses agreed with the numbers proposed or said they were 'about right'. Respondents generally agreed with the principle that allocations should be made on a rational basis, e.g. the number of hereditaments or population numbers. The 3 Tribunals and the Governing Council disagreed, saying that allocations should be equal in each region. Special mention was made of Powys, where the proposed cut in numbers was the most radical. As it covers such a large geographical area, it was felt that the complement for Powys should be increased to maintain adequate coverage and representation for the distinct areas within the authority. It was also suggested that the number of members per region should be divisible by 3 as this would preserve the current practice whereby one third of the membership is required to be appointed/re-appointed on a rolling two year basis, assuming the maximum 6 year term of appointment is the norm. One response said that councillors should not be allowed to be members of the Valuation Tribunal.

### **Q3 Do you agree that there should be a postal ballot for the National President?**

Twelve responses agreed that there should be a postal ballot. The AJTC disagreed, saying that the National President should be appointed on the basis of an open and independent merit-based process. The issue of the appointment of a Deputy President was mentioned by some, with some saying a Deputy should be elected, either by all members or by the Governing Council, and one saying a Deputy should not be appointed, as this would limit the opportunity for Regional Representatives to gain experience by standing in.

**Q4 Do you agree that the President should be able to delegate the task of appointing new members to the Regional Representatives?**

Eleven agreed that the President should be able to delegate this task, and three responses stated that this should be mandatory. The AJTC said that new members should be appointed on the basis of an open and independent merit-based process. One response did not comment on this point.

**Q5 Do you agree with the arrangements for electing the Regional Representative and Deputy Regional Representative?**

Five responses agreed with the proposed procedure. Of the others, the main comment made was that only members who had already been appointed as Chairs should be eligible to stand as a candidate for Regional Representative or President. A different election process was suggested by two of the Tribunals and the Governing Council, whereby a separate ballot for Regional Representative and Deputy Regional Representative would be held. One response said there was no need for an elected Deputy Regional Representative as Tribunal Chairs could deputise on a rotating basis. The AJTC said that appointments should be made on the basis of an open and independent merit-based process.

**Q6 Do you agree with the provisions for the structure and functions of the Governing Council?**

Eleven responses agreed with the provisions for the structure and functions of the Governing Council. The Tribunals and the current Governing Council linked this to the previous point saying that if only members who had already been appointed as Chairs were elected as Regional Representative or President, there would be more experience on the Council. One local authority thought the Governing Council should have an odd number of members with a quorum of three, one of which should be an independent member. The AJTC expressed concern about independent oversight of the service given that only one Council member would be appointed from 'outside the system' with all other members being elected from the body of tribunal members.

**Q7 Do you agree that the Chief Executive should be Clerk to the Tribunal, and that the Clerk should be able to delegate his/ her statutory functions to other members of VTW staff?**

Five responses agreed with this provision, with comments such as 'it would provide a clearer structure and control' and one saying that the delegation of functions to staff should be a statutory requirement. The main concern of the remainder of responses was the possibility of a conflict of interest between the roles of the Clerk and Chief Executive. The Valuation Tribunals and the Governing Council expressed concern about the current regional clerks and questioned how they would fit in to the new structure. The Governing Council considered that the Tribunal would be better served by the appointment of a Chief Clerk and four regional Clerks, and that the proposed structure meant

that opportunities for staff would be restricted, giving rise to recruitment and retention problems

**Q8 Do you have any further comments on the draft regulations?**

The Valuation Tribunals and the Governing Council expressed concern that the provisions in the draft regulations went further than the proposals in the previous consultation on the policy to establish a single tribunal. In particular they pointed out that the previous consultation stated that the proposals “did not seek to address the structure or operation of the Valuation Tribunal Service for Wales”, which is perceived as a separate body from the Tribunals. They argued that the proposed structure for the new Valuation Tribunal, which has responsibility for both judicial and administrative functions, would blur the divisions between these two distinct areas of responsibility and erode public perception of the judicial independence of the Tribunal.

The timing of the Regulations was an issue for the Tribunals, who pointed out that a Non-Domestic Rates revaluation would be taking effect from 1 April 2010, leading to an increase in their workload. They considered that implementation should be delayed to allow further time to establish a clearly defined structure and possibly permit the shadow operation of the new tribunal during a transitional period.

Some were concerned that the regulations were scheduled to come into force before the summary of consultation responses was due to be published. They felt that this erodes the transparency and openness of the consultation process.

Some technical amendments to the draft regulations were also suggested, including minor amendments to council tax legislation, and provision relating to the use of public rooms for hearing appeals.