

REGULATORY APPRAISAL

LOCAL GOVERNMENT, WALES

THE LOCAL AUTHORITIES (ALTERNATIVE ARRANGEMENTS) (WALES) REGULATIONS 2007

Background

1. The National Assembly for Wales made The Local Authorities (Alternative Arrangements) (Wales) Regulations 2001 SI No. 2284 (W.173) in 2001. These Regulations permit all county and county borough councils in Wales to operate alternative arrangements provided that those arrangements are in the form required by the Regulations. The Regulations also specify the committees, which must be established by an authority operating alternative arrangements and these include the establishment of a Board. The Regulations provide that a local authority operating alternative arrangements must delegate its functions to its Board subject to certain limitations.
2. The Regulations specify the functions, which:
 - must not be the responsibility of an authority's board. These include town and country 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 board (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 under the Licensing Act 2003 (except the function in respect of establishing a Licensing Committee.); and
 - must not be the sole responsibility of an authority's board. 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.
3. The Regulations also set out the circumstances in which functions must not to be the responsibility of an authority's board, such as the determination of the authority's budget and their borrowing and capital expenditure.
4. It has been necessary to amend these Regulations in 2002, 2003 and 2004 to ensure the allocation of functions is kept up-to-date. These Regulations will be made in tandem with the associated Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales)

Regulations 2007, which introduce amendments to the functions of local authorities operating executive arrangements.

Purpose and intended effect of the measure

5. These Regulations consolidate The Local Authorities (Alternative Arrangements) (Wales) Regulations made in 2001 and amended in 2002, 2003 and 2004. They will continue to have the effect of making most local authority functions the responsibility of the board.
6. In addition, the Regulations remove provisions contained in the previous Regulations as follows:
 - (a) the requirement on local authorities operating alternative arrangements to have a Social Services Committee has been removed following the coming into force, in April 2006, of section 55 of the Children Act 2004, which removed the need for such a committee to be operated by those local authorities still obliged to have one. In Wales this applied only to authorities operating alternative arrangements, as those operating executive arrangements have not been so required since the introduction of the provisions of the Local Government Act 2000; and
 - (b) the requirement for political balance on Area Committees has also been removed as it was not the policy intention of the original Regulations and does not apply to those authorities operating executive arrangements. This change will not affect the political balance requirement for all other committees of a council.
7. These Regulations also make a number of changes as a result of discussions with representatives of the three authorities in Wales, which operate alternative arrangements. These concern the form of the operation of alternative arrangements, rather than the allocation of functions and responsibilities. The Regulations introduce provisions, which :-
 - (a) prevent Board members being in the majority on any committee (other than the Board or sub-committee of the Board);
 - (b) prevent Board members from chairing committees of the Council (other than the Board or sub-committee of the Board);
 - (c) prevent a Board member from being a member of an overview and scrutiny committee;
 - (d) widen the powers of the Principal Scrutiny Committee to include decisions of the full council;
 - (e) correct an error in Regulation 6(8) of The Local Authorities (Alternative Arrangements) (Wales) Regulations 2001, as amended, which prevents a sub-committee of either the Principal Scrutiny Committee or an overview and scrutiny committee from carrying out any function other than scrutiny of best value reviews;

- (f) amend Regulation 4 of the 2001 Regulations to include the establishment of a Standards Committee; and
- (g) correct an error in Regulation 2(c) of the 2001 Regulations, which prevents an Area Committee, which covers an area containing less than 15% of the authority's population, from setting up a sub-committee covering an area smaller than itself. This was not the policy intention of the original Regulations.
8. Furthermore, these Regulations make a number of additional changes as follows:
- (a) the following unallocated functions under the Gambling Act 2005, which can be delegated by an authority operating alternative arrangements, have been specified as functions, which may be (but need not be) the responsibility of an authority's board) (i.e. local choice functions:
- prescribing of fees for premises license applications (section 212) ;
 - power to make an Order (section 284) in respect of alcohol licensed premises, removing the right to provide exempt gaming at those premises or the right to make up to 2 gaming machines available for use (section 284);
 - power to designate officers as authorised officers (section 304); and
 - power to prosecute (section 346).
- This will provide consistency with the non-allocated functions under the Licensing Act 2003, which, in Wales, have been made "local choice" functions;
- (b) the Housing Strategy, which provides the strategic planning role for the local authority's housing service, has been added to the list of plans, schemes and strategies, which are not solely to be board functions, thereby bringing this strategy in line with other plans, schemes and strategies;
- (c) functions relating to the Highways Act 1980 and the Wildlife and Countryside Act 1981, which currently feature in the 2001 Regulations have been removed as non-board functions, thereby making them functions of the board;
- (d) updating of legislative references in the Schedules to the original Regulations made in 2001.

Risk Assessment

9. These amendments are required in order to respond to requests from local government and to capture certain items of legislation, such as the Gambling Act 2005, not currently provided for. If these Regulations were

not made the allocation of functions would not be updated and complete. This would have the effect of hampering the efficiency of local government, as functions would not be allocated to those who can most appropriately exercise them.

Options

Option 1: Do Nothing

10. Not to make these Regulations would result in local government having to continue to work with technical Regulations, which, because of the number of amending Regulations, have become difficult to follow in the day-to-day work situation.

Option 2: Make the Legislation

11. These Regulations consolidate the Regulations previously made by replacing and revoking The Local Authorities (Alternative Arrangements) (Wales) Regulations 2001 as amended. In addition, they capture certain items of legislation, such as the Gambling Act 2005, not currently provided for.

Benefits

12. The consolidation of these Regulations follows on from representations from local government who argued that, because of their technical nature and the number of amending Regulations made, they had become difficult to follow in the day-to-day work situation. Therefore, the implementation of these Regulations will provide local authorities with a more user-friendly document. In addition, these Regulations also allow for the better allocation of responsibilities for local government.

Costs

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

Competition assessment

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

Consultation

With Stakeholders

15. An initial policy consultation took place between 15 June 2005 and 16 September 2005. That sought the views of local authorities in Wales, the Welsh Local Government Association, the Society of Local Authority Chief Executives in Wales, the then Local Government Ombudsman for Wales, Assembly Members and the Audit Commission on the desirability of amending the existing alternative arrangement Regulations (as well as the associated executive arrangements Regulations).

16. Nine responses were received from seven local authorities (of which one operates alternative arrangements) and also from SOLACE and the Welsh Branch of the Association of County Secretaries and Solicitors (ACS&S). Respondents expressed concern about the proposals to make certain executive/board functions, concerning the power to inspect premises, building Regulations, designation of areas, food safety, consumer protection, health and safety, maladministration, highways, public health and dogs, non-executive/non-board functions. They were concerned that such changes could lead to the establishment of regulatory committees, thereby making the system more bureaucratic and time-consuming.
17. The consultation also sought views on how effective the functions under Part 2 of the Licensing Act 2003 (other than the appointment of the licensing committee) were operating as “local choice” functions in accordance with the Local Authorities (Alternative Arrangements) (Amendment) (Wales) Regulations 2004 and the Local Authorities Executive Arrangements (Functions and Responsibilities) (Amendment) (Wales) Regulations 2004. Respondents advised that they were content with these arrangements. There was also general agreement to the consultation proposal to make the Housing Strategy Plan one, which was not solely to be an executive/board function. A number of respondents also took the opportunity to make representations for the consolidation of the Regulations.
18. On 19 July 2005 Welsh Assembly Government officials met with officials from a local authority operating alternative arrangements, at their request, to discuss in general terms the operating of alternative arrangements. Welsh Assembly Government officials subsequently met, on 23 November 2005, with officials from the three authorities operating alternative arrangements (Gwynedd Council, Merthyr Tydfil County Borough Council and Powys County Council) to identify common ground for concerns and how best these could be addressed. There was general agreement, that certain of the concerns should be addressed in revised statutory guidance (Guidance for County and County Borough Councils in Wales on Executive and Alternative Arrangements 2006 – Part II of the Local Government Act 2000, which issued end August 2006, whilst others should be addressed in these Regulations, as detailed in paragraph 7 above.
19. Draft Regulations (together with the associated executive arrangements Regulations) issued for consultation from 2 October 2006 to 27 November 2006. Those consulted comprised Chief Executives and Monitoring Officers of County and County Borough Councils, the Welsh Local Government Association, Society of Local Authority Chief Executives Wales, Wales Audit Office, and the Association of County Secretaries and Solicitors – Wales Branch (ACS&S). Consultees were advised that in response to their concerns, the proposals from the initial consultation, to make certain board functions including the power to inspect premises, building Regulations, food safety and highways non-board functions, had

been abandoned. Similar provisions, which had previously featured in the Regulations as non-board functions, had now been removed for reasons of consistency. Recipients were also advised that in response to their representations, the Regulations had been consolidated. They were also advised that the legislative references contained in the Schedules to the original Regulations had been updated. Attention was drawn to the new proposals to make unallocated functions under the Gambling Act 2005 ones for local choice, thereby bringing them into line with the allocation of functions under the Licensing Act 2003.

20. Six responses were received from four local authorities (of which two operate alternative arrangements) with the others from the Wales Audit Office and the ACS&S. The responses generally concerned points of detail, rather than policy issues. However, the ACS&S has queried whether under the Gambling Act 2005 the functions relating to prescribing fees were required to be specified as functions of the authority. The Assembly's position is set out in the summary of consultation responses at Annex A, which also details a number of minor amendments made to the Regulations and their Schedules as a result of the responses to the consultation exercise.

With Subject Committee

21. 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), Annex A, Item No. LAA-26) and have remained on the list ever since. However, at that time the title of the legislation was The Local Authorities (Alternative Arrangements) (Wales) Regulations 2005. The Committee did not identify the Regulations for scrutiny. In addition, the Committee was sent a copy of the consultation letter of 15 June 2005 and was also included in the consultation exercise on the draft Regulations, which commenced on 2 October 2006. No comments were received in respect of either consultation.

Review

22. 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.

Summary

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

SUMMARY OF RESPONSES TO CONSULTATION ON REVISED REGULATIONS CONCERNING LOCAL AUTHORITIES FUNCTIONS AND RESPONSIBILITIES

Consultation Period – 2 October to 27 November 2006

Those Consulted:-

Chief Executives and Monitoring Officers of County and County Borough Councils
Director – WLGA
Solace Wales
Wales Audit Office
Association of County Secretaries and Solicitors – Wales Branch (ACS&S)

6 Responses Received From:-

- Carmarthenshire County Council (Operating Executive Arrangements)
Head of Administration and Law
- Gwynedd Council (Operating Alternative Arrangements)
Head of Administration and Public Protection
- Neath Port Talbot County Borough Council (Operating Executive Arrangements), Head of Democratic Services
- Powys County Council (Operating Alternative Arrangements)
Head of Legal, Scrutiny and Democratic Services
- Wales Audit Office, Chief Operating Officer
- Welsh Branch of the Association of County Secretaries and Solicitors (ACS&S) Co-ordinator

General Comments:-

Wales Audit Office – Proposed changes appear pragmatic. In particular consolidating the Functions Regulations into one set of regulations and the Alternative Arrangements Regulations into a second set of regulations is to be welcomed.

ALTERNATIVE ARRANGEMENTS DRAFT REGULATIONS

Gwynedd Council welcome proposals contained in paragraph 8 of consultation letter of 2 October 2006. They have also provided the following detailed comments:-

Regulation	Comment	Assembly Response
4(2) – Membership of Board	This allows membership to include chairs of certain committees and conflicts with Regulation 9(3)(b) which precludes chairs from Board membership.	Policy intention is that Board members should not chair committees of council (except Board or sub-committee of Board) Amend Regulation 4(2)
6(1)(c) – Membership of Principal Scrutiny Committees (PSC) and Scrutiny Committees	Concerned that this regulation, as drafted, prevents a member of the controlling political group from chairing any scrutiny committee.	Not policy intention. Amend Regulation 6(1)(c)
6(3) – Function of PSC and scrutiny committee	Reference should be to paragraph (4) rather than paragraph (5)	Noted. But amendment no longer required as original numbering now correct following action undertaken in respect of Regulation 6(1) above
6(6) – Function of sub-committee of PSC or scrutiny committee	Reference should be to paragraph (5) rather than paragraph (6)	Noted. But amendment no longer required as original numbering now correct following action undertaken in respect of Regulation 6(1) above.
6(7) – Functions of PSC and scrutiny committee	Current regulations enable a PSC or scrutiny committee to refer a matter relating to a decision of the Board to the full council. This paragraph should be replicated in the new regulations.	Accept
9(3) – Membership of Committees and Sub-Committees	Reference should also be made to sub-committees of the Board	Accept and also make similar amendment to Regulation 4(5)(ii)
9(3)(a) - Membership of Committees and Sub-Committees	Noted that prohibition on Board members sitting on other committees will extend to Area Committees. No objection to this. Assume that Board members will have to be in majority on Board committees.	No action This is matter for local authorities and not for regulations.

EXECUTIVE ARRANGEMENTS DRAFT REGULATIONS

Comments received relate solely to Schedules – see below.

SCHEDULES FOR BOTH EXECUTIVE ARRANGEMENTS AND ALTERNATIVE ARRANGEMENTS - FUNCTIONS WHICH ARE NOT TO BE, MAY NOT BE OR ARE NOT SOLELY TO BE EXECUTIVE/BOARD FUNCTIONS

Schedule 1 – Functions not to be responsibility of Executive/Board

Function No	Respondent	Comment	Response
A20	Gwynedd Council ACS&S	Provided updated legislative reference	Accept
A22	Gwynedd Council ACS&S	Provided updated legislative references	Accept
B6	Gwynedd Council Neath Port Talbot CBC ACS&S	Legislative reference to be repealed by Gambling Act 2005	Accept. Footnote to be added making reference to repeal by the Gambling Act 2005, which has not yet been brought into force
B7	Gwynedd Council Neath Port Talbot CBC ACS&S	Legislative reference to be repealed by Gambling Act 2005	Accept. Footnote to be added making reference to repeal by the Gambling Act 2005, which has not yet been brought into force
B8	Gwynedd Council Neath Port Talbot CBC ACS&S	Legislative reference to be repealed by Gambling Act 2005	Accept. Footnote to be added making reference to repeal by the Gambling Act 2005, which has not yet been brought into force
B9	Gwynedd Council Neath Port Talbot CBC ACS&S	Legislative reference to be repealed by Gambling Act 2005	Accept. Footnote to be added making reference to repeal by the Gambling Act 2005, which has not yet been brought into force.
B10	Gwynedd Council Neath Port Talbot CBC ACS&S	Legislative reference to be repealed by Gambling Act 2005	Accept. Footnote to be added making reference to repeal by the Gambling Act 2005, which has not yet been brought into force.
B11	Gwynedd Council	Legislative reference to	Accept. Footnote to

	Neath Port Talbot CBC ACS&S	be repealed by Gambling Act 2005	be added making reference to repeal by the Gambling Act 2005, which has not yet been brought into force.
B18	Gwynedd Council ACS&S	Legislative reference repealed by Licensing Act 2003	Accept. Function removed from Schedule
B20	Gwynedd Council ACS&S	Provided updated legislative references	Accept
B25 – Duty to promote fire safety	ACS&S	Query whether this should be Executive Function	Reject. To remain as function not to be the responsibility of the executive/board
D1	Gwynedd Council ACS&S	Provided updated legislative reference	Accept
D7	Gwynedd Council ACS&S	Provided updated legislative reference	Accept
H – Functions relating to pensions etc	ACS&S	Query whether this should be Executive function	Reject. To remain as functions not to be the responsibility of the executive/board
I6 – Appointmen t and terms & conditions of staff	Powys County Council ACS&S	Would benefit from clarification.	Accept. Amend description of function to “Appointment and dismissal of staff” Amend legislative reference to include “Sections 7 and 8 of the Local Government and Housing Act 1989”
I8 – Power to consider adverse reports from Local Commissio ner	Gwynedd Council ACS&S	Query whether this function should remain as no such provision contained in Public Services Ombudsman (Wales) Act 2005 which abolished position of Local Commissioner	Amend description of function and legislative reference to “Power to consider reports from the Public Services Ombudsman for Wales” – “Section 19 of the Public Services Ombudsman (Wales) Act 2005”

Carmarthenshire County Council – content for those functions outlined in paragraph 10 of consultation letter not to feature in Schedule 1. This will make them Executive/Board functions and, in doing so, will bring them into line with similar functions which, as a result of responses to the policy consultation, will

remain as Executive/Board functions (rather than making them non-executive/non-board functions as had been proposed in the policy consultation).

Schedule 2 – Functions may be (but need not be) responsibility of Executive/Board; that is local choice functions

Functions under Gambling Act 2005

Carmarthenshire County Council – **agree to proposals to make these local choice functions. This would compliment their existing licensing processes.**

No action required

ACS&S – **query whether the functions under the following sections of the Gambling Act 2005 can be made local choice functions**

- **section 166 - resolutions concerning casino licenses**
- **section 212 - prescribing fees; and**
- **section 349 – three year licensing policy.**

Their view is that section 154(2)(a) &(c) provide that functions under these sections of the Act may not be delegated by the authority and, as such, cannot be made local choice functions.

Assembly Response - Legal Services have revisited their advice on the Gambling Act 2005 (“the 2005 Act”) and, having done so, it remains the position of the Welsh Assembly Government that, for those authorities operating executive arrangements, the local authority functions under sections 166, 212 and 349 may be specified in Regulations as local choice functions, but for those authorities operating alternative arrangements, the functions under sections 166 and 349 should be excluded from being local choice functions.

Thus the local choice functions will be different for authorities operating alternative and executive arrangements as regards the Gambling Act. This is however a consequence of primary legislation and not something that the Assembly has done. Boards and Executives have a different status in law and this difference as to local choice functions stems from that, i.e. a Board is effectively a committee of an authority and an Executive is not. Boards and Executives are treated differently in the Local Government Act 2000, which impacts on how the Gambling Act affects them).

County Councils and County Borough Councils in Wales are defined in the Act as the Licensing Authorities. Section 154 of the 2005 Act provides that certain functions of a licensing authority are by virtue of subsection (1) delegated to a licensing committee of the authority, established under section 6 of the Licensing Act 2003, but functions under:-

- (a) section 166 may not be delegated by the authority;
- (b) section 212 are not but may be delegated by the authority; and
- (c) section 349 may not be delegated by the authority.

For those authorities operating alternative arrangements, section 32 provides a regulation making power concerning the specification of arrangements regarding the discharge of functions. The draft Alternative Arrangements Regulations made under section 32 of the 2000 Act provide that some functions can be delegated to a Board. As the functions in sections 166 and 349 cannot be delegated by the authority, they are not delegable to the Board or any other committee, and therefore cannot be made “local choice” functions.

For those authorities operating executive arrangements, the position is different because of the effect of section 13 of the 2000 Act. Under section 13(2), unless the primary legislation specifies that a function is to be the responsibility of the whole authority or specific provision is made in Regulations, a function will be deemed to be the responsibility of the Executive. In other words, any function which is not specified in the Regulations made under section 13 will be the responsibility of the Executive, and so unless otherwise specified (as being “local choice” functions), responsibility for sections 166, 212 and 349 will rest with the Executive.