

REGULATORY APPRAISAL

LOCAL GOVERNMENT, WALES

THE STANDARDS COMMITTEES (WALES) (AMENDMENT) REGULATIONS 2006

Purpose and intended effect of the measure

1. Part III of the Local Government Act 2000 makes provision with respect to the conduct of local government members and employees. Section 53(1) of the 2000 Act requires every relevant authority (County Councils, County Borough Councils, National Park authorities and Fire and Rescue authorities in Wales) to establish a standards committee, which is to have functions conferred on it by or under that part of the 2000 Act. Under section 53(11) of the Local Government Act 2000, the National Assembly for Wales may, by regulations, make provision for standards committees concerning (amongst other things) their size and composition. Such provisions are contained in the Standards Committees (Wales) Regulations 2001 (SI 2001/2283).
2. It is proposed that these Regulations amend the Standards Committees (Wales) Regulations 2001 and make provision :
 - To make it clear that a county/county borough council shall have the final decision on the appointment of community committee members to their standards committees, subject to prior consultation with town and community councils and any community council associations within their area.
 - That the term of office for community committee members be 4 years, or the period until the next community council elections following the appointment of the individual in question, whichever is shorter. An individual shall cease to be a community committee member if he or she ceases to be a member of a community council situated within the area of the principal authority. A community committee member may be re-appointed for one further consecutive term following appropriate consultation.
 - To permit a second term of office for independent members, in line with the provisions of Regulation 21(1) of the Standards Committees (Wales) Regulations 2001 and without the need for a detailed appointment process. (Regulation 21(1) provides that a member of a standards committee of a relevant authority and who is a member of that authority may be re-appointed for one further consecutive term). The second term of office of an independent member is to be restricted to a maximum of 4 years.
 - To remove any perceived conflict by amending Regulation 24 of the Standards Committees (Wales) Regulations 2001 to make it clear that "chairperson" referred to in that Regulation means either the

person elected as chairperson under Regulation 22(1) and presiding at the relevant meeting, the person elected as vice-chairperson under Regulation 22(1) and presiding in the absence of the chairperson (under Regulation 22(4)) or an independent member presiding in accordance with Regulation 22(5).

- To regulate on the composition of sub-committees appointed under section 54A(1) of the Local Government Act 2000. To regulate that such a sub-committee should consist of a minimum of three members, at least half of whom (including the Chairperson) must be independent. The quorum for a meeting of a section 54A sub-committee is to be two members (including the chairperson of the sub-committee). These provisions do not affect a sub-committee established under section 56(3) of the Local Government Act 2000 to undertake the functions of standards committees relating to community councils, which remain subject to the same requirements under the Regulations as the 'full' standards committee itself.

Risk Assessment

3. These Regulations simplify and clarify the procedures of standards committees. The procedures have been in place since 2001 and with the experience gained it is now sought to improve them to ensure the continued smooth running and effectiveness of standards committees and their sub-committees. The views of standards committees of relevant authorities and (amongst others) monitoring officers have been taken into account, and a full and comprehensive consultation on the proposals has been undertaken.

Options

Option 1: Do Nothing

4. Failure to introduce the Regulations would mean a missed opportunity to clarify procedures in line with the views of monitoring officers and standards committees of relevant authorities and also make it more difficult to recruit and retain independent and community committee members to standard committees.

Option 2: Make the Legislation

5. Making the Regulations would result in clarification and streamlining of procedures. The operation of a standards committee would become easier, especially from the point of view of recruiting and retaining independent members and community and town council members.

Benefits

6. The Regulations will assist principal councils, National Park authorities and Fire and Rescue authorities in their operation of standards committees. The amendment to Regulation 10 of the Standards Committees (Wales) Regulations 2001 will provide flexibility for county and county borough councils to take account of local community and representative association

coverage in their area. The term of office and re-appointment of community committee members is to be clarified. The re-appointment of independent members will make it easier to recruit and retain such members and should ease the financial burden of the recruitment process should the authority in question choose to retain the independent member for a second term.

Costs

7. There are no financial implications arising from the introduction of the Regulations for either the Assembly or local government.

Competition Assessment

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

Consultation

With Stakeholders

9. An eight week consultation took place on the principles of the proposed Regulations between 26 August 2005 and 25 October 2005. Those consulted were:

- Chief Executives/Monitoring Officers of County/County Borough Councils
- Clerks of Community and Town Councils
- Clerks of National Park authorities
- Clerks of Fire and Rescue Authorities
- Clerks of Police authorities
- Chairs of Standards Committees
- The Audit Commission for Wales
- Commission for Local Administration in Wales
- Information Commissioner
- One Voice Wales
- The Society of Local Authority Chief Executives
- Wales Council for Voluntary Action
- The Welsh Association of National Park Authorities
- The Welsh Local Government Association

A full list of consultees is attached at Annex A.

10. A total of 57 responses were received. These were made up as follows:

- 16 from county/county borough councils
- 2 from Fire and Rescue Authorities
- 2 from National Park authorities
- 37 from community and town councils

A full list of respondents is attached at Annex B.

11. The results of the consultation showed an overwhelming majority of respondents in favour of the proposals. However, some minor comments were made with respect to some of the detail. These were given due consideration and incorporated into the proposals where appropriate. These changes are as follows:

- As regards the term of office/re-appointment of community committee members the Regulations now provide that a member may be re-appointed following further consultation with community councils and any regional association in the principal authority's area. The Regulations also provide that a person will cease to be a community committee member of a standards committee if they cease to be a member of a community council in the principal authority's area.
- The Regulations have now been drafted on the basis that a second term of office for independent members be limited to a maximum period of 4 years.

12. There were 6 responses that disagreed with the proposed changes to Regulation 10 of the Standards Committees (Wales) Regulations 2001. These came from community and town councils and as there was no consensus of opinion as to an alternative means of appointing community committee members, it was felt that there was no basis to amend the original proposal.

13. A 4 week consultation on the draft Regulations started on 22 February 2006 and ended on 22 March 2006. Consultees were as above. A total of 24 responses were received. These were made up as follows:

- 8 from unitary authorities
- 12 from community and town councils
- 1 from Police Authority
- 1 from National Park Authority
- 1 from Information Commissioner's Office
- 1 from North Wales Fire and Rescue Authority

14. Seventeen of the respondents fully supported the proposals. All the comments made were given full consideration. As a result the following amendments have been incorporated:

- The Regulations will provide that no business of a s 54A sub-committee shall be transacted unless 2 members, including the chairperson of the sub-committee are present. The quorum for a community sub-committee (established under section 56 of the Local Government Act 2000) is to remain unchanged.
- The Regulations shall make it clear that a chairperson or vice-chairperson that is re-appointed for a second term as an

independent member may also serve a second term as a chairperson /vice-chairperson.

- The Regulations shall make it clear that the requirement in regulations 13 - 17 of the 2001 Regulations (relating to the recruitment process for independent members) do not apply to the re-appointment of existing independent members. The Regulations will not however, prevent authorities from applying these provisions, should they choose to do so.

15. The view made by one respondent that the Regulations assume that the chairperson and vice-chairperson of a standards committee would also be members of any sub-committees of that standards committee is not accepted. Each sub-committee is required to elect its own chairperson and vice-chairperson independently of those elected to the standards committee.

16. One respondent was of the opinion that a sub-committee should consist of two members but this was discounted as this issue was fully considered following the comments made in the first consultation exercise. However, the quorum for a meeting of a section 54A sub-committee is to be two members (including the chairperson of the sub-committee).

With Subject Committee

17. These Regulations were first notified to the Local Government and Public Services Committee via the list of forthcoming legislation on 21 September 2005 (LGPS (2)-08-05(p7) Item No. LAA33) and have remained on the list ever since. The Regulations were scrutinised by the Committee on 17 May 2006. Three points of clarification were raised. Two were clarified at the meeting. The other point regarding the appointment of Community Council members to Standards Committees will be addressed in guidance. The Committee were content for the Regulations to proceed subject to the issues raised being included in the guidance supporting the Regulations, although one Member reserved their position on the issues of Community Council appointees. A copy of the transcript of the discussion is attached at Annex C.

Review

18. The impact of these Regulations is unlikely to need review in the foreseeable future as a full and comprehensive consultation has been carried out with majority views taken into account.

Summary

19. The Regulations will impact on county and county borough councils, community and town councils, National Park authorities and Fire and Rescue Authorities in Wales and will assist them in the operation of their standards committees and sub-committees. There are no financial implications for these authorities as a result of the Regulations.

ANNEX A

List of Consultees:

Chief Executives
Monitoring Officers
County and County Borough Councils

Clerks
Town and Community Councils

Clerks
Fire Authorities

Clerks
Police Authorities

Chief Officers
National Park Authorities

Chairs
Standards Committees

The Audit Commission for Wales
The Public Services Ombudsman Wales
The Information Commissioner
One Voice Wales
The Society of Local Authority Chief Executives
The Wales Council for Voluntary Action
The Welsh Association of National Park Authorities
The Welsh Local Government Association

ANNEX B

LIST OF RESPONDENTS TO CONSULTATION ON DRAFT PROPOSALS 26 August 2005- 25 October 2005

COUNTY AND COUNTY BOROUGH COUNCILS

*Anglesey County Council
Bridgend County Borough Council
Caerphilly County Borough Council
Carmarthen County Council
Ceredigion County Council
Conwy County Borough Council
Denbighshire County Council
Flintshire County Council
Gwynedd County Council
Merthyr County Borough Council
Newport County Council
Pembrokeshire County Council
Powys County Council
Swansea County Council
Torfaen County Borough Council
Wrexham County Borough Council*

COMMUNITY AND TOWN COUNCILS

*Aber Valley Town Council
Bangor Town Council
Bagillt Community Council
Barry Town Council
Brynmawr Town Council
Broughton Community Council
Cardigan Town Council
Cefn Community Council
Darran Valley
Ewenny Community Council
Harwarden Community Council
Haverfordwest Town Council
Henllys Community Council
Llandough Community Council
Llanelli Town Council
Llanfair ME Community Council*

Llangynnwr Town Council
Llantwit Fadre Community Council
Llwchwr Town Council
Llantilio Community Council
Mechell Community Council
Milford haven Town Council
Mold Town Council
Mumbles Community Council
Newtown Town Council
Pentraeth Town Council
Pontardawe Town Council
Pontardulais Town Council
Raglan Community Council
Rogiet Community Council
Rhondda Cynon County Council
Rhayader Town Council
Rhuddlan Town Council
Resolven Community Council
Talybont Town Council
Usk Town Council
Whitton Community Council

NATIONAL PARK AUTHORITIES

The Snowdonia National Park
The Brecon Beacons National Park

FIRE AND RESCUE AUTHORITIES

The North Wales Fire and Rescue Authority
The Mid and West Wales Fire Authority

LIST OF RESPONDENTS TO CONSULTATION ON DRAFT STATUTORY INSTRUMENT

22 February 2006- 22 March 2006

Caerphilly County Borough Council
Carmarthenshire County Council
Conwy County Borough Council
Merthyr Tydfil County Borough Council
Monmouthshire County Council
Neath Port Talbot County Borough Council
Newport City Council
Wrexham County Borough Council
Abergele Town Council
Aber Valley Community Council

Carmarthen Town Council
Connah's Quay Town Council
Disserth and Trecoed Community Council
Llanelli Rural Council
Llanelli Town Council
Llangan Community Council
Llwchwr Town Council
Penrhydeudraeth Town Council
Pyle community Council
The Gwent Police Authority
The North Wales Fire and Rescue Authority
The Pembrokeshire Coast National Park Authority
The Information Commissioner's Office

ANNEX C

Is-ddeddfwriaeth—Rheoliadau Pwyllgor Safonau (Cymru) Subordinate Legislation—The Standards Committee (Wales) Regulations

[1] **Ann Jones:** The subordinate legislation was identified, and there have been some points of clarification, as well as an issue that is raised for discussion by Members. We are joined at the table by Peter Jones, who will help us through this item. Gwenda, you had some points that you wanted to raise on the Standards Committee (Wales) Regulations. Are you content, or do you want to put them on record?

11.20 a.m.

[2] **Gwenda Thomas:** In terms of point 3(ii) of paper 8a, I think that it should refer to sub-committees. That was the subject of my point of clarification, and not committees. Those were my thoughts regarding the regulations.

[3] **Ann Jones:** Okay. Thank you. Mike, you have an issue with this piece of subordinate legislation.

[4] **Michael German:** Yes. The legislation, effectively, gives unitary authorities a veto over which community council members, who have been nominated by community councils in the area, should be members of the standards committee. I wanted to know from the Minister what the logic was behind expressing that veto. If there is logic in having a member of the community council serving this purpose, and that this should be someone with a degree of independence from the operation of the unitary authority, it strikes me as strange that the unitary authority should have the right to determine who should be chosen, rather than having the representative role of the community council. I would be grateful for an explanation on that matter. I wish to come back following the Minister's response.

[5] **Sue Essex:** Steve Phipps is leading on this, and I will ask him to respond. I do not think that it was an issue of veto; it is an issue of having the power, through the legislation, to make that decision. I am with Mike regarding the aspiration that whomever the community council has put forward should be chosen—although, to be realistic, in most cases, more than one name will go forward, in which case it is difficult. I will ask Steve to comment, because I accord with the spirit of what you are saying, Mike, namely that the person chosen by the community council should be on the committee. However, there is a problem with the legislation in that the power to make that decision rests with the unitary authority, as I understand it from Steve. We would need to look at guidance to try to achieve what I think you are hinting at.

[6] **Ann Jones:** Before I bring Steve in, Gwenda wants to come in.

[7] **Gwenda Thomas:** The first point of clarification that I raised is on this matter. The first bullet point under 'Background' states:

'a county borough council shall have the final decision on the appointment of community committee members'.

[8] Does that refer to the nomination or the appointment? I think that it is slightly ambiguous and we need to clarify that, as well as Mike's point.

[9] **Ann Jones:** Steve, do you want to try to help us through this?

[10] **Mr Phipps:** Essentially, it is a question of practicalities. Our starting position is that, as it is a county council committee, it is for the county to make the final decision on appointments to it. The 2001 regulations were lacking in this regard because this was not clarified, and we are told that there have been instances of disagreement between community councils as to who their representative on the standards committee should be. We have tried to clarify, through this amendment, that, in those circumstances, it would be for the county to take the final decision. However, in seeking to appoint a community council member to the committee, the county will need to consult with community and town councils and any community associations in its area. Where there is consensus from those councils as to the nomination for the appointment, we would anticipate that the county would abide by that and we would be looking to reinforce that in guidance.

[11] **Michael German:** You said that this is a practical arrangement. It strikes me that, if the regulations required the community councils to submit a single nomination, they would surely have to provide you with a single name, collaborate, and agree on whose name that would be.

[12] **Mr Rawlings:** Theoretically, I think that that would be true but, if you were going to do that, you would then have to provide extensive machinery for enabling all the relevant community councils to vote on, ballot, and select who their nominee would be. In practice, this regulation is about recognising the fact that, normally, several names come forward. Someone has to make the decision as to who it will be. Given that we are talking about a county council making an appointment to one of its own committees, the proposition is that it should be the county council that has to choose where you have more than one name. If a single name comes forward, the county council would appoint that person.

[13] **Michael German:** I understand the point that you are making but you could, for example, have a county council, given a number of names, that might want to choose a sympathetic community councillor to work on a standards issue. I do not think that that is the purpose of the legislation. The purpose is to try to get a degree of independence of thinking. That is why, presumably, community councillors are involved in this in the first place.

[14] You seemed to intimate that a huge amount of machinery is needed for community councillors to agree with each other. If they are required to agree, that is a matter for them. I do not see it costing a great deal of money for them to do it. They know that they have to do it.

[15] **Mr Rawlings:** I think that the answer is that, if you place a duty on them, you have to find some way of enforcing it. If they do not, or cannot, agree, what happens then?

[16] **Michael German:** Presumably, they cannot make a nomination and therefore they are in breach of the legislation.

[17] **Mr Rawlings:** That goes to the point that Mrs Thomas raised, which is whether there is any choice for the unitary authority in terms of having a community councillor on the standards committee at all. If you look at proposed regulation 5, you will see that it says that the membership of the standards committee shall include at least one community council member. In other words, there will be one, but the question is who is it to be?

[18] **Michael German:** It says that there will be at least one such member.

[19] **Mr Rawlings:** Indeed. If you got to the position where there was no consensus among all the community councils in the area, there would not be a standards committee, because they would not have put forward a name. If they put forward a single name, the authority would appoint that person, or, if they would not put forward a single name, the authority would choose from the list of names with which it was presented.

[20] **Michael German:** I understand the point that you are making, but I do not understand why a requirement on community councils is the same as a requirement on unitary authorities. It is not a requirement that is enforceable. I remain unconvinced but I am looking to my colleagues to see whether they feel that it is—

[21] **Ann Jones:** I am just wondering, Minister, whether you would like to respond to the three points that Gwenda raised and the point that Mike raised, on paper 8a.

[22] **Sue Essex:** Yes. Steve, would you like to respond?

[23] **Mr Phipps:** Yes. On Gwenda's point, Hugh has already said that, where a standards committee is exercising functions in relation to community councils, it must have at least one community councillor member.

[24] **Gwenda Thomas:** My concern was about the quorum. If we have a quorum of two members, we could then have a stalemate position, which could clog up the workings. I wonder whether it is ever wise to have a quorum of two members.

11.30 a.m.

[25] **Mr Phipps:** We did look at this, and in consultation, we had various permutations put to us. In that situation, the chair, who would be independent of the authority, would have a casting vote. Under the regulations, a standards committee can have between five and nine members. We wanted to try to give as much flexibility as was sensible in terms of the size of the sub-committees, and we arrived at the figure of three members. However, to deal with a situation where, perhaps, one member is taken ill at short notice, we decided that a quorum of two was appropriate so that that sub-committee could continue business at short notice.

[26] **Gwenda Thomas:** So, the chair would be one of the two?

[27] **Mr Phipps:** Yes, and the chair would have a casting vote.

[28] **Gwenda Thomas:** The other question was on the independent member. I understand that there are regulations to cover that.

[29] **Mr Phipps:** Yes, there are. If an independent member was elected, or co-opted to be a member of the authority, then they would not be able to remain as an independent member of the standards committee.

[30] **David Melding:** I am sure that I am getting slightly paranoid, and that the Minister will be able to alleviate my distress, but the regulation does not specify that the county council has to take one of the nominations; it could choose a completely different community councillor. That would, presumably, be addressed in the guidance, would it not? That would be a perverse decision if it had a list of five but chose a sixth after consultation.

[31] **Mr Phipps:** Yes.

[32] **David Melding:** Then I am fairly happy with the regulations.

[33] **Michael German:** I will reserve my position.

[34] **Ann Jones:** You will reserve your position?

[35] **Michael German:** Yes.

[36] **David Lloyd:** I do not want to rehearse the argument again, but Mike's point is about nominations, and the regulation is about local authority appointments. Can we not assuage Mike's concern by adding the stipulation that community councils are free to nominate whomever they choose and work together to put forward a nomination? However, as you said, it is a local authority committee, so it is the local authority that appoints, but, within that, community councils would have got together to agree on the nomination. It is the difference between the nomination and the appointment. I am sorry to sound like an anorak about this, but I think that that is what needs to be clarified. As long as that is clarified, I would be happy to let it go, as long as

the guidance states the difference between the nomination and the appointment.

[37] **Mr Phipps:** The consultation would be to seek nominations and hopefully to build some consensus around those nominations. However, this provision seeks to clarify what is happening now in that the county council ultimately has to appoint someone.

[38] **David Lloyd:** To one of its own committees.

[39] **Ann Jones:** Mike is reserving his position, which we understand, but is the committee happy to accept the regulations as they stand? We will note your reservation, Mike.

[40] **David Melding:** Subject to the guidance. I understand that it is not possible to put everything into the regulations.

[41] **Ann Jones:** Our report to the Business Committee will be based on the clarifications and the verbatim Record. Is everyone happy with that? I see that you are.

11.33 a.m.