

REGULATORY APPRAISAL

LOCAL GOVERNMENT, WALES

THE LOCAL AUTHORITIES (ALLOWANCES FOR MEMBERS) (WALES) REGULATIONS 2007

Background

1. Part V of the Local Government Act 2000 (the 2000 Act) includes provisions concerning allowances and pensions for members of local authorities. Section 99 of that Act substantially amended section 18 of the Local Government and Housing Act 1989 (the 1989 Act), which provides for schemes for basic attendance and special responsibility allowances for members of local authorities.
2. The Local Authorities (Allowances for Members of County and County Borough Councils and National Park Authorities) (Wales) Regulations 2002 (the 2002 Regulations) were made on 18 July 2002. They require each county and county borough council and National Park authority (NPAs) in Wales to make, and publicise, a scheme of allowances for their members. All members are entitled to receive a Basic Allowance and travel and subsistence allowance. Councils may decide that certain members with special responsibilities, such as members of the cabinet and chairs and vice-chairs of committees, may receive a Special Responsibility Allowance (SRA). Members of NPAs only are entitled to an Attendance Allowance, whilst members of county and county borough councils only are entitled to care (or dependants') allowances in respect of children and dependent adults. Financial loss allowances may be paid to members who are not councillors (i.e. non-elected members of council committees or NPAs). The 2002 Regulations also provide for the annual uprating of allowances.
3. The 2002 Regulations are supported by Statutory Guidance. The Guidance sets the maximum amount payable for Basic Allowance each year, in accordance with a specified index. The Guidance also sets the maximum rates payable for SRA, which varies in accordance with the post held and the population size of the council, and stipulates that such allowances may be uprated in line with increases in Assembly Members' pay. Furthermore, the Guidance stipulates that no authority may pay more than one SRA to a member of that authority. The maximum amount of care allowance is also detailed, together with annual uprating, also linked to increases in Assembly Members' pay.
4. The Local Authorities (Allowances for Members of County and County Borough Councils) (Pensions) (Wales) Regulations 2003 enable local authorities to determine which of their elected members should be entitled to join the Local Government Pension Scheme, subject to those members having first been recommended to do so by the Welsh Independent Remuneration Panel. The Regulations enabled the establishment of the Panel for a temporary period of six months.

5. The Local Authorities (Allowances for Members of Fire Authorities) (Wales) Regulations 2004 (as amended) require Fire and Rescue Authorities in Wales to make a scheme for the payment of allowances. The Regulations provide for the payment of an allowance for Members, Chairpersons and Vice-chairpersons. They also provide for the payment of a care allowance and for travel and subsistence. The amount of the annual adjustment to a fire authority allowance, the allowances for chairpersons and vice-chairpersons and the care allowance is restricted to the average of any adjustments each year made by the Fire and Rescue Authority's constituent councils in respect of Basic, SRA and care allowance, respectively. The Regulations also provide for a Fire and Rescue Authority to withhold and recover allowances paid to a suspended member.

Purpose and intended effect of the measure

6. These Regulations revoke and replace The Local Authorities (Allowances for Members of County and County Borough Councils and National Park Authorities) (Wales) Regulations 2002 (the 2002 Regulations), in so far as they apply to members of county and county borough councils, and amend them in so far as they apply to members of National Park Authorities (NPAs). They revoke and replace the Local Authorities (Allowances for Members of County and County Borough Councils) (Pensions) (Wales) Regulations 2003. They also amend the Local Authorities (Allowances for Members of Fire Authorities) (Wales) Regulations 2004.
7. The main proposals in these Regulations in respect of members of county and county borough councils are:-
 - (a). Independent Remuneration Panel
 - for an independent remuneration panel (the Panel) to be established on a permanent basis, for county and county borough councils, to prescribe in an initial report the responsibilities and duties that may attract Special Responsibility Allowances (SRAs) and co-optees' allowance and the maximum level of all allowances payable (namely Basic Allowance, SRA, care allowance, travel and subsistence allowance and co-optees' allowance). The Panel would be able to prescribe different amounts for different councils and, for the purposes of SRA and co-optees' allowance, different amounts for different councils;
 - in each subsequent year the Panel would be required to produce an annual report, which would prescribe the maximum level of adjustment (uprating) that may be made to those allowances (by index or otherwise). Again, the Panel would be able to prescribe different amounts for different councils;
 - that the Panel would, in supplementary reports be able to report at such other times as it considered necessary. Through such reports the Panel would also be able to respond to specific requests from county and county borough councils on any matter concerning the

responsibilities and duties that may attract SRA and co-optees' allowance and the maximum level of all the allowances available to councillors. This would ensure that the Panel has the flexibility, which is not available in the 2002 Regulations;

- the Panel would also be able to make recommendations in the initial and supplementary reports about pensions if and when the need arose; and
- a proposal that the Panel's first report, their initial report should be published by the end of July 2008 (or such later date as the National Assembly for Wales may agree).

(b). Withholding of Allowances

- Local authorities would be required to withhold a member's allowance during any period of suspension and would have the discretion to recover an allowance already received by a member for a period for which the member is subsequently suspended/partially suspended.

(c). Deputy Leader's Special Responsibility Allowance (SRA) (Vice Chair under Alternative Arrangements)

- The current provision, which allows for a 10% mark-up over and above a cabinet member's SRA for a single deputy leader would be relaxed to allow authorities to share the 10% addition between different councillors where more than one deputy has been appointed. It should be noted, however, that the Regulations would retain the restriction that no more than 50% of all members of an authority may receive an SRA.

(d). Chairs and Vice Chairs of Licensing Committees

- Once the Regulations come into force a local authority would be entitled to uprate their level of SRA payable to a Chair and Vice-Chair of a Licensing Committee to that received by their Chairs and Vice-Chairs of Scrutiny and Planning Committees, until such time as the Panel makes its determinations on the range and amount of SRAs payable.

(e). Co-optees' Allowance

- A discretionary co-optees' allowance would replace the Financial Loss Allowance for non-elected members with voting rights. The Panel would prescribe maximum levels of co-optee allowance and the maximum annual adjustment to co-optee allowance for each authority.

(f). Travel and subsistence

- The Panel would prescribe the maximum levels of travel and subsistence allowances and the maximum level of annual adjustment (which could be by reference to an index). The duties for which travel and subsistence would be payable would continue

to be set out in the Regulations. Receipts for travel and subsistence claims must be provided and such claims must be made within a time limit specified by the authority.

(g). Care allowance

- The current restriction, which prevents a councillor in receipt of an SRA of £15,000+ pa from receiving a care allowance would be lifted as soon as the Regulations come into force.

(h). Publicity

- The publicity requirements in The Local Authorities (Allowances for Members of County and County Borough Councils and National Park Authorities) (Wales) Regulations 2002 (the 2002 Regulations) , requiring publication of the total sums paid to each member in respect of Basic Allowance, Special Responsibility Allowance (SRA), and care allowance are to be extended to include travel and subsistence and co-optees' allowance.

8. The main proposals in the Regulations in respect of members of National Park Authorities (NPAs) are:-

- when making or amending their scheme of allowances, NPAs would be required to have regard to the matters prescribed by the Panel in respect of types and maximum levels of allowances payable to a NPA's constituent county and county borough councils;
- reimbursement of expenses to members in arranging for the care of children or dependants under section 100(d) of the Local Government Act 2000 (in effect a carer's allowance). The maximum amount payable would be the average of the maximum set by the constituent county and county borough councils;
- the introduction of an allowance for co-opted members with voting rights. The maximum amount payable would be the average amount of this allowance paid by NPAs constituent county and county borough councils;
- a Financial Loss Allowance to continue to be available to co-opted members without voting rights, although this would become discretionary with the introduction of the allowance for co-opted members with voting rights (circa 30 November 2008);
- a discretionary Attendance Allowance to continue to be available to councillors;
- in determining rates of travel and subsistence allowances an NPA would be required to have regard to the relevant provisions of an independent remuneration panel's (the Panel) reports. An NPA would also be required to set a time-limit for receipt of claims for travel and subsistence;

- there would be a requirement to withhold a member's allowance on suspension, with the discretion to recover an allowance already paid during the period of suspension; and
 - the current requirement for publication of total amounts paid to members (in respect of Basic Allowance, SRA and Attendance Allowance) to be extended to include travel and subsistence, the new carer's allowance, the new co-optees' allowance and Financial Loss Allowance.
9. The main provisions in the Regulations in respect of members of Fire and Rescue Authorities are:-
- fire and Rescue Authorities would have the discretion to pay a co-optees' allowance to their non-elected members with voting rights and to withhold payment on suspension of the member, with the discretion to recover the allowance if already paid. The maximum amount payable would be the average amount of this allowance paid by the fire and rescue authority's constituent county and county borough councils;
 - in line with the other authorities, Fire and Rescue Authorities would be required to set a time-limit for the receipt of travel and subsistence claims;
 - the requirement for publication of total amounts paid to members is to be extended to include travel and subsistence and co-optees' allowance; and
 - these Regulations also correct a number of minor drafting errors in The Local Authorities (Allowances for Members of Fire Authorities) (Wales) Regulations 2004.

Risk Assessment

10. The establishment of the Independent Remuneration Panel will provide an impartial view on the setting of Councillors remuneration. The production of new Regulations will also enable the Assembly to address some reforms and anomalies, which have arisen over the last five years and, which have been detailed earlier.
11. If the Regulations are not made there will be a delay in the Assembly being able to establish the Independent Remuneration Panel (the Panel) and a subsequent delay in the Panel's ability to produce their report.

Options

Option 1: Do Nothing

12. If these Regulations are not made, it would mean that the proposed independent remuneration panel would not be created and other reforms to the existing regime on allowances would not be introduced.

Option 2: Make the Legislation

13. The Regulations will recognise the new burdens placed on chairs and vice chairs of licensing committees by the Licensing Act 2003 and the increased role of co-opted members, particularly on Standards Committees. The Regulations also clarify the issue of non-payment (and recovery) of allowances paid to members suspended from duty.

Benefits

14. Establishing a remuneration panel allows an impartial setting of councillors' remuneration.

Costs

15. The estimated cost for the Assembly in the establishment and operation of the Panel, and the publication of their reports, is £50,000 per year. This cost will be borne within existing and planned budgets in the Local Government MEG.

16. Authorities will need to consider their budgetary constraints in determining their scheme of allowances, and other allowances payable, as exists under the current arrangements. Certain allowances would continue to be discretionary matters for consideration by each Authority, with the Panel, rather than the Assembly setting maximum amounts for allowances and maximum annual increases to allowances. The exception to this would continue to be the Basic Allowance, which authorities are required to make available to all their councillors (although the Panel would set maximum amounts and maximum annual increases) and also travel and subsistence allowance, which will continue to be an entitlement.

Consultation

With Stakeholders

17. An initial policy consultation took place between 9 February 2005 and 5 May 2005. This sought the views of Chief Executives and Legal Officers of County and County Borough Councils in Wales, the Welsh Local Government Association (WLGA), Chief Executives of National Park Authorities, Chief Fire Officers, Chief Constables, Assembly Members, Political Parties, the Audit Commission in Wales (now the Wales Audit Office) and the then Local Government Ombudsman.

18. There were 33 responses to the consultation exercise. Support was given to all but one of the proposals put forward in the consultation. The exception was the proposal that County Councillors who also served on National Park Authorities, Police or Fire and Rescue Authorities should not

be able to receive more than one Special Responsibility Allowance (SRA). This proposal was subsequently withdrawn and is not included in the Regulations.

19. Draft Regulations issued for consultation from 26 October 2006 to 21 December 2006. Those consulted comprised Leaders, Chief Executives and Monitoring Officers of County and County Borough Councils, the Leader and Director of the WLGA, Chairs and Chief Executives of National Park Authorities, Chairs and Clerks to Fire and Rescue Authorities, the Chair and Chief Executive of One Voice Wales, Clerks to Police Authorities, the Wales Audit Office, the Public Services Ombudsman Wales, the Society of Local Authority Chief Executives, the Society of Welsh Treasurers, the Secretary to Police Authorities of Wales, the Welsh Association of National Park Authorities, the Wales Council for Voluntary Action, Chairs of Standards Committees in local authorities, Assembly Members and Political Parties.
20. There were 19 responses to this consultation, from 12 local authorities, the WLGA, two Fire and Rescue Authorities, the three NPAs and one consultee, who wishes their details to remain confidential. Respondents were overwhelmingly in support of the contents of the draft Regulations but comments were made on some points of detail. A summary of the consultation responses, together with the Assembly's response to the comments made, is at Annex A to the Regulatory Appraisal. Annex B details a number of other changes made to the Regulations, subsequent to the consultation exercise.
21. An oversight in the draft Regulations issued for consultation did not contain provisions requiring Fire and Rescue Authorities (in line with county and county borough councils and National Park Authorities) to specify a time-limit for the receipt of claims for travel and subsistence and the new co-optees' allowance (although the latter provision has subsequently been dropped in response to other consultation responses received). The draft Regulations also omitted to include provisions extending the publicity requirement to include travel and subsistence allowance and co-optees' allowance. Reference was, however, made to these proposals in the accompanying letter of consultation. For completeness officials wrote to Fire and Rescue Authorities on 7 February 2007 inviting them to submit comments on these two proposals by 22 February 2007. A joint response was received on behalf of all three fire and rescue authorities giving their support to the proposals.
22. The Local Government Partnership Council considered the draft of the Regulations, which issued for consultation, at their meeting of 16 November 2006. The Regulations were welcomed although a small number of queries were raised regarding the Panel membership (in particular the need to ensure their independence) and the method of determining the level of the new co-optees' allowance.

With Subject Committee

23. Members of the Local Government and Public Services Committee were included in the policy consultation, which took place in 2005, and were also sent copies of the draft Regulations, and covering letter, which issued for consultation in October 2006. One Committee member responded to the policy consultation. They welcomed the proposals set out in the consultation letter, particularly the proposal to prevent members of more than one Authority from receiving more than one SRA – this proposal was subsequently withdrawn and is not included in the regulations (paragraph 21 above refers).
24. These Regulations were notified to the Local Government and Public Services Committee, via the list of forthcoming legislation on 25 February 2004 (LGPS 02-04 (p7) Annex 1, Item LAA 04 (RS-07)) and have remained on the list ever since. However, at that time the title of the legislation was The Local Authorities (Allowances for Members of County and County Borough Councils and National Park Authorities) (Amendment) (Wales) Regulations 2003. The Committee identified these Regulations for detailed scrutiny. There has been a delay in bringing this item forward due to the need to prioritise other pressing policy issues such as work on the Local Government Bill. These Regulations were also subject to two consultations.
25. The Committee considered the Regulations at its meeting of 7 March 2007 LGPS(2) 03-07, paper 4. One query was raised at the meeting, which concerned the appointment process for membership of the Independent Remuneration Panel for Wales post May 2007 arrangements, and in particular the scrutiny process under the new arrangements. The Committee were advised that the appointments would be made by the Welsh Assembly Government and the process would be handled by the Public Appointments Unit through open advertisement and an interview process. The Minister noted that currently Subject Committee Nominees were consulted on public appointments and undertook to inform the Committee about the possible role of Assembly Members in the process under the Government of Wales Act 2006. The Committee agreed the Regulations without amendment.

Review

26. Once the Independent Remuneration Panel is in existence, the Regulations should give it sufficient flexibility to avoid the need for revision of these Regulations for the foreseeable future.

Summary

27. These Regulations will impact on county and county borough councils, National Park Authorities and Fire and Rescue Authorities and are designed to ensure fair remuneration for their members.

SUMMARY OF RESPONSES TO CONSULTATION ON REGULATIONS CONCERNING ALLOWANCES FOR MEMBERS OF COUNTY AND COUNTY BOROUGH COUNCILS, NATIONAL PARK AUTHORITIES AND FIRE AND RESCUE AUTHORITIES

Consultation Period 26 October – 21 December 2007

Those Consulted:-

Leaders, Chief Executives and Monitoring Officers of County and County Borough Councils
Leader and Director of the Welsh Local Government Association (WLGA)
Chairs and Chief Executives of National Park Authorities,
Chairs and Clerks to Fire and Rescue Authorities
Chair and Chief Executive of One Voice Wales
Clerks to Police Authorities
Wales Audit Office
Public Services Ombudsman Wales
Society of Local Authority Chief Executives
Society of Welsh Treasurers
Secretary to Police Authorities of Wales
Welsh Association of National Park Authorities
Wales Council for Voluntary Action
Chairs of Standards Committees in local authorities
Assembly Members
Political Parties.

19 Responses Received From:-

- 12 County and County Borough Councils:-
Bridgend CBC - Andrea McMillan, Member Services Officer
Caerphilly CBC - Ian Medicott, Monitoring Officer/Corporate Solicitor
Carmarthenshire CC - P J Grafton, Head of Law and Administration
Ceredigion CBC - Denfer Morgan, Chief Administration Officer
Conwy CBC - Ken Finch, Corporate Director - Resources
Denbighshire CC – Ian Hearle, County Clerk
Flintshire C C – Peter Evans, Assistant Director (Democratic Services)
Gwynedd - Dilys Phillips, Head of Administration and Public Protection
Neath Port Talbot CBC - Peter Moran, Head of Democratic Services
Newport City Council - Joyce Steven, Head of Finance
Powys CC - Geoffrey Petty, Head of Finance, Corporate Property and Procurement
Wrexham CBC - Lynne Tharme, Payroll Manager
- WLGA - Colin Everett, Head of Improvement
- Fire and Rescue Authorities

North Wales - Ian Miller, Clerk
South Wales - Sally Murton, Solicitor & Director Legal Admin & ICT

- National Park Authorities
Brecon Beacons - Lynne Coughlan, Solicitor to Authority
Pembrokeshire Coast - Nic Wheeler, Chief Executive
Snowdonia - Iwan Jones, Head of Corporate and Legal Services
- A.N.Other (Has requested their response be treated in confidence)

Additional “mini” Consultation 7 February – 22 February 2007 with Clerks to Fire and Rescue Authorities concerning following provisions which were not included in the draft regulations which issued for consultation October to December 2007, but which were referred to in the letter of consultation:-

- Specifying a time-limit for receipts of claims for travel and subsistence and the new co-optees’ allowance; and
- Extending the publicity requirement in terms of the payments of allowances made to include travel and subsistence and co-optees’ allowance.

Joint response received from Sally Murton, Monitoring Officer with South Wales Fire and Rescue Service – In agreement with the proposals.

SUMMARY OF RESPONSES TO CONSULTATION EXERCISE AND ASSEMBLY RESPONSE

1. Role of Independent Remuneration Panel

(a) 10 Responses (7 local authorities, 1 Fire and Rescue Authority, 1 National Park Authority (NPA) and A.N.Other)

- All welcomed establishment of Panel.
- Some concern expressed that Panel’s remit would allow it to use different indices for uprating allowances for different councils – respondents that the same index should be applied to same type of allowances across all councils.
- Some concern also expressed that the Panel would be able to prescribe different maximum figures for different authorities – respondents believe that this should only relate to Special Responsibility Allowance (SRA), where there might be some distinction related to population size of la.
- A.N.Other - rather than specifying a list of posts that may attract SRA, Panel should be allowed to develop a more flexible approach to allow for local discretion.

- (b) Assembly's Response
The policy intention is to maximise the Panel's flexibility, within statutory requirements. This would enable the Panel, should it be so minded, to prescribe different maximum amounts of allowances for different authorities as well as different uprating indices for different authorities.
- (c) Action
The Regulations to remain as drafted
2. Withholding and Recovery of Allowances
(a) 6 Responses (5 local authorities and A.N.Other)
- Las support
 - A.N.Other - query whether statute allows for recovery of allowances.
- (b) Assembly's Response
Assembly lawyers are satisfied that sections 18(4)(c) of the Local Government and Housing Act 1989 and section 105 of the Local Government Act 2000 enable provisions to be included in the regulations which allow for an authority to recover allowances already paid. Similar provisions are contained in the comparable England regulations "The Local Authorities (Members' Allowances) (England) Regulations 2003 SI No.1021.
- (c) Action
The Regulations to remain as drafted
3. **Consolidation of Regulations**
(a) 4 Response (3 local authorities and A.N.Other)
- Support
- (b) Action
The Regulations to remain as drafted
4. **Sharing of Deputy Leader's SRA**
(a) 5 Responses (4 local authorities and A.N.Other)
- Local authorities support
 - A.N.Other – provision won't be required if regulations were more flexible
- (b) Action
The Regulations to remain as drafted
5. **Increasing Maximum Level of SRA for Chairs/Vice-Chairs of Licensing Committees to that of Chairs/Vice-Chairs of Scrutiny and Planning Committees**
(a) 7 Responses (6 local authorities and A.N.Other)
- Local authorities support
 - A.N.Other – provision won't be required if regulations were more flexible
- (b) Action
The Regulations to remain as drafted
6. **Payment of Co-optees' Allowance**
(a) 6 Responses (4 local authorities, 1 Fire and Rescue Authority and

- A.N.Other)
- All support
- (b) Action
The Regulations to remain as drafted

7. **Travel and Subsistence**

- (a) 13 Responses (10 local authorities, 2 NPAs and A.N.Other)
- Majority support Panel prescribing maximum levels. One local authority and one NPA believe this should be a matter for the individual authority.
 - Whilst one local authority would welcome lump sum payments the rest favoured requirement for receipts to be provided, as exists under the current regulations. Several local authorities pointed out that reimbursement without production of receipts, or even payment of single lump sum, could give rise to tax issues.
 - A.N.Other - Power of Panel to determine maximum rates payable, and on what criteria they are paid out is sensible. But it should be left to local choice as to whether travel expenses should remain as claimable or be made as lump sum payments.
- (b) Assembly Response
The majority of responses favour continuation of the current arrangements whereby receipts are required.
- (c) Action
The draft regulations have been amended to include provision which replicates Regulation 15(3) of the existing regulations (The Local Authorities (Allowances for Members of County and County Borough Councils and National Park Authorities) (Wales) Regulations 2002).

8. **Care Allowance – Removal of Current Restriction For Members in Receipt of a SRA of £15,000+**

- (a) 7 Responses (6 local authorities and A.N.Other)
- Local authorities – support. One local authority queried whether the regulations, as drafted, allowed for removal of this restriction to come into force when the regulations are made.
 - Panel should be allowed flexible approach to carers' allowance
- (b) Assembly Response
The Regulations as drafted already provide for the restriction to be removed as soon as the regulations come into force.
- (c) Action
The Regulations to remain as drafted.

9(i) **Time-limit for Receipt of Claims for Travel and Subsistence Allowance**

- (a) 7 Responses - 6 local authorities and combined response from the 3 Fire and Rescue Authorities.
- Support
- (b) Action
The Regulations to remain as drafted (but with the missing provision added in respect of Fire and Rescue Authorities).

9(ii) **Time-limit for Receipt of Claims for Co-optees' Allowance**

- (a) 6 Responses – 5 local authorities and combined response from the 3 Fire and Rescue Authorities.
- Two local authorities opposed to inclusion of time-limit requirement in regulations; one of view that this should be a matter for local choice, whilst other considered that this should be an annual payment.
- (b) Assembly Response
In common with other allowances, it would appear reasonable for this allowance to be made as a payment, rather than being one which has to be claimed on each occasion by a member. As such the time-limit provision is no longer required.
- (c) Action
This particular provision has been removed from the Regulations.

10 **Extending Publicity Requirement of Allowances to Include Travel and Subsistence and Co-optees' Allowance**

- (a) 6 Responses – 5 local authorities plus combined response from the three Fire and Rescue Authorities
- Fire and Rescue Authorities support. 4 local authorities in support with one of view that this should be a matter for local choice.
- (b) Assembly Response
The current 2002 Regulations require authorities to publish the total amounts payable to members in respect of Basic allowance, SRA, and care allowance (and in relation to NPAs, the publication of sums of Attendance Allowance paid). This requirement is replicated in the draft regulations and, in the spirit of open government, is extended to include travel and subsistence and co-optees' allowance for members of county and county borough councils, NPAs and Fire and Rescue Authorities.
- (c) Action
The Regulations to remain as drafted (but with the missing provisions added in respect of Fire and Rescue Authorities).

11 **Pensions**

- (a) 3 Responses – all local authorities
- 2 local authorities in support of the Panel being able to make recommendations as to which members of an authority are to be entitled to join the Local Government Pension Scheme. One local authority opposed to the Panel having power to make different recommendations to different authorities.
- (b) Assembly Response
These provisions replicate those in The Local Authorities (Allowances for Members of County and County Borough Councils) (Pensions) (Wales) Regulations 2003.
- (c) Action
The regulations to remain as drafted

12 **Coming into Force Date**

- (a) 8 Responses (7 local authorities and 1 NPA)
- 2 local authorities support date being linked to 2008 local government elections

- 2 local authorities support date being linked to start of financial year
- 1 local authority – should be asap
- 1 local authority – 1 October 2008
- Fire and Rescue Authority – content with timetable proposed in draft regulations

(b) Assembly Response

Two coming into force dates are required as some of the new provisions in the regulations can be introduced straightaway (eg increasing maximum level of SRA for Chairs/Vice-Chairs of Licensing Committees), whilst others (eg the introduction of the co-optee allowance) are dependent on the Independent Remuneration Panel setting maximum levels to be payable.

(c) Action

The regulations will come into force in two stages:-

(i) **1 June 2007** – main provisions coming into force at this time include establishing the Independent Remuneration Panel, requiring it to meet and produce reports; SRA increase for Chairs/Vice-Chairs of Licensing Committees; withholding and recovery of allowances of suspended members and the introduction of a “carers” allowance for members of NPAs.

(ii) (circa) **30 November 2008** (ultimately dependent upon when the Panel produces its initial report) – Requiring local authorities to establish new schemes of allowances, based on the maximum levels set by the Panel in their “initial” report, introduction of co-optees’ allowance (see Paragraph no 17 below) and, indirectly, requiring National Park Authorities and Fire and Rescue Authorities to have regard to the Panel’s determinations when setting new levels of allowances.

Additional Comments Made By Respondents

13 Dates for Panel’s First Meeting and Production of Report

(a) One local authority has commented that given the Panel must produce their first report by 31 December 2007, the date for the Panel’s first meeting should be held before then – say 30 September 2007.

(b) Assembly Response

The draft Regulations which issued for consultation require the Panel to meet before 31 December 2007 (or such later date as the National Assembly for Wales may agree, although post-May 2007 this will amount to a Welsh Minister function) and produce their “initial” report before 31 December 2007 (or such later date as the National Assembly for Wales may agree). The provisions in the Government of Wales Act 2006, which will result in the separation of powers between the Welsh Assembly Government and the National Assembly for Wales, and which come into force in May 2007 post election, necessitate changes in the way Ministers will make public appointments. As a result the appointment process for recruiting the

Panel members cannot commence until May 2007. Because of the procedures to be followed in this recruitment process it is unlikely that the members will be appointed much before the end of 2007. The “initial” report prepared by the Panel will be their most comprehensive report, on which all future “annual” and “supplementary” reports will be based. Accordingly the Panel may take in the region of 6 months to gather information, consider representations and then produce this report.

(c) Action

The Regulations have been amended to require the first meeting of the Panel to be within 6 weeks of the members’ appointment (or such later date as the National Assembly for Wales for agree, again this will be a Welsh Minister function after May 2007) – estimated as **January 2008**. The date for the publication of the “initial” report would be six months later, by **31 July 2008** (or such later date as the National Assembly for Wales may agree, to be a Welsh Minister function as above). There is of course nothing preventing the Panel producing their report at an earlier date. Authorities would then be required to have prepared their new schemes of allowances by **30 November 2008** (ie four months after the publication of the Panel’s “initial” report.)

14 Adjustment of Allowances

(a) One local authority queried whether the drafting of Regulation 10(3) & (4) allows for adjustments to be agreed at any point during the financial year and backdated to the beginning of the financial year.

(b) Assembly Response

This is the policy intention of the Regulations, and is the position under the current 2002 Regulations. Assembly lawyers have revisited these provisions. They have confirmed that these provisions allow for allowances which form part of a scheme of allowances (that is Basic Allowance, SRA and care allowance) to be backdated to the start of the financial year. However, the draft of the Regulations which issued for consultation did not provide for the backdating of increases for travel and subsistence and also the new co-optees’ allowance. Whilst it is not the policy intention for travel and subsistence allowances to be back-dated, it is the policy intention to allow for changes in the level co-optees’ expenses to be back-dated.

(c) Action

Provision has now been included in the Regulations which would enable an authority to back-date an increase in the co-optees’ allowance to the start of the financial year.

15 Voting By Panel and Quorum

(a) One local authority queried the drafting of Regulation 27(2), which in the case of an equality of votes, enables the Chair to have a second, casting vote. They also queried that, given that the minimum size of the panel is 3 members, of whom 2 would be the chair or vice-chair, whether the quorum should be 2.

(b) Assembly Response

For Regulation 27(2) to be redrafted as suggested by the local authority. To also redraft Regulation 24(1) which relates to the size of the Panel so that it makes clear that the Panel should consist of 5 persons, which would include the chairperson and vice-chairperson, with a quorum of 3; as originally drafted the regulations allowed the Panel to consist of between 3 - 5 members in total.

(c) Action

The Regulations have been amended accordingly.

16 **Compatibility With Freedom of Information Act 2000**

(a) One local authority queried whether Regulation 36(2) as drafted (concerned with the requirement of the Assembly to send a copy of the Panel's report to authorities) contravenes the requirements of the Freedom of Information Act.

(b) Assembly Response

Assembly lawyers have revised this provision and also draft Regulation 36(3). They accept that these provisions, as drafted, could be construed as cutting across the Freedom of Information Act 2000 (although this was not the intention).

(c) Action

These provisions have been redrafted to ensure compatibility with the requirements of the Freedom of Information Act 2000.

17 **Care Allowance for Members of National Park Authorities**

(a) One NPA expressed their disappointment that the proposed regulations do not provide for a care allowance for their members.

(b) Assembly Response

Section 100(d) of the Local Government Act 2000 enables "the reimbursement of expenses incurred by members of such relevant authorities as may be prescribed". Although this does not amount to an "allowance" it would enable the reimbursement of monies expended on costs of arranging for care.

(c) Action

Provisions have been included in the Regulations giving NPAs the discretion to reimburse a member for expenses incurred for the care of children or dependants. Such provision would come into force at the first coming into force date of the regulations – 1 June 2007. NPA would be required to publicise each year the amounts paid to each member.

ADDITIONAL CHANGES MADE TO THE REGULATIONS

- Provisions have been included in the Regulations which would also require the National Assembly for Wales to send copies of relevant Panel reports to National Park Authorities and Fire and Rescue Authorities.
- Provisions have been included which would allow for National Park Authorities to recover co-optees' allowance from suspended members (this is agreed policy but owing to an oversight was not included in the draft of the regulations which issued for consultation).
- Provisions have been included which require county and county borough councils, NPAs and Fire and Rescue Authorities to publish each year the amounts paid to their members in respect of travel and subsistence and co-optees' allowance; the former to come into force on 1 June 2007 and the latter on (circa) 30 November 2008. Provisions also require NPAs to publish the amounts of the reimbursement of care expenses paid each year to their members, coming into force 1 June 2007 (thus bringing such allowances in line with Basic, SRA and the local authority carer's allowance which are already subject to a publicity requirement).
- Provisions have been included which enable, for the period (circa) 30 November 2008 – 31 March 2009, the maximum amount of allowances payable by local authorities to be proportionate to the maximum amount of allowances applicable (in light of the Panel's report) that would otherwise have operated if the new schemes had been in operation for the full financial year 2008/09.