

Explanatory Memorandum to the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020

This Explanatory Memorandum has been prepared by the Department for Local Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020.

Julie James AM
Minister for Housing and Local Government
30 April 2020

PART 1

1. Description

The Regulations make temporary provision in relation to local authority meetings and for public and press access to these meetings during the COVID-19 pandemic.

The measures employed to combat COVID-19 include social distancing, the avoidance of non-essential travel and the requirement to work from home where possible. Legislation currently places requirements on local authorities to meet in person in specified offices, to make many meetings open to the public and to enable the public to inspect documents related to the meetings, in some cases, in the offices of local authorities. This runs counter to the measures in place for COVID-19.

The Regulations provide flexibility to enable local authorities (including local authority executives) to operate safely, effectively and lawfully, while retaining the principles of openness and accountability to the public by, for example, enabling meetings to be conducted on the basis of full or partial remote attendance and by making provision about the electronic publishing of certain documents.

Regulation 2 defines “local authority” for the purposes of the Regulations.

Local authorities are not able to make these changes by amendments to their own standing orders or other local rules as requirements for meetings are generally set out in detail in primary and secondary legislation.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, the Llywydd has been informed that the Regulations will come into force less than 21 days from the date of laying.

The Regulations make temporary provision for the conduct of local authority meetings and for public and press access to these meetings. In view of the circumstances surrounding the COVID-19 pandemic, the role of local authorities in responding to this emergency, and in particular its fast-moving nature, not adhering to the 21-day convention is thought necessary and justifiable in this case. Without the changes set out in these Regulations, the majority of local authorities concerned are unable to hold their meetings by remote attendance lawfully (or in the case of some, they cannot have all members attending remotely). This is preventing them from their vital efforts to deal with the crisis.

3. Legislative background

The Regulations are made under section 78 of the Coronavirus Act 2020, sections 20 and 190 of the Local Government and Housing Act 1989 and sections 22 and 105 of the Local Government Act 2000.

Section 78(1) of the Coronavirus Act 2020 Act enables the relevant national authority to make provision by regulations relating to local authority meetings. Pursuant to section 78(5) (b), “relevant national authority” means the Welsh Ministers in relation to local authorities in Wales. Section 78(4) enables the Welsh Ministers to disapply or modify any enactment or subordinate legislation and to make consequential and supplementary provision.

Section 20 of the Local Government and Housing Act 1989 enables the Secretary of State to make regulations to require relevant authorities to incorporate such provision as may be prescribed by the regulations in standing orders for regulating their proceedings and business and to make or refrain from making such other modifications of any such standing orders as may be so prescribed. Functions of the Secretary of State under sections 20 of the 1989 Act, so far exercisable in relation to Wales transferred to the National Assembly for Wales by virtue of article 2 and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). Those functions are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

Section 22 of the Local Government Act 2000 enables the Welsh Ministers to make provision by regulations about access to information of meetings of local authority executives.

Sections 78(13) of the 2020 Act and section 190(2) of the 1989 Act provides that the procedure for Regulations made under section 78 of the 2020 Act and section 20 of the 1989 Act are subject to the negative procedure. Section 105(5) of the 2000 Act and paragraphs 30 and 34 of Schedule 11 to the Government of Wales Act 2006 provide that the negative resolution procedure will apply to Regulations made under section 22 of the 2000 Act.

4. Purpose and intended effect of the legislation

Local authorities are being asked to undertake a number of essential and unusual functions in order to manage the ongoing COVID-19 pandemic. They are also expected to contribute to local resilience planning for the pandemic and continue the effective delivery of local services. These Regulations modify existing requirements in relation to local authority meetings for a specified period.

These Regulations aim to minimise risks to their continuing conduct of business, and ensure their members and officers can act in accordance with official health guidance. It also seeks to minimise the risk to the public and press by enabling a number of activities to be undertaken electronically rather than in person or through postal services.

Part 1

Part 1 sets out preliminary matters and defines terms used in the Regulations. It provides that provision made in the Regulations applies regardless of any provision contained in the standing orders, executive arrangements or any other rules of a local authority. If a provision in standing orders or other local rules is incompatible with any provision in the Regulations, that provision will have no effect whilst the provisions in the Regulations have effect.

Part 1 also specifies that where a body to which these Regulations apply has its own website, any requirement imposed by these Regulations to publish notices or other specified documentation electronically shall be fulfilled by the body publishing the material on that website.

Part 2

Part 2 enables participation at meetings of a local authority held before 1 May 2021 on the basis of full or partial remote attendance so long as persons who are not in the same place are able to speak to, and be heard by, other participants.

The Regulations provide that a reference to the attendance or presence of a person at a meeting in any enactment or other instrument (for example standing orders) includes by remote attendance.

The Regulations also provide that a reference to a place of a meeting is not to be read as limited to a single physical location.

Part 2 requires local authorities to have regard to any guidance issued by Welsh Ministers about remote attendance.

Part 3

Part 3 removes the requirement for the 2020 annual meeting of a principal council to be held in March, April or May 2020, those of a community council to be held in May 2020 and removes the need for the 2020 annual meeting of a National Park authority to be the first meeting after 31 May 2020. The Regulations enable the annual meetings of principal and community councils in 2020 to be held on such day in 2020 as the proper officer may determine. The Regulations enable the annual meetings of a National Park authority in 2020 to be held on such day in 2020 as is fixed by the chair of the Authority after consulting the proper officer of the Authority.

The Regulations also provide flexibility for local authorities (as defined in regulation 2) to hold a meeting other than annual meetings on such day and hour before 1 May 2021 as they may determine.

Part 3 also modifies section 85 of the Local Government Act 1972 (“the 1972 Act”). Section 85(1) provides that if a member of a local authority fails throughout a period of six consecutive months from the date of the member’s last attendance to attend any meeting of the authority, the member shall, unless

the failure was due to some reason approved by the authority before the expiry of that period, cease to be a member of the authority. Section 85(2A) makes similar provision with respect to a local authority operating executive arrangements.

Section 85 is modified by the Regulations to provide that members will not trigger the six month disqualification rule solely as a result of local authorities being unable to hold meetings because of COVID- 19.

The Regulations provide that the period beginning with the day on which the Regulations come into force and ending with the first day after the Regulations come into force on which a meeting is held (which, if the member were to attend it, would be attendance for the purposes of section 85(1) and (2A) of the 1972 Act) is to be disregarded for the purposes of calculating the period of six consecutive months under section 85(1) or (2A).

The Regulations also makes provision about the election of chairs and vice chairs of principal councils and community councils and chairs and deputy chairs of National park authorities at annual meetings. The Part provides flexibility for the timing of these elections. Similar provision is made for the election of chair of the joint board of Swansea Bay Port Health Authority and other appointments which are made at local authority meetings held before 1 May 2021. Provision is made for local authorities to allow the substitution of members to attend local planning authority committees and sub-committees. Provision is also made for community councils to determine appropriate methods for voting in meetings held before 1 May 2021.

Part 3 also makes provision for the publication of notices of meetings of principal councils, community councils and National Park authorities held before 1 May 2021 to be made electronically (and published on the body's website, where that body has its own website) and enables summonses to be sent to members electronically to attend those meetings.

Part 4

Part 4 makes modifications to public access requirements in relation to certain local authority meetings, decisions of principal council executives and notices and documents relating to those meetings or decisions. Provision in Part 4 (other than regulation 22) ceases to have effect at the end of 30 April 2021.

The modifications in Part 4 provide for the publication of notices and summonses to local authority meetings to be made electronically and published on the body's website, where that body has its own website (this term also covers publishing on shared websites, pages on another authority's website and Facebook pages).

Part 4 also modifies existing legislation relating to public and press access to information relating to and the proceedings of local authority meetings. It provides for key documentation about and relating to a meeting to be made

available electronically and where a body has a website by publishing documents on that website (see explanation above).

Statutory requirements placed on local authorities by existing legislation to admit the public and the press in person to certain meetings and to provide facilities to inspect certain documents in person at offices of the authority are relaxed for the duration of these regulations. Local authorities may, if practicable, enable members of the public and the press to attend certain meetings remotely.

Part 4 includes provision to require key information such as notices, agendas, reports where practicable (subject to the usual requirements about not publishing confidential and exempt information) and the outcomes of meetings to be made available electronically, to enable local people to follow proceedings and to know what decisions local authorities are taking.

5. Consultation

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations.

The Welsh Government has been in regular contact with the UK Government and has had advisory consultations with bodies representing local government in Wales.

6. Regulatory Impact Assessment (RIA)

An RIA has not been prepared further to the Welsh Ministers' regulatory impact assessment code for subordinate legislation and the urgency required to make these Regulations.