

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

This Explanatory Memorandum has been prepared by the Department for Local Government and is laid before Senedd Cymru 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) (Amendment) Regulations 2020.

Julie James MS

Minister for Housing and Local Government

30 June 2020

PART 1

1. Description

The Local Authorities (Coronavirus) (Meetings) (Wales) (Amendment) Regulations 2020 (“the Amendment Regulations”) amend the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020 (S.I. 2020/442 (W. 100)) (“the April 2020 Regulations”) to make further temporary provision in relation to local authority meetings and for public and press access to these meetings during the COVID-19 pandemic. The Amendment Regulations also make modifications which arise as a result of the April Regulations.

The April 2020 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.

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

None.

3. Legislative background

The Amendment Regulations are made under section 78 of the Coronavirus Act 2020 (“the 2020 Act”) and make certain amendments to the April 2020 Regulations which were made by the Welsh Ministers on 21 April 2020 and came into force on 22 April 2020.

Section 78(1) of the 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 78(13) of the 2020 Act provides that regulations made under section 78 of the 2020 Act are subject to the negative resolution procedure.

4. Purpose and intended effect of the legislation

The April 2020 Regulations modify existing requirements in relation to local authority meetings (including meetings of fire and rescue authorities and National Park authorities) for a specified period, to minimise risks to local authorities in the conduct of business and to ensure their members and officers can act in accordance with official health guidance. The April 2020 Regulations also sought to minimise the risk to the public and press by enabling or requiring a number of activities to be undertaken electronically rather than in person or through postal services.

The Amendment Regulations make further provision for these same purposes and make modifications which arise as a result of the April 2020 Regulations. The Amendment Regulations also amend regulation 9 which concerns the flexibility for local authorities to hold certain meetings.

The Amendment Regulations insert new provision in the April Regulations. Accordingly, the terms defined in regulation 2 of the April 2020 Regulations apply to the Amendment Regulations.

Regulation 2 of the Amendment Regulations

Regulation 2 of the Amendment Regulations amends regulation 9 of the April 2020 Regulations to insert a new paragraph (3) in that regulation. Regulation 9 of the April 2020 Regulations made provision to provide flexibility for local authorities to hold meetings which, (by virtue of an enactment or other instrument) are required to be held before 1 May 2021 (other than the annual meetings listed in paragraph (2) of that regulation) on such day and time before 1 May 2021 as they may determine.

The Welsh Ministers have concluded that such flexibility should not apply to meetings of local authorities (including where appropriate local authority executives) which are required to be held within a specified period after copies of reports are sent to authorities (or to members, as the case may be). The

Welsh Ministers consider that the subject matter of such meetings is so grave that if reports are sent, local authorities should not be able to defer the required action until such time before 1 May 2021 as they might determine.

Accordingly, regulation 2 of the Amendment Regulations dis-applies regulation 9(1) of the April 2020 Regulations for meetings required to take place under the provisions listed in the new paragraph (3)(a).

The new paragraph (3)(b) dis-applies regulation 9 in respect of any statutory requirement to hold a meeting by a local authority “as soon as practicable (however that requirement is expressed)”. This covers requirements to meet “as soon as practicable”, “as soon as reasonably practicable”, “as soon as possible” and other phrases to that effect.

Regulations 3 to 5 of the Amendment Regulations

Regulations 3 to 5 insert new provisions into Part 4 of the April Regulations. Regulation 5 also adds a new Schedule to the April Regulations.

Regulation 3 provides for the modification of section 228 of the Local Government Act 1972 in relation to meetings held before the end of 30 April 2021, by inserting new regulation 24 in the April Regulations. Under the modification, community councils are not required to make minutes of proceedings open to inspection, but instead are required to provide copies of minutes on request. A community council may charge a reasonable fee for providing such copies. Community councils are already required to publish electronically the minutes of the proceedings of council meetings and (in so far as is reasonably practicable) any documents which are referred to in the minutes by section 55(1)(c) of the Local Government (Democracy) (Wales) Act 2013.

Regulation 4 provides for the modification of section 26(3)(a) of the Public Audit (Wales) Act 2004 by inserting a new regulation 25 in the April Regulations, so the notice a local authority is required to give for a meeting to be held to consider the Auditor General for Wales’s report or recommendation, under section 25(4) of the Public Audit (Wales) Act 2004, accords with the fact that during the pandemic such a meeting may be taking place remotely, with no single venue.

Regulation 5 adds a Schedule to the April 2020 Regulations, and makes other related technical amendments.

Schedule to the April 2020 Regulations

The Amendment Regulations insert a new Schedule to the April 2020 Regulations. The Schedule sets out modifications of various enactments which arise as a result of the modifications made by Part 4 of the April 2020 Regulations.

Paragraph 1 of the new Schedule modifies section 41(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976. Section 41 concerns the use, as evidence, of “signed” minutes of the proceedings at local authority meetings. The modification provides that the wording of section 41 is consistent with the fact that the April 2020 Regulations provide for the minutes of local authority meetings to be “signed *or authenticated*”.

Paragraph 2 of the new Schedule makes certain modifications to regulations 26, 27 and 28 of the Standards Committees (Wales) Regulations 2001.

The modification to regulation 26 is technical, taking account of the modifications made in the April 2020 Regulations to the provisions referred to in regulation 26.

The modifications to regulation 27 concern the publication of notices and other documents related to a meeting of a principal council’s standards committee on the website of the community councils in the principal council’s area. The current provision (paragraphs (1) to (3) of regulation 27) provides that the principal council may provide for such notices and documents to be posted and made available for inspection at the offices of the community councils in question, circumstances which are not practicable in the current pandemic.

The modifications to regulation 28 bring the requirements in relation to the drawing up and authentication of minutes of standards committee meetings occurring after 21 July 2020 and before 1 May 2021 into line with those for other local authority meetings as provided for in the April 2020 Regulations.

Paragraph 3 of the new Schedule makes certain modifications to sections 24 and 26 of the Public Audit (Wales) Act 2004 so that the arrangements a local authority must make for publicising, holding and reporting a meeting which must be held to consider a report under section 22 of the Act (a Public Interest Report) are consistent with the arrangements provided for in the April 2020 Regulations.

5. Consultation

The Amendment Regulations mainly make modifications which arise as a result of the April 2020 Regulations, and is consistent with, that made in the April 2020 Regulations. Given the serious threat arising from coronavirus there has been no public consultation in relation to these Regulations.

The Welsh Government has had advisory consultations with representatives from local authorities, bodies representing local government in Wales and other bodies.

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.