

Explanatory Memorandum to the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) (Amendment No. 2) Regulations 2013

This Explanatory Memorandum has been prepared by the Local Government Department of the Welsh Government and is laid before the National Assembly for Wales 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 (Executive Arrangements) (Functions and Responsibilities) (Wales) (Amendment No 2) Regulations 2013. I am satisfied that the benefits outweigh any costs.

Lesley Griffiths

Minister for Local Government and Government Business, one of the Welsh Ministers

13 November 2013

1. Description

The Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) (Amendment No 2) Regulations 2013 (“the Amendment Regulations”) makes provisions which amend the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007 (“the Principal Regulations”). The Principal Regulations, made under the Local Government Act 2000, provide for functions of a local authority which may, may not or may not solely be the functions of a local authority executive.

These Amendment Regulations add the functions related to the promotion or opposing of Private Bills and functions related to family absence to those which are not to be functions of a local authority executive.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

None

3. Legislative background

Part 5 of the Local Government Democracy (Wales) Act 2013 (sections 52 to 54) enable certain local authorities in Wales to promote or oppose Private Bills placed before the National Assembly. This replicates an entitlement which these authorities already had in relation to Parliament.

The Principal Regulations already provided that functions related to the promotion or opposition of these Bills in Parliament should not be executive functions and these Amendment Regulations apply the same provision to the new powers.

The Family Absence for Members of Local Authorities (Wales) Regulations 2013 (“the Family Absence Regulations”) are being tabled at the same time as these Amendment Regulations and prescribe the conditions to be satisfied for a member of a Principal Council to be entitled to a period of family absence.

The Amendment Regulations will provide that functions connected to the Family Absence Regulations will not be the responsibility of a local authority executive.

The Welsh Ministers, in exercise of the powers conferred by sections 13 and 105 of the Local Government Act 2000, make the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) (Amendment No 2) Regulations 2013

4. Purpose & intended effect of the legislation

In general, the functions of a local authority when acting in a quasi-judicial manner, are not the responsibility of a local authority executive but fall to the full council or a body delegated by full council. That is why functions in relation to promoting or opposing Private Bills in Parliament were listed in the Principal Regulations as matters not to be the responsibility of an executive and why these Amendment Regulations provide the same in relation to the new powers in relation to Private Bills in the National Assembly.

The responsibility for making decisions in relation to the Family Absence Regulations will variously fall to the Chair or Presiding Member of a council, a council committee or the council's Head of Democratic Services. These bodies are not part of the council's executive or subject to it and therefore it follows that the functions related to Family Absence Regulations should not be the responsibility of a council executive.

5. Regulatory Impact Assessment (RIA)

Options for achieving the policy objectives in relation to the Regulations, as discussed in Section 4, are:

- Option 1 – Do nothing and do not make the Regulations;
- Option 2 – Make the Regulations.

Option 1 – Costs and benefits

There would be no financial costs to the Welsh Government or local authorities as a result of failing to make the Regulations. Doing nothing, however, would leave the functions relating to Private Bills and Family Absence as executive functions.

Option 2 - Costs and Benefits

Making the Regulations will provide that both functions fall outside the responsibility of the Local Authority executive. This is in keeping with the nature of the provisions in the Amendment Regulations.

6. Consultation

There has been no separate consultation on these Amendment Regulations. The provisions with respect to Private Bills are technical in that they replicate the existing arrangements in relation to Private Bills in Parliament. The provisions relating to family absence flow naturally from the Family Absence

regulations and supporting guidance, which imply the non-executive nature of these functions throughout and which have been the subject of a full 12 week consultation. Local authority lawyers have themselves raised the need for the Principal Regulations to be amended to provide for family absence functions to be non-executive.

There are no market implications associated with the making of these Regulations. It has no impact on business, charities or the voluntary sector.