

Explanatory Memorandum to the Local Government (Politically Restricted Posts) (Wales) Regulations 2008

This Explanatory Memorandum has been prepared by Local Government Policy Division and is laid before the National Assembly for Wales

Description

1. Part I of the Local Government and Housing Act 1989 (1989 Act) places restrictions on the political activity of certain local authority employees. It ensures that local authority employees who hold posts involving duties of a politically sensitive nature cannot, at the same time, become or remain a member of another local authority. In addition, they cannot stand for election as a Member of Parliament, Member of the European Parliament, National Assembly for Wales or Scottish Parliament.
2. Local authorities have a duty to maintain a list of posts regarded as politically restricted. Such posts include those specified in section 2(1) of the 1989 Act. In the main these are:
 - Specified senior posts, where these posts have no right to appeal to the Independent Adjudicator for exemption.
 - Posts paid above a certain level, where the remuneration is or exceeds £19,500 or a higher amount as set out in regulations (currently £35,852 as at 1 April 2007).
 - posts where the duties include regularly giving advice to the authority and or speaking to the media.

Employees included on the authority's list of politically restricted posts due solely to their salary level may apply to the Independent Adjudicator to be exempted from the list.

These proposed regulations are intended to increase the remuneration threshold and thereby to reduce the number of officers who are subject to political restriction.

Matters of Special Interest to the Subordinate Legislation Committee

None

Legislative Background

3. Part 1 of the Local Government and Housing Act ("the 1989 Act") introduced provisions relevant to local authority members, officers and committees. In particular, section 2 defines the categories of staff subject to limitations on their political activity. These include –
 - (a) certain statutory posts including, for example, the head of paid service and chief officers;
 - (b) staff who earn more than a certain salary level; and

- (c) staff who regularly provide advice to the authority or committees, or who regularly represent the authority to the media.
4. Such officers are precluded from standing as a candidate in elections or from holding office in political parties.
 5. Local authorities must maintain lists of their staff who fall within paragraphs (b) and (c) above. Those staff are also entitled to apply to an independent adjudicator (appointed under section 3) for exemption from political restrictions.
 6. The salary level referred to in (b) above was originally set at £19,500. Then the level was set, by the Local Government (Politically Restricted Posts) (No 2) Regulations 1990, by reference to point 44 on the NJC salary scale for local government officers. Currently that point equates to £35,852 (as at 1 April 2007).
 7. The functions of the Secretary of State to change the salary level under section 2, in so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales under the National Assembly for Wales (Transfer of Functions) Order 1999. These functions have now been transferred to the Welsh Ministers by virtue of Schedule 11 to the Government of Wales Act 2006. Regulations shall be exercised by Statutory Instrument and made by the negative resolution procedure.

Purpose and intended effect of the legislation

8. The Assembly Government in conjunction with other stakeholders have been working to raise public awareness of local government and seeking ways to encourage more candidates to consider standing for office at the local elections in 2008.
9. These draft regulations are intended to increase the remuneration level at which certain local government officers are subject to political restrictions. The regulations would have no impact upon the officers described in (a) and (c) above.
10. The draft regulations propose that the salary level in (b) would be by reference to point 49 on the scale mentioned - £40,101 which includes the recent 2007 pay award.
11. These draft regulations will enable more local government staff to consider standing for office without having to apply for exemption from political restriction first. No data is held centrally of the number of employees included on an authority's list of politically restricted posts. On an averaging basis it is considered that approximately 1000 employees will be freed from political restriction under these regulations.

Implementation

12. These regulations will revoke The Local Government (Politically Restricted Posts) (No2) Regulations 1990 in relation to Wales.
13. It is intended that the draft regulations come in to force on 29 February 2008.
14. A press statement has been issued to publicise the intention to make the regulations ahead of the 2008 local elections. The press statement was issued in August 2007 when Ministerial agreement to the drafting of the regulations was received.
15. Publicising the intention to make the regulations at that stage provided the opportunity for individuals to consider the possibility of standing for office at the 2008 local elections.
16. It is well known that political parties choose candidates at an early stage before an election. Announcing the intention at an early date of introducing these draft regulations would have enabled individuals, previously barred from standing for office to be considered as a candidate.
17. The next elections to principal and community councils in Wales will be held on 1 May 2008. The closing date for nominations will be 19 days before the day of election i.e. 4 April 2008.
18. If the target date for the making of the regulations is not achieved this could prohibit some prospective candidates from standing for election.
19. The Welsh Assembly Government's consultation on the regime governing political restriction was held in parallel to the UK Government's consultation.
20. In response to their consultation the UK Government propose to retain the existing framework which restricts the political activity of senior staff and to consider amending the existing rules to ensure that political restriction only applies to the most senior posts.
21. The Local Government and Public Involvement in Health Act 2007 provides that, in the case of England, responsibility for granting exemption from political restriction is to be transferred to an authority's standards committee and that the post of Independent Adjudicator will be abolished. Stakeholders in Wales did not support this option.

Consultation on policy

22. A 12 week policy consultation exercise on the political restriction regime was conducted in Wales in November 2004. Those consulted were Local Authority Chief Executives, the then Audit Commission in Wales, Local

Government Information Unit, SOLACE, Welsh Local Government Association (WLGA), UNISON.

23. The consultation was based on the document prepared by the then Office of the Deputy Prime Minister (ODPM) "Review of the Regulatory Framework Governing the Political Activities of Local Government Employees."
24. The document sought views on the regime governing the political activities of local government employees as set out in Part 1 of the 1989 Act. Part of the consultation sought views on:
 - The desirability to reduce the number of officers covered by the restrictions,
 - The remuneration level at which restriction should be applied,
 - The categories of posts that should be covered by the restrictions.
25. In total 33 responses were received: eight from local authorities with the others from WLGA, SOLACE, UNISON and the Audit Commission. Those who commented on this aspect of the consultation felt that the existing rules on political restriction worked well and were understood but that there was scope for the rules to be reviewed to reduce the number of staff covered by the restrictions.
26. There was consensus for reducing the number of officers covered by the political restriction regulations. Chief Executives, Chief Statutory Officers and senior employees should continue to be within the political restriction regime. Other politically restricted posts should be determined by the duties performed and not the salary.

Consultation on draft regulations

27. A six week consultation on the draft regulations was conducted from 19 October 2007 to 23 November 2007. Those consulted included Chief Executives and Monitoring Officers of County and County Borough Councils and National Park Authorities, the Welsh Local Government Association, the Society of Local Authority Chief Executives (SOLACE), Clerks to Police Authorities, Chairs of Standards Committees, the Association of County Secretaries and Solicitors, the Welsh Association National Parks Authorities in Wales, the Audit Office, the Public Service Ombudsman for Wales, UNISON and the Information Commissioner's Officer in Wales.
28. Responses were received from Snowdonia National Park Authority, Wrexham County Borough Council, Denbighshire County Council and SOLACE Wales.
29. There was consensus of support from those who responded to the consultation to the draft regulations. No respondent suggested any amendment or alteration to the regulations. Some did suggest that the overall regulatory framework should be reviewed, but this was outside the

scope of this consultation.

Regulatory Impact Assessment

30. The primary legislation only provides power for the Minister to make an amendment to the remuneration rate of officers. The legislation does not give the Welsh Ministers the option to abolish the restriction based on remuneration level.
31. The Civil Service Code prevents members of the Senior Civil Service and Fast Streamers from national political activity, but with permission, they may participate at a local level. Setting the remuneration level for local government employees, at or above which posts become politically restricted, at level 49 of the NJC scale is in parallel with pay point 1 of the Civil Service Grade 7 post.
32. In these circumstances, it is not considered necessary to prepare a Regulatory Impact Assessment.