

Constitutional and Legislative Affairs Committee Report

CLA484 – The Accounts and Audit (Wales) Regulations 2014

Procedure: Negative

These Regulations revoke and replace the Accounts and Audit (Wales) Regulations 2005 (as amended). They consolidate all previous amendments and clarify the definitions of, and auditing practices applicable to, smaller and larger relevant bodies.

1. Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

2. Merits Scrutiny

One point is identified for reporting under Standing order 21.3(ii), namely, that it is of political importance or gives rise to issues of public policy likely to be of interest to the Assembly.

Regulation 9 provides that the statement of accounts required to be prepared by a larger relevant authority must include (inter alia) a note of the remuneration and contribution to the pensions by the relevant authority of senior employees or relevant police officers. Individuals whose salary is over £150,000 a year are to be identified by name; regulation 9(5) provides that the persons whose remuneration is so noted must be listed individually and identified by way of job title only. However this does potentially enable the identities of the latter category to be ascertained so giving rise to concerns relating to data protection and incompatibility with UN Convention on Human Rights.

The principle underlying the provision is not novel. Similar requirements were found in the Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003 (and in subsequent amending regulations). In 2009 The first time this provision was enacted within

accounts and audit regulations was in The Account and Audit (Amendment No.2) (England) Regulations 2009; the same provision was then contained in the Wales regulations in 2010.

In 2009 the Joint Committee on Statutory Instruments considered the 2009 Regulations; the regulations were not reported. Members may find informative the following extract from the Explanatory Memorandum laid with the 2009 Regulations.

“Of particular relevance to the Government’s consideration of the content of the Regulations was the response from the Information Commissioner’s Office (ICO). In the ICO’s response, it was noted that the Commissioner encourages public authorities to publish information pro-actively wherever possible, including certain information about staff costs. The Commissioner did not foresee that the proposals would be incompatible with the Data Protection Act, and envisaged that section 34 of that Act would apply. The Commissioner agreed that public sector workers who are responsible for major policy decisions and the spending of public money should expect some scrutiny of their pay, and supported the detailed reporting of remuneration as proposed, but sounded a note of caution that such disclosure should not be misleading. Disclosure should provide transparency about the expenditure of public money, not an employee’s purely private financial affairs”.

Notwithstanding the potential data protection and human rights issues potentially raised by this provision, Members may consider that the public interest in the accountability of public bodies regarding the expenditure of public money, including on the remuneration of public sector workers, must be balanced against the protection of private information and private interests of the persons involved regarding the protection of private information.

3. Government's Response

The Government notes the point raised in this draft report and thanks the Committee for bringing it to our attention.

The Convention right which the legal advisers have in mind is presumed to be Article 8 which states –

Article 8 – Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The provision in the Regulations about which the Committee's legal advisers are concerned is regulation 9 (declaration of remuneration) and, in particular, paragraph (5) which reads –

(5) The persons whose remuneration is to be noted under paragraph (4) [*senior employees and relevant police officers*] must be listed individually and identified by way of job title only, except that those persons whose salary is £150,000 or more per year must also be identified by name.

Thus, for example, a local authority chief executive whose salary is over £150k must be listed individually and named in the declaration of remuneration. In addition, it would be reasonably easy for a member of the public to use the declaration of remuneration to ascertain the salary region of other senior local authority employees and by other means to obtain their names.

The declaration of remuneration would accompany the annual statement of accounts prepared by the authority's chief financial officer for approval by the authority before being submitted to audit.

Background to the provision in regulation 9

The provision in regulation 9 is not new.

- (a) The first time this provision was enacted within accounts and audit regulations was in the Accounts and Audit (Amendment No 2) (England) Regulations 2009 (2009 No. 3322).
- (b) The same provision was inserted in the Accounts and Audit (Wales) Regulations 2005 by amending Regulations in 2010.
- (c) The Localism Act 2011 contained further provision regarding the salaries of local authority employees. The Act requires local authorities each year to publish a pay policy statement setting out the authority's policies for the financial year relating to, amongst other things, the remuneration of its chief officers. In particular, the statement must include the authority's policies relating to:
 - (i) the level and elements of remuneration for each chief officer,
 - (ii) remuneration of chief officers on recruitment,
 - (iii) increases and additions to remuneration for each chief officer,
 - (iv) the use of performance-related pay for chief officers,
 - (v) the use of bonuses for chief officers, (vi) the approach to the payment of chief officers on their ceasing to hold office under or to be employed by the authority, and (vii) the publication of and access to information relating to remuneration of chief officers.

When the regulation 9 provision was first enacted, the UK Government provided a full analysis of the privacy argument in their Explanatory Memorandum. In particular, it was stated that the provision–

- (a) was not regarded by the Information Commissioner's Office as incompatible with the Data Protection Act (and that section 34 of that Act applied);
- (b) was comparable to standards required for management boards in the civil service or private listed companies.

In addition, the Joint Committee on Statutory Instruments did not report on the England 2009 Regulations. Nor was there any report by the CLAC legal advisers when the Wales 2010 Regulations introduced the salary provision.

Reasoning

It is clear that the level of salary paid to senior public officials has been a matter of public concern for some years, and continues to be so. At a time of reducing public expenditure and general economic down-turn, it is self-evident that the disclosure of the pay of senior local authority officers (and relevant police officers) and, in some instances, the naming of those officers –

- (i) satisfies the principles of transparency and proper reporting of public expenditure,
- (ii) is in the public interest and (iii) is proportionate.

Transparency and proper reporting of public expenditure are necessary in a democratic society in the interests of the economic well-being of the country. That transparency extends to providing the names of those who are paid relatively large salaries.

Accordingly, regulation 9 is in accordance with the law, in pursuit of a legitimate aim and proportionate, and that, accordingly, is not incompatible with Article 8 of the Human Rights Convention or with the Data protection Act.

4. Committee Consideration

The Committee considered the instrument and Government response at its meeting 19 January 2015 and reports to the Assembly in line with the merits reporting point in section 2 above.