

Explanatory Memorandum to The Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2017

This Explanatory Memorandum has been prepared by the Department for Environment and Rural Affairs 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 (Standing Orders) (Wales) (Amendment) Regulations 2017. I am satisfied that the benefits justify the likely costs.

Jane Hutt
One of the Welsh Ministers
24 March 2017

PART 1 – EXPLANATORY MEMORANDUM

1. Description

The Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2017 (“the 2017 Regulations”) amend the Local Authorities (Standing Orders) (Wales) Regulations 2006.

- 1.1 The 2017 Regulations introduce the requirement that Local Planning Authorities (LPAs) in Wales must operate planning committees with a quorum of 50% of the membership, rounded to the nearest whole number, in order to make decisions.
- 1.2 The 2017 Regulations also prohibit the use of substitute members in the absence of appointed members.

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

- 2.1 There are no matters of special interest to the Committee.

3. Legislative background

- 3.1 The powers enabling the 2017 Regulations to be made are contained in Section 20 (Duty to adopt certain procedural standing orders) of the Local Government and Housing Act 1989. Powers under sections 20 of the Local Government and Housing Act 1989 are now vested in the Welsh Ministers. They were previously vested in 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). By virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c. 32), they were transferred to the Welsh Ministers.
- 3.2 The 2017 Regulations are subject to the negative procedure.
- 3.3 There is a link between the 2017 Regulations and the 2017 Committee Regulations. Regulation 2(3) of the 2017 Regulations inserts new Schedule 2A in Local Authorities Standing Orders (Wales) Regulations 2006. The new provision requires local planning authorities to update their standing orders to prevent the appointment of substitute members to planning committees. A local planning authority is therefore prevented from appointing another of their members to act as a member of a planning committee in the absence of the member appointed in accordance with the Size and Composition of Local Planning Authority Committees (Wales) Regulations 2017.

4. Purpose & intended effect of the legislation

- 4.1 The 2017 Regulations work in conjunction with the 2017 Committees Regulations to ensure planning committees in Wales are operated within a model deemed most efficient and effective.
- 4.2 If the overall committee size is to be limited (the 2017 Committees Regulations), it is important that there should be a quorum for decision making. This is to ensure that where the committee size is small there is a sufficient number of members present to debate the planning issues and make consistent decisions on planning applications.
- 4.3 In order to take decisions, at least half of the total number of members of the committee, rounded to the nearest whole number, must be present.
- 4.4 There are presently varying practices in relation to the use of substitute members. However, inconsistent membership of the committee through the use of substitute members can lead to an imbalance in the skills and knowledge of the committee due to substitute members not being trained to the same high standard as the formal members of the committee. Additionally, the use of substitute members can lead to inconsistent decision making.
- 4.5 The use of substitute members hinders the development in Wales of planning committees consisting of an informed group of councillors with the necessary skills and knowledge to undertake better informed evidence-based decision making in the wider public interest.
- 4.6 In the absence of a member of the planning committee, the Local Planning Authority is not permitted to appoint another member for a relevant meeting.
- 4.7 If the 2017 Regulations are not made, there is a significant risk of continuing inconsistent decision-making within LPAs and at a wider national level due to LPAs undertaking differing practices. The legitimacy of the democratic process may also be called into question if planning applications are determined by less than half of the planning committee.

5. Consultation

- 5.1 The requirement for legislation to prescribe the size and composition of planning committees was first discussed in the 'Positive Planning' consultation paper. A more detailed consultation was subsequently undertaken between 06 October 2014 and 16 January 2015.

5.2 The responses were significantly in favour of the proposals. A summary of the consultation responses received is available on the Welsh Government website.

PART 2 – REGULATORY IMPACT ASSESSMENT

The Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2017

1 Options

1.1 Three options have been considered:

- Option 1: Do nothing i.e. allow LPAs to set their own quorum and chose whether to use substitute members
- Option 2: Prescribe a quorum of 50% and prohibit the use of substitute members nationally
- Option 3: Issue guidance encouraging LPAs to set a quorum of 50% and prohibit substitute members

2. Option 1: Do nothing

Description

2.1 Option 1 would continue the existing practice whereby each local planning authority decides their quorum and whether to use substitute members.

Costs

Welsh Government

2.2 There would be no financial consequences for the Welsh Government.

Local Planning Authorities

2.3 There would be no financial consequences for LPAs.

2.4 There would however remain an element of risk that too few members may take important, strategic, decisions should there be a number of absentees at an LPA committee meeting, which may result in potential legal challenge.

Development Industry / Applicants

2.5 Instances of inconsistent decision making through the use of substitute members would remain. Inconsistent decision making contributes towards delays in the planning process. Whilst it is difficult to estimate the exact cost, it is apparent that delayed planning decisions place a significant financial burden on developers and the Welsh economy.

Benefits

Welsh Government

- 2.6 This option would not give rise to any benefits to the Welsh Government in terms of improved performance.

Local Planning Authorities

- 2.7 Each LPA would retain their ability to set quorum and determine whether to use substitute members. However an opportunity to create consistency throughout Wales at planning committees to improve the decision making process would be lost.

Development Industry / Applicants

- 2.8 There are no notable benefits to this sector. Potential for inconsistency in the decision making process would remain.

3. Option 2: Introduce Regulations which prescribe quorum and prohibit the use of substitute members

Description

- 3.1 Option 2 will prescribe in subordinate legislation the requirement to achieve a quorum of 50% (rounded to the nearest whole number) of the total committee present to take decisions, and prohibit the use of substitute members.

Costs

Welsh Government

- 3.2 There would be no financial consequences for the Welsh Government.

Local Planning Authorities

- 3.3 There would be no financial consequences for LPAs.
- 3.4 Each LPA will be required to amend the relevant sections of their constitution to take account of the proposed changes to planning committee procedure. It would be anticipated that this would normally be an agenda item in a routine full council meeting following the election of a new Council and hence not impose an additional cost.

- 3.5 Many LPAs currently operate a quorum of 50% whilst the use of substitute members varies. Prohibiting their use would create consistency at a national level.
- 3.6 Should a Local Planning Authority be unable to achieve quorum, the meeting will be cancelled. Cancelling a meeting will not however result in a cost to the Local Planning Authority. The Local Planning Authority will know in advance of the meeting if they are unlikely to meet quorum, enabling the meeting to be cancelled before any costs are incurred.
- 3.7 Whilst an infrequent occurrence, cancelling a planning committee is not unheard of. This most often occurs when there is not sufficient 'business' for the committee to discuss.

Development Industry / Applicants

- 3.8 The cancellation of a committee meeting may result in the determination of applications being delayed. This will have a knock-on effect on the Development Industry / Applicants.
- 3.9 The chance of a meeting being cancelled as a result of not meeting quorum requirements is however expected to be extremely low.

Benefits

Welsh Government

- 3.10 There are presently varying practices in relation to the use of substitute members. However, inconsistent membership of the committee through the use of substitute members can lead to an imbalance in the skills and knowledge of the committee due to substitute members not being trained to the same high standard as the formal members of the committee. Additionally, the use of substitute members can lead to inconsistent decision making.

Local Planning Authorities

- 3.11 Where the committee size is small, the Regulations will ensure there is a sufficient number of members present to debate the planning issues and make consistent decisions on planning applications.

Development Industry / Applicants

3.12 Consistency in the planning committee membership through the prohibition of substitute members will be of significant assistance in addressing some of the delays in the existing system that occur as a result of inconsistent decision making.

3.13 This is considered to outweigh the cost-impact of the Regulations (i.e. the potential for a meeting being cancelled by not achieving quorum).

4. Option 3: Issue best practise guidance

Description

4.1 This option would result in the production of guidance on planning committee procedures, which would include the introduction of a quorum of 50% and deterring the use of substitute members. It would not be mandatory for LPAs to follow the guidance.

Costs

Welsh Government

4.2 The costs associated with developing and disseminating the guidance would fall within the day to day role of Welsh Government and would be captured by existing budgets.

Local Planning Authorities

4.3 Issuing guidance would have no direct monetary cost to LPAs.

4.4 There would remain a risk that too few members may take important, strategic decisions should there be a number of absentees at an LPA committee meeting, which may result in potential legal challenge.

Development Industry / Applicants

4.5 Issuing guidance would have no direct monetary cost to this sector. The associated cost to this sector would remain as set out in option 1.

Benefits

Welsh Government

- 4.6 Guidance would not be mandatory and is therefore unlikely to result in the desired outcome i.e. achieving a consistent approach to planning committee procedures.

Local Planning Authorities

- 4.7 Local Authorities would retain control over their committee procedures. The criteria contained within any guidance would not be mandatory and therefore each LPA could decide whether to implement the policy (in full or in part) or to make no changes to their committee procedures.
- 4.8 Due to the skills and knowledge imbalance, the continued use of substitute members will lead to instances of inconsistent decision making and hinder the development of planning committees consisting of a core group of councillors with the necessary skills and knowledge to undertake better informed evidence-based decision making in the wider public interest.

Development Industry / Applicants

- 4.9 The benefits to this sector would depend on whether, and how, the LPAs reformed their committee composition as a result of the guidance. Inconsistency would likely remain as the guidance would not be mandatory with no requirement for LPA's to reform their committee structure or processes.

5. Summary and Preferred Option

- 5.1 There is a strong evidence base for change provided by the RTPI study referenced in this EMRIA.
- 5.2 Smaller committees with a consistent membership and a quorum established for decision making will ensure that those decisions taken by the planning committee will be consistent and robust. A core of well trained Members with a clearly defined role of representing the wider public interest, will be able to use their knowledge and understanding of planning issues to develop a better culture of informed evidence-based decision making and providing a consistent, fairer, more transparent planning service.
- 5.3 Option 3 could ensure the recommendations identified in the RTPI report are implemented by all LPAs voluntarily, however, as this option relies only upon guidance, there would need to be complete buy-in by all LPAs, which cannot be guaranteed.
- 5.4 For this reason option 2 is the preferred option as it will provide a framework for LPAs to formulate their planning committee structure based on parameters

which have been consulted upon and have significant buy-in from stakeholders the majority of whom support the proposal.

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