

# Constitutional and Legislative Affairs Committee

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Meeting Venue:

**Committee Room 3 – Senedd**

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Meeting date:

**19 January 2015**

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Meeting time:

**14.30**

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



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## Agenda

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**1 Introduction, apologies, substitutions and declarations of interest**

**2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3** (Pages 1 – 5)

**CLA(4)–02–15 – Paper 1 – Statutory instruments with clear reports**

Negative Resolution Instruments

**CLA481 – The Secure Tenancies (Absolute Ground for Possession for Anti-Social Behaviour) (Review Procedure) (Wales) Regulations 2014**

Negative procedure; Date made: 9 December 2014; Date laid: 12 December 2014;

Coming into force date: 12 January 2015

**CLA482 – The Education (Wales) Measure 2009 (Pilot) (Revocation) Regulations 2014**

Negative procedure; Date made: 11 December 2014; Date laid: 15 December 2014;

Coming into force date: 5 January 2015

### **3 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3**

#### Negative Resolution Instruments

**CLA484 – The Accounts and Audit (Wales) Regulations 2014** (Pages 6 – 40)

Negative procedure; Date made: 22 December 2014; Date laid: 23 December 2014;  
Coming into force date 3 March 2015

CLA(4)–02–15 – Paper 2 – Report

CLA(4)–02–15 – Paper 3 – Regulations

CLA(4)–02–15 – Paper 4 – Explanatory Memorandum

#### Composite Negative Resolution Instruments

**CLA483 – The Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014**  
(Pages 41 – 54)

Composite negative; Date made: 18 December 2014; Date laid: 19 December 2014;  
Coming into force date: 12 January 2015

CLA(4)–02–15 – Paper 5 – Report

CLA(4)–02–15 – Paper 6 – Regulations

CLA(4)–02–15 – Paper 7 – Explanatory Memorandum

### **4 SICM 4 – The Public Bodies (Abolition of the Advisory Committees on Pesticides) Order 2015** (Pages 55 – 78)

CLA(4)–02–14 – Paper 8 – Statutory Instrument Consent Memorandum

CLA(4)–02–14 – Paper 9 – Order

CLA(4)–02–14 – Paper 10 – Explanatory Document

### **5 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:**

(vi) the committee is deliberating on the content, conclusions or recommendations of a report it proposes to publish; or is preparing itself to take evidence from any person;

**Draft Report Planning (Wales) Bill** (Pages 79 – 121)  
**CLA(4)–02–15 – Paper 11 – Draft Report**

Public Session Resumed

**6 Evidence in relation to the inquiry into Making Laws in the Fourth Assembly** (Pages 122 – 140)  
*(Indicative time 3.00pm)*

**British Medical Association**

Dr Stephen Monaghan, Chair of the BMA Welsh Council Legislation Subcommittee  
Mr Andrew Cross, Assistant Secretary, BMA Cymru Wales  
Dr Rodney Berman, Senior Policy Executive, BMA Cymru Wales

**CLA(4)–02–15 – Paper 12 – Written Evidence**  
**CLA(4)–02–15 – Research Service Briefing**

**7 Evidence in relation to the inquiry into Making Laws in the Fourth Assembly**  
*(Indicative time 3.40pm)*

**Civitas Law**

Graham Walters

**8 Evidence in relation to the inquiry into Making Laws in the Fourth Assembly** (Pages 141 – 147)  
*(Indicative time 4.00pm)*

**Welsh Local Government Association**

Marie Rosenthal, Lawyers in Local Government;  
Naomi Alleyne, WLGA;  
Tim Peppin, WLGA;  
Daniel Hurford, WLGA

**CLA(4)-02-15 – Paper 13 – Written Evidence**

**9 Papers to note** (Page 148)

**CLA(4)-02-15 – Paper 14 – Written Statement: Consultation on the Draft National Assembly for Wales (Disqualification) Order 2015**

**10 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:**

(vi) the committee are deliberating on the content, conclusions or recommendations of a report it proposes to publish or is preparing itself to take evidence from any person;

**Forward Work Programme** (Pages 149 – 151)

**CLA(4)-02-15 – Paper 15 – Forward Work Programme**

# Agenda Item 2

**Constitutional and Legislative Affairs Committee  
Statutory Instruments with Clear Reports  
19 January 2015**

**CLA481 – The Secure Tenancies (Absolute Grounds for Possession for Anti-Social Behaviour) (Review Procedures) (Wales) Regulations 2014**

**Procedure: Negative**

Section 84A of the Housing Act 1985 (the Act) provides for a new, absolute, anti-social behaviour ground for possession of a dwelling let under a secure tenancy.

Section 85ZA of the Act provides secure tenants of local housing authorities and housing action trusts with a right to request a review of a landlord's decision to seek possession under section 84A. The landlord must review the decision if the tenant requests it.

These Regulations make provision about the procedure to be followed in connection with such a review, including the information required for the tenants review application (Regulation 2), the right to a hearing (Regulation 3), review without a hearing (Regulation 5), review with a hearing (Regulation 6), the procedure at the hearing (Regulation 7), and the review decision (Regulation 10).

**CLA482 – The Education (Wales) Measure 2009 (Pilot) (Revocation) Regulations 2014**

**Procedure: Negative**

The Education (Wales) Measure 2009 (Pilot) Regulations 2012 (“the 2012 Regulations”) make provision to pilot the provisions of the Education Act 1996 (on special educational needs appeals) and the Equality Act 2010 (on disability discrimination claims) as amended by Part 1 of the Education (Wales) Measure 2009 (“the Measure”). The effect of is that the amendments made by Part 1 of the Measure to the Education Act 1996 and the Equality

Act 2010 apply only for the purposes of piloting in the local authority areas of Carmarthenshire and Wrexham.

The 2012 Regulations applied from 6 March 2012 and provided that they would cease to have effect at the end of 30 June 2015. Regulation 2 of these Regulations revokes the 2012 Regulations in their entirety from the earlier date of 5 January 2015. Regulation 2 also provides that article 4 of the Commencement Order is revoked. This provided for the continued application, to local authorities in Wales not within the pilot, of sections 332A and 332B of the Education Act 1996 as if the amendments to those sections by the Measure were not in force.

The effect of the revocations made by these Regulations is to end the pilot with the result that the amendments to the Education Act 1996 and Equality Act 2010 made by Part 1 of the Measure apply to all local authorities in Wales.

# Agenda Item 3.1

## Constitutional and Legislative Affairs Committee Draft 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.

#### **Technical Scrutiny**

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

#### **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 to 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.

**Legal Advisers**

**Constitutional and Legislative Affairs committee**

**2014 No. 3362 (W. 337)**

**LOCAL GOVERNMENT,  
WALES**

**The Accounts and Audit (Wales)  
Regulations 2014**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make provision with respect to the accounts and audit of bodies whose accounts are required to be audited in accordance with section 39 of the Public Audit (Wales) Act 2004 (“the 2004 Act”) other than a local probation board for an area in Wales or a Welsh probation trust. The bodies who are subject to these Regulations are: county and county borough councils (and their committees and joint committees); community councils; fire and rescue authorities; National Park authorities; police and crime commissioners; chief constables; port health authorities; internal drainage boards; and conservation boards.

These Regulations replace the Accounts and Audit (Wales) Regulations 2005 which, together with amending Regulations, are revoked.

These Regulations differ in a number of respects from previous Accounts and Audit Regulations. Of particular note among the changes are the following: the bodies which are subject to the Regulations are specified on the face of the Regulations; the increase in the threshold of gross income or gross expenditure for smaller relevant bodies, from £1 million per year to not more than £2.5 million (regulation 2); changes to the procedures for approving and publishing accounts (regulations 10 and 15); the separation of procedures governing published accounts and audit for larger relevant bodies from that for smaller relevant bodies in the structure of the Regulations (see Parts 4 and 5); and it is no longer an offence to fail to comply with any aspect of the Regulations.

Part 1 is introductory. Regulation 1 sets out the title, commencement date of 31 March 2015 and application

of the Regulations to Wales. Regulation 2 sets out the defined terms used in the Regulations.

Part 2 concerns specifying bodies so that those bodies come within the meaning of local authority for the purposes of section 23(1) of the Local Government Act 2003. Under that section the Welsh Ministers may make provision about accounting practices to be followed by local authorities as defined in the 2003 Act. Regulation 3 specifies internal drainage boards and port health authorities and regulation 4 identifies accounting practices for those bodies.

Part 3 concerns financial management and internal control. Regulation 5 requires relevant bodies to be responsible for ensuring that the financial management of the body is adequate and effective and the body has a sound system of internal control which they regularly review. Regulation 6 makes provision in respect of the accounting records which are to be kept, and the control systems that must be maintained, by relevant bodies. Regulation 7 makes provision for relevant bodies to maintain an adequate and effective internal audit of their accounting records and system of internal control.

Part 4 concerns the published accounts and audit for larger relevant bodies. Regulation 8 contains the requirements for the preparation of the statement of accounts for a body; regulation 9 the requirement for the statement of accounts to include notes relating to remuneration; regulation 10 the requirements for signing, approval and publication of the statement of accounts; regulation 11 the procedure for the public to inspect the accounts of a body; regulation 12 the procedure for a body to give notice of the public rights relating to the accounts and audit procedure; and regulation 13 the requirement for a body to give notice as to the conclusion of audit and the availability of its statement of accounts for inspection by local government electors.

Part 5 concerns the published accounts and audit for smaller relevant bodies. Regulation 14 contains the requirements for the preparation of accounting statements for a body; regulation 15 the requirements for signing, approval and publication of accounting statements; regulation 16 the procedure for the public to inspect the accounts of a body; regulation 17 the procedure for a body to give notice of the public rights relating to the accounts and audit procedure; and regulation 18 the requirement for a body to display a notice stating that the audit has concluded and that the relevant accounting statements are available for inspection by local government electors.

Part 6 concerns particular authorities. Regulation 19 makes provision as to the accounting treatment of certain payments and contributions statutorily payable

by an internal drainage board. Regulation 20 makes provision in respect of joint committees, fire and rescue authorities and National Park authorities regarding the deposit of certain documents relating to their accounts and audit with each constituent authority (being an authority entitled to appoint members to the body, and in relation to a National Park authority includes the Welsh Ministers).

Part 7 concerns audit procedure. Regulation 21 requires the auditor to appoint a date on or after which the rights of local government electors under sections 30 (right to request an opportunity to question the auditor about the accounts) and 31 (right to make objections to the auditor) of the 2004 Act may be exercised, and to notify the relevant body concerned. Regulation 22 requires a relevant body notified under regulation 21 to make the accounts and documents mentioned in section 30 of the 2004 Act available in accordance with the procedure specified for the type of relevant body (in either Part 4 or 5 of these Regulations). Regulation 23 provides that, except with the consent of the auditor, accounts and other documents must not be altered after the date on which they are first made available for inspection. Regulation 24 requires relevant bodies to give notice of public rights in accordance with the procedure specified in these Regulations. Regulation 25 contains the requirements for any written notice of an objection given in pursuance of section 31 of the 2004 Act by a local government elector. Regulation 26 requires a relevant body to give notice of conclusion of audit in accordance with the procedure specified in these Regulations. Regulation 27 requires a relevant body to consider the annual letter from the auditor, publish it and make copies available for purchase. Regulation 28 provides that, where an auditor has been directed by the Auditor General for Wales to hold an extraordinary audit of a relevant body's accounts under section 37 of the 2004 Act, the body must advertise the right of any local government elector to make objections to any of those accounts.

Part 8 concerns amendments and revocations. Regulation 29 amends the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007 (S.I. 2007/399 (W. 45)). Regulation 30 sets out the instruments which are, and the extent to which they are, revoked.

**2014 No. 3362 (W. 337)**

**LOCAL GOVERNMENT,  
WALES**

**The Accounts and Audit (Wales)  
Regulations 2014**

*Made* 22 December 2014

*Laid before the National Assembly for Wales*  
23 December 2014

*Coming into force* 31 March 2015

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29. Amendment to the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007
30. Revocation and saving of instruments

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by sections 13, 105 and 106 of the Local Government Act 2000<sup>(1)</sup>, sections 21(1), (2)(b) and (5), 23(2) and (3),

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(1) 2000 c. 22; section 13 was amended by the Local Government and Public Involvement in Health Act 2007 (c. 28), section 236(9); the Localism Act 2011 (c. 20), Schedule 3, paragraphs 8 and 13; and the Local Government (Wales) Measure 2011 (nawm 4), section 57(2)(a). Section 105 was amended by the Local Government Act 2003 (c. 26), Schedule 3, paragraphs 11 and 14; the Localism Act 2011 (c. 20), Schedule 3, paragraphs 8 and 70; and by S.I. 2013/2597. Section 106 was amended by the Localism Act 2011 (c. 20), Schedule 3, paragraphs 8 and 71; and the Local Government (Wales) Measure 2011 (nawm 4), section 176(1). Section 106 was also amended by the Local Government (Democracy) (Wales) Act 2013 (anaw 4), section 68(4), but at the time of making these Regulations, section 68(4) is not yet in force.

24 and 23 of the Local Government Act 2003(1) and sections 39 and 58 of the Public Audit (Wales) Act 2004(2).

In accordance with section 39(2) of the Public Audit (Wales) Act 2004, the Welsh Ministers have consulted the Auditor General for Wales, such associations of local authorities in Wales as appear to them to be concerned and such bodies of accountants as appear to them to be appropriate.

## PART 1

### Introductory

#### **Title, commencement and application**

**1.**—(1) The title of these Regulations is the Accounts and Audit (Wales) Regulations 2014 and they come into force on 31 March 2015.

(2) These Regulations apply in relation to Wales.

(3) These Regulations apply as follows—

- (a) regulations 2, 5 to 7(2), and 21 to 28 apply to all relevant bodies;
- (b) regulations 3 and 4 apply to internal drainage boards and port health authorities;
- (c) regulations 7(3) to 13 apply to larger relevant bodies;
- (d) regulations 14 to 18 apply to smaller relevant bodies;
- (e) regulations 19 and 20 apply to the particular relevant bodies mentioned in Part 6;
- (f) regulations 5 to 28 apply, with all necessary modifications, to the accounts of an officer whose accounts are required to be audited by section 38 of the 2004 Act (audit of accounts of officers); and
- (g) regulation 29 applies to county councils and county borough councils.

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(1) 2003 c. 26; section 24 was amended by the Local Government and Public Involvement in Health Act 2007 (c. 28), section 238(3). Section 24 was also amended by the Local Government and Public Involvement in Health Act 2007, Schedule 14, paragraph 5, and by the Local Audit and Accountability Act 2014, Schedule 12, paragraphs 49 and 52, but at the time of making these Regulations those provisions are not yet in force.

(2) 2004 c. 23; section 39 was amended by the Public Audit (Wales) Act 2013 (anaw 3), Schedule 4, paragraphs 20 and 44. Section 58 was amended by that Act, Schedule 4, paragraphs 20 and 58.

## Interpretation

### 2.—(1) In these Regulations—

“the 1972 Act” (“*Deddf 1972*”) means the Local Government Act 1972<sup>(1)</sup>;

“the 1989 Act” (“*Deddf 1989*”) means the Local Government and Housing Act 1989<sup>(2)</sup>;

“the 2003 Act” (“*Deddf 2003*”) means the Local Government Act 2003;

“the 2004 Act” (“*Deddf 2004*”) means the Public Audit (Wales) Act 2004;

“auditor” (“*archwilydd*”) means—

(a) a person whose appointment continues to have effect by virtue of the Public Audit (Wales) Act 2013, Schedule 3, paragraph 2(2)<sup>(3)</sup>;

(b) otherwise, the Auditor General for Wales;

“conservation board” (“*bwrdd cadwraeth*”) means a board established under section 86 of the Countryside and Rights of Way Act 2000<sup>(4)</sup>;

“fire and rescue authority” (“*awdurdod tân ac achub*”) means an authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004<sup>(5)</sup> or a scheme to which section 4 of that Act applies;

“internal drainage board” (“*bwrdd draenio mewnl*”) means an internal drainage board for an internal drainage district wholly in Wales;

“joint committee” (“*cyd-bwyllgor*”) means a joint committee of two or more local authorities;

“larger relevant body” (“*corff perthnasol mwy*”) means—

(a) a county or county borough council;

(b) a fire and rescue authority;

(c) a National Park authority;

(d) a police and crime commissioner;

(e) a chief constable; or

(f) a body which is listed in the definition of “smaller relevant body” in this regulation but which does not meet the qualifying condition;

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(1) 1972 c. 70.

(2) 1989 c. 42.

(3) 2013 anaw 3. Paragraph 2(2) of Schedule 3 (read with S.I. 2013/1466 (W. 138) (C. 56)) provides that where, immediately before 1 April 2014, an appointment of an auditor has effect under section 13 of the Public Audit (Wales) Act 2004, that appointment continues to have effect until the end of the period for which the appointment was made (subject to any earlier termination).

(4) 2000 c. 37.

(5) 2004 c. 21.

“notice by advertisement” (*“hysbysiad drwy hysbyseb”*) means a notice published in one or more local newspapers circulating in the area of the relevant body;

“port health authority” (*“awdurdod iechyd porthladd”*) means a port health authority for a port health district wholly in Wales;

“qualifying condition” (*“amod cymhwys”*) means that the relevant body’s gross income or gross expenditure (whichever is higher) is not more than £2,500,000;

“relevant body” (*“corff perthnasol”*) means (as appropriate) a larger relevant body or a smaller relevant body;

“smaller relevant body” (*“corff perthnasol llai”*) means a body—

- (a) which is—
  - (i) a community council;
  - (ii) a committee of a county or county borough council (including a joint committee);
  - (iii) a port health authority;
  - (iv) an internal drainage board; or
  - (v) a conservation board; and
- (b) being—
  - (i) an established body, which meets the qualifying condition for the year concerned or for either of the two preceding years;
  - (ii) a newly established body, which meets the qualifying condition for its first or second year;

“working day” (*“diwrnod gwaith”*) means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or any other day which is a bank holiday in Wales under the Banking and Financial Dealings Act 1971<sup>(1)</sup>; and

“year” (*“blwyddyn”*) means the 12 months ending with 31 March.

(2) Any reference in these Regulations to the “responsible financial officer” (*“swyddog ariannol cyfrifol”*) means—

- (a) the person who is responsible for the administration of the financial affairs of a relevant body by virtue of—
  - (i) section 151 of the 1972 Act (financial administration),

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(1) 1971 c. 80.

- (ii) section 112(1) of the Local Government Finance Act 1988 (financial administration as to certain authorities)(1), or
- (iii) paragraph 13(6) of Schedule 7 to the Environment Act 1995 (national park authorities)(2),

or, if no person is so responsible, the person who is responsible for keeping the accounts of such a body; or

- (b) if the person referred to in sub-paragraph (a) is unable to act owing to absence or illness—
  - (i) such member of that person’s staff as is nominated by that person for the purposes of section 114 of the Local Government Finance Act 1988 (functions of responsible officer as regards reports)(3); or
  - (ii) if no nomination is made under that section, such member of staff nominated by the person referred to in sub-paragraph (a) for the purposes of these Regulations.

## PART 2

### Specification of Bodies and Proper Practices

#### **Specification of internal drainage boards and port health authorities**

3. Internal drainage boards and port health authorities are specified for the purposes of section 23(1) of the 2003 Act (local authority) but only in relation to section 21 (accounting practices) of that Act.

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(1) 1988 c. 41; section 112 was amended by the Police Act 1997 (c. 50), Schedule 6, paragraph 27; the Criminal Justice and Police Act 2001 (c. 16), Schedule 6, paragraphs 45 and 47; the Fire and Rescue Services Act 2004 (c. 21), Schedule 1, paragraph 68; the Local Democracy, Economic Development and Construction Act 2009 (c. 20), Schedule 6, paragraphs 74 and 78; and the Police Reform and Social Responsibility Act 2011 (c. 13), Schedule 16, paragraphs 180 and 187.

(2) 1995 c. 25.

(3) 1988 c. 41; section 114 was amended by the Local Government and Housing Act 1989 (c. 42), Schedule 5, paragraph 66; the Police and Magistrates’ Courts Act 1994 (c. 29), Schedule 4, paragraph 34; the Police Act 1997 (c. 50), Schedule 6, paragraph 28; the Criminal Justice and Police Act 2001 (c. 16), Schedule 6, paragraphs 45 and 48; S.I. 2002/808; the Police Reform and Social Responsibility Act 2011 (c. 13), Schedule 16, paragraphs 180 and 188; and the Localism Act 2011 (c. 20), Schedule 25, Part 32.

### **Proper practices**

4. For the purposes of section 21(2) of the 2003 Act (accounting practices)—

- (a) in relation to internal drainage boards, the accounting practices contained in the “Governance and Accountability in Internal Drainage Boards in England: A Practitioners Guide 2006” (as revised in November 2007 and issued jointly by the Association of Drainage Authorities and the Department for Environment, Food and Rural Affairs) are proper practices; and
- (b) in relation to port health authorities which are not county councils or county borough councils, the accounting practices contained in the “Governance and accountability for Local Councils in Wales: A Practitioners’ Guide 2011 (Wales)” as may be amended or reissued from time to time (whether under the same title or not) issued jointly by One Voice Wales and the Society for Local Council Clerks are proper practices.

## **PART 3**

### **Financial Management and Internal Control**

#### **Responsibility for internal control and financial management**

5.—(1) The relevant body must ensure that there is a sound system of internal control which facilitates the effective exercise of that body’s functions and which includes—

- (a) arrangements for the management of risk, and
- (b) adequate and effective financial management.

(2) The relevant body must conduct a review at least once in a year of the effectiveness of its system of internal control.

(3) The findings of the review referred to in paragraph (2) must be considered—

- (a) in the case of a larger relevant body, by the members of the body meeting as a whole or by a committee, and
- (b) in the case of a smaller relevant body, by the members of the body meeting as a whole.

(4) Following the review, the body or committee must approve a statement on internal control prepared in accordance with proper practices.

(5) The relevant body must ensure that the statement referred to in paragraph (4) accompanies—

- (a) any statement of accounts which it is obliged to prepare in accordance with regulation 8; or
- (b) any accounting statement which it is obliged to prepared in accordance with regulation 14.

### **Accounting records and control systems**

**6.—**(1) The responsible financial officer of a relevant body must determine on behalf of the body, after consideration, when relevant, of proper practices, its—

- (a) accounting records, including the form of accounts and supporting accounting records, and
- (b) accounting control systems,

and that officer must ensure that the accounting control systems determined by that officer are observed and that the accounting records of the body are kept up to date and maintained in accordance with the requirements of any enactment and proper practices.

(2) The accounting records determined in accordance with paragraph (1)(a) must—

- (a) be sufficient to show and explain a relevant body's transactions and to enable the responsible financial officer to ensure that any statement of accounts or accounting statement which is prepared under these Regulations complies with these Regulations; and
- (b) contain—
  - (i) entries from day to day of all sums of money received and expended by the body and the matters to which the income and expenditure or receipts and payments accounts relate;
  - (ii) a record of the assets and liabilities of the body; and
  - (iii) a record of income and expenditure of the body in relation to claims made, or to be made, by it for contribution, grant or subsidy from the Welsh Ministers, any Minister of the Crown or a body to whom the Welsh Ministers or such a Minister may pay sums of monies.

(3) The accounting control systems determined in accordance with paragraph (1)(b) must include—

- (a) measures to ensure that the financial transactions of the body are recorded as soon as reasonably practicable and as accurately as reasonably possible, measures to enable the prevention and detection of inaccuracies and fraud, and the ability to reconstitute any lost records;

- (b) identification of the duties of officers dealing with financial transactions and division of responsibilities of those officers in relation to significant transactions;
- (c) procedures to ensure that uncollectable amounts, including bad debts, are not written off except with the approval of the responsible financial officer, or such member of that person's staff as is nominated for this purpose, and that the approval is shown in the accounting records; and
- (d) measures to ensure that risk is appropriately managed.

### **Internal audit**

7.—(1) A relevant body must maintain an adequate and effective system of internal audit of its accounting records and of its system of internal control.

(2) Any officer or member of that body must, if the body requires—

- (a) make available such documents of the body which relate to its accounting and other records as appear to that body to be necessary for the purpose of the audit; and
- (b) supply the body with such information and explanation as that body considers necessary for that purpose.

(3) A larger relevant body must, at least once in each year, conduct a review of the effectiveness of its internal audit.

(4) The findings of the review referred to in paragraph (3) must be considered, as part of the consideration of the system of internal control referred to in regulation 5(3), by the committee or body referred to in that paragraph.

## **PART 4**

### **Published Accounts and Audit – Larger Relevant Bodies**

#### **Statement of accounts**

8.—(1) A larger relevant body must prepare for each year a statement of accounts in accordance with these Regulations and proper practices and the statement must include such of the following accounting statements as are relevant to the functions of the body—

- (a) housing revenue account;
- (b) firefighters' pension fund;

- (c) any other statements relating to each and every other fund in relation to which the body is required by any statutory provision to keep a separate account.

(2) Where a county council or a county borough council is required by section 74 (duty to keep housing revenue account) of the 1989 Act<sup>(1)</sup> to maintain a Housing Revenue Account the statement of accounts required by paragraph (1) must include a note prepared in accordance with proper practices in relation to any Major Repairs Allowance grant paid to the county council or county borough council under section 31 of the 2003 Act detailing income and expenditure and any balance on any account used to record the grant.

### **Declaration of remuneration**

9.—(1) The statement of accounts required by regulation 8(1) must be accompanied by the notes referred to in paragraphs (2) to (4).

(2) The first note is a note of the relevant body's remuneration ratio information (but this requirement does not apply to a relevant body which is a joint committee).

(3) The second note is a note of (except in relation to persons to whom paragraph (4) applies) the number of employees or police officers in the year to which the accounts relate whose remuneration fell in each bracket of a scale in multiples of £5,000 starting with £60,000.

(4) The third note is a note of the remuneration (set out according to the categories listed in paragraph (7)) and the contribution to the person's pension by the relevant body of—

- (i) senior employees, or
- (ii) relevant police officers,

in respect of their employment by the relevant body or in their capacity as a police officer, whether on a permanent or temporary basis.

(5) The persons whose remuneration is to be noted under paragraph (4) 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.

(6) The remuneration and the pension contribution noted under paragraph (4) must be noted in respect of both the year to which the accounts relate and the previous year.

(7) The categories to which paragraph (4) refers are—

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(1) 1989 c. 42; section 74 was amended by the Housing Act 1996 (c. 52), Schedule 18, paragraph 24(2).

- (a) the total amount of salary, fees or allowances paid to or receivable by the person;
- (b) the total amount of bonuses paid to or receivable by the person;
- (c) the total amount of sums paid by way of expenses allowance that are chargeable to United Kingdom income tax, and were paid to or receivable by the person;
- (d) the total amount of any compensation for loss of employment paid to or receivable by the person, and any other payments made to or receivable by the person in connection with the termination of their employment by the relevant body, or, in the case of a relevant police officer, the total amount of any payment made to a relevant police officer who ceases to hold office before the end of a fixed term appointment;
- (e) the total estimated value of any benefits received by the person otherwise than in cash which do not fall within sub-paragraphs (a) to (d) above, which are emoluments of the person, and which are received by the person in respect of their employment by the relevant body or in their capacity as a police officer; and
- (f) in relation to relevant police officers, any payments, whether made under the Police Regulations 2003(1) or otherwise, which do not fall within (a) to (e) above.

(8) In this regulation—

“chief executive” (“*prif weithredwr*”) means—

- (a) in the case of a relevant body which is a county council or county borough council, fire and rescue authority or National Park authority, the head of the body’s paid service designated under section 4(1) of the 1989 Act;
- (b) in the case of a relevant body which is a chief constable, the chief constable;
- (c) in the case of a relevant body which is a police and crime commissioner, the chief executive appointed by the commissioner under Schedule 1 to the Police Reform and Social Responsibility Act 2011(2);
- (d) in the case of any other relevant body, the highest ranking employee;

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(1) S.I. 2003/527; relevant amending instruments are S.I. 2006/3449, 2011/3026, and 2012/192 and 2712.  
 (2) 2011 c. 13.

“contribution to the person’s pension” (“*cyfraniad at bensiwn y person*”) means an amount to be calculated as follows—

- (a) in relation to contributions to the relevant pension scheme established under section 7 of the Superannuation Act 1972<sup>(1)</sup>, the common rate of employer’s contribution specified in a rates and adjustments certificate prepared under regulation 62 (actuarial valuations of pension funds) of the Local Government Pension Scheme Regulations 2013<sup>(2)</sup>, being the amount appropriate for that body calculated in accordance with the certificate and regulation 67 (employer’s contributions) of those Regulations, multiplied by the person’s pensionable pay;
- (b) in relation to contributions to the firefighters’ pension scheme established under the Fire Services Acts 1947 and 1959<sup>(3)</sup>, the percentage of the aggregate of the pensionable pay calculated for the purposes of paragraph G2(3) and (4) of Schedule 2 to the Firemen’s Pension Scheme Order 1992<sup>(4)</sup>, multiplied by the person’s pensionable pay;
- (c) in relation to contributions to the firefighters’ pension scheme established under the Fire and Rescue Services Act 2004<sup>(5)</sup>, the percentage of the aggregate of the pensionable pay calculated for the purposes of paragraphs (2) and (3) of rule 2 of Part 13 of Schedule 1 to the Firefighters’ Pension Scheme (Wales) Order 2007<sup>(6)</sup>, multiplied by the person’s pensionable pay;
- (d) in relation to contributions to police pension schemes established under the Police Pensions Regulations 1987<sup>(7)</sup> or the Police Pensions Regulations 2006<sup>(8)</sup>, the percentage of pensionable pay specified in regulation 5(1) (contributions) of the

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(1) 1972 c. 11; section 7 was amended by the Public Service Pensions Act 2013 (c. 25), Schedule 8, paragraphs 6 and 8.  
(2) S.I. 2013/2356.  
(3) 1947 c. 41 and 1959 c. 44. Both these Acts have been repealed by the Fire and Rescue Services Act 2004 (c. 21) which contained savings in respect of pension schemes established under them.  
(4) S.I. 1992/129; rule G2 was amended by S.I. 2006/1672 (W. 160), 2007/1074 (W. 112) and 2012/974 (W. 128).  
(5) 2004 c. 21.  
(6) S.I. 2007/1072 (W. 110); rule 2 was amended by S.I. 2009/1225 (W. 108).  
(7) S.I. 1987/257 to which there are amendments not relevant to these Regulations.  
(8) S.I. 2006/3415 to which there are amendments not relevant to these Regulations.

Police Pension Fund Regulations 2007(1), multiplied by the person's pensionable pay;

"employee" (*cyflogai*) includes a member of the relevant body and a holder of an office under the relevant body, but does not include a person who is an elected councillor, and "employment" (*cyflogaeth*) is to be construed accordingly;

"relevant body's remuneration ratio information" (*gwybodaeth cymhareb tâl y corff perthnasol*) means—

- (a) the remuneration of the body's chief executive during the year to which the accounts relate;
- (b) the median remuneration of all the body's employees during the year to which the accounts relate; and
- (c) the ratio of the amount in sub-paragraph (a) to the amount in sub-paragraph (b);

"relevant police officer" (*swyddog heddlu perthnasol*) means—

- (a) in relation to a police force maintained under section 2 (maintenance of police forces) of the Police Act 1996(2), the chief constable, and
- (b) any other senior police officer whose salary is £150,000 per year or more;

"remuneration" (*tâl*) means all amounts paid to or receivable by a person, and includes sums due by way of expenses allowance (so far as those sums are chargeable to United Kingdom income tax), and the estimated money value of any other benefits received by an employee otherwise than in cash;

"senior employee" (*cyflogai hŷn*) means an employee whose salary is £150,000 or more per year, or an employee whose salary is £60,000 or more per year who falls within at least one of the following categories—

- (a) a person employed by a relevant body to which section 2 (politically restricted posts) of the 1989 Act(3) applies who—

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(1) S.I. 2007/1932, amended by S.I. 2008/1887; there are other amending instruments but none are relevant.

(2) 1996 c. 16. Section 2 was amended by the Police Reform and Social Responsibility Act 2011 (c. 13), Schedule 16, paragraphs 1 and 4.

(3) 1989 c. 42. Section 2 was amended by the Education Act 1996 (c.56), Schedule 37, paragraph 95; S.I. 2002/808 (W. 89); the Children Act 2004 (c. 31), Schedule 2, paragraph 3; the Fire and Rescue Services Act 2004 (c. 21), Schedule 2; the Local Government and Public Involvement in Health Act 2007 (c. 28), section 203(1); the Local Democracy, Economic Development and Construction Act 2009 (c. 20), sections 30(1) and (2) and 146(1); S.I. 2010/1158; the Local

- (i) has been designated as head of paid service under section 4 of that Act<sup>(1)</sup>;
- (ii) is a statutory chief officer within the meaning of section 2(6) of that Act; or
- (iii) is a non-statutory chief officer within the meaning of section 2(7) of that Act;
- (b) the person who is the head of staff for any relevant body to which section 4 of the 1989 Act does not apply; or
- (c) a person who has responsibility for the management of the relevant body to the extent that the person has power to direct or control the major activities of the body (in particular activities involving the expenditure of money), whether solely or collectively with other persons; and

“senior police officer” (“*swyddog heddlu hŷn*”) means a member of a police force holding a rank above that of superintendent.

(9) The sums of £60,000 and £150,000 in this regulation are to be reduced pro rata for an employee or officer who is employed or engaged on a temporary or part-time basis.

### **Signing, approval and publication of statement of accounts**

**10.**—(1) The responsible financial officer of a larger relevant body must, no later than 30 June immediately following the end of a year, sign and date the statement of accounts, and certify that it presents a true and fair view of the financial position of the body at the end of the year to which it relates and of that body’s income and expenditure for that year.

(2) A larger relevant body must, no later than 30 September in the year immediately following the end of the year to which the statement relates—

- (a) consider either by way of a committee or by the members meeting as a whole the statement of accounts;
- (b) following that consideration, approve the statement of accounts by a resolution of that committee or meeting;
- (c) following approval, ensure that the statement of accounts is signed and dated by the person

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Government (Wales) Measure 2011 (nawm 4), section 21; and the Health and Social Care Act 2012 (c. 7), Schedule 5, paragraph 57.

(1) Section 4 was amended by the Local Democracy, Economic Development and Construction Act 2009 (c. 20), Schedule 6, paragraph 81(1) and (2) and by the Police Reform and Social Responsibility Act 2011 (c. 13), Schedule 19, paragraphs 199 and 201.

presiding at the committee or meeting at which that approval was given; and

- (d) publish (which must include publication on the body's website) the statement of accounts together with any certificate, opinion or report issued, given or made by the auditor under sections 23(2) (general report)(1) and 33 (advisory notices)(2) of the 2004 Act before the date of publication, or, if the publication takes place prior to the conclusion of the audit and no such opinion has been given, together with a declaration and explanation of the fact that at the date of publication the auditor has given no opinion.

(3) The responsible financial officer must re-certify the presentation of the statement of accounts before the relevant body approves it.

(4) If the responsible financial officer does not comply with paragraph (1) or (3), the larger relevant body must—

- (a) publish immediately a statement setting out the reasons for the officer's non-compliance; and
- (b) agree to a course of action to ensure compliance as soon as possible.

(5) If the accounts were approved pursuant to paragraph (2) before the conclusion of an audit of those accounts, the accounts must be approved as soon as reasonably practicable after the receipt of any report from the auditor which contains the auditor's final findings from the audit and which is issued before the conclusion of the audit.

(6) The approval required by paragraph (5) is in addition to approval pursuant to paragraph (2).

(7) Where any material amendment is made to the accounts, the responsible financial officer must report such amendment to the larger relevant body or the committee of that body immediately before the body or committee is to approve the accounts pursuant to paragraph (2) or (5).

(8) A larger relevant body must keep copies of the documents mentioned in paragraph (2)(d) for purchase by any person on payment of a reasonable sum.

### **Procedure for public inspection of accounts**

**11.** The procedure for public inspection of accounts for a larger relevant body, referred to in regulation 22,

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- (1) 2004 c. 23; section 23(2) was amended by the Public Audit (Wales) Act 2013 (anaw 3), Schedule 4, paragraphs 20 and 28.
  - (2) 2004 c. 23; section 33(2) was amended by the Public Audit (Wales) Act 2013 (anaw 3), Schedule 4, paragraphs 20 and 38.

is that it must make the documents referred to in that regulation available for public inspection for 20 working days before the date appointed by the auditor under regulation 21.

### **Notice of public rights**

**12.**—(1) The procedure for a larger relevant body to give notice of public rights, referred to in regulation 24, is that, not later than 14 days before the commencement of the period during which the accounts and other documents are made available in pursuance of regulation 11, the body must give notice by advertisement and on its website of the matters set out in paragraph (2).

(2) The matters referred to in paragraph (1) are—

- (a) the period during which the accounts and other documents referred to in paragraph (1) will be available for inspection in accordance with regulation 11;
- (b) the place at which, and the hours during which, they will be so available;
- (c) the name and address of the auditor;
- (d) the rights contained in section 30 (inspection of documents and questions at audit)<sup>(1)</sup> and section 31 (right to make objections at audit)<sup>(2)</sup> of the 2004 Act; and
- (e) the date appointed under regulation 21 for the exercise of rights of electors.

(3) A larger relevant body must on giving notice under paragraph (1) notify the auditor immediately in writing that a notice has been given.

### **Notice of conclusion of audit**

**13.** As soon as reasonably possible after conclusion of an audit, a larger relevant body must give notice by advertisement and on its website stating that the audit has been concluded and that the statement of accounts is available for inspection by local government electors and including—

- (a) a statement of the rights conferred on local government electors by section 29 (inspection of statements of accounts and Auditor General for Wales' reports)<sup>(3)</sup> of the 2004 Act;

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(1) 2004 c. 23; section 30 was amended by the Public Audit (Wales) Act 2013 (anaw 3), Schedule 4, paragraphs 20 and 35.

(2) 2004 c. 23; section 31 was amended by the Public Audit (Wales) Act 2013 (anaw 3), Schedule 4, paragraphs 20 and 36.

(3) 2004 c. 23; section 29 was amended by the Public Audit (Wales) Act 2013 (anaw 3), Schedule 4, paragraphs 20 and 34.

- (b) the address at which and the hours during which those rights may be exercised; and
- (c) details of where the last approved statement of accounts and auditor's reports can be found on the body's website.

## PART 5

### Published Accounts and Audit – Smaller Relevant Bodies

#### **Accounting statements**

**14.** A smaller relevant body must prepare for each year accounting statements in accordance with these Regulations and proper practices.

#### **Signing, approval and publication of accounting statements**

**15.—**(1) Before the approval referred to in in paragraph (2) is given, the responsible financial officer of a relevant body must—

- (a) in a case where the body has prepared a statement of accounts, sign and date the statement of accounts, and certify that it presents a true and fair view of the financial position of the body at the end of the year to which it relates and of that body's income and expenditure for that year;
- (b) in a case where the body has prepared a record of receipts and payments, sign and date that record, and certify that it properly presents that body's receipts and payments for the year to which the record relates; or
- (c) in any other case, sign and date the income and expenditure account and statement of balances, and certify that they present fairly the financial position of the body at the end of the year to which they relate and that body's income and expenditure for that year.

(2) A smaller relevant body must, no later than 30 June immediately following the end of a year—

- (a) consider the accounting statements by the members meeting as a whole;
- (b) following that consideration, approve the accounting statements for submission to the auditor by a resolution of the body; and
- (c) following approval, ensure that the accounting statements are signed and dated by the person presiding at the meeting at which that approval was given.

(3) If the responsible financial officer does not comply with paragraph (1), the smaller relevant body must—

- (a) publish immediately a statement setting out the reasons for the officer's non-compliance; and
- (b) agree to a course of action to ensure compliance as soon as possible.

(4) Where a smaller relevant body decides to amend its accounting statements following the receipt of a report from the auditor which contains the auditor's final findings and which is issued before the conclusion of the audit, the body must ensure that the amended accounting statements are signed and dated by the person presiding at the meeting at which the amendment was approved.

(5) A smaller relevant body must, no later than 30 September in the year immediately following the end of the year to which the statement relates, either—

- (a) publish the accounting statements by means other than solely by reference in the minutes of meetings, together with—
  - (i) any certificate, opinion, or report issued, given or made by the auditor under sections 23(2) and 33 of the 2004 Act, or
  - (ii) if the publication takes place prior to the conclusion of the audit and no such opinion has been given, together with a declaration and explanation of the fact that at the date of publication the auditor has given no opinion; or
- (b) display a notice containing the documents mentioned in sub-paragraph (a) in a conspicuous place or places in the area of the body for a period of at least 14 days.

(6) A smaller relevant body must keep copies of the documents mentioned in paragraph (5)(a) for purchase by any person on payment of a reasonable sum.

### **Procedure for public inspection of accounts**

**16.** The procedure for public inspection of accounts for a smaller relevant body, referred to in regulation 22, is that the body must make the documents mentioned in that regulation available for public inspection on reasonable notice, during a period of 20 working days before the date appointed by the auditor under regulation 21.

### **Notice of public rights**

**17.—(1)** The procedure for a smaller relevant body to give notice of public rights, referred to in regulation 24, is that it must display, in a conspicuous place or

places in the area of the body for a period of at least 14 days immediately prior to the period during which the accounts and other documents are made available under regulation 16, a notice containing the matters set out in paragraph (2).

(2) The matters referred to in paragraph (1) are—

- (a) the period during which the accounts and other documents referred to in paragraph (1) will be available for inspection in accordance with regulation 16;
- (b) details of the manner in which notice should be given of an intention to inspect the accounts and other documents;
- (c) the name and address of the auditor;
- (d) the provisions contained in section 30 (inspection of documents and questions at audit) and section 31 (right to make objections at audit) of the 2004 Act; and
- (e) the date appointed under regulation 21 for the exercise of rights of electors.

(3) A smaller relevant body must on displaying a notice under paragraph (1) notify the auditor immediately in writing that a notice has been displayed.

#### **Notice of conclusion of audit**

**18.** As soon as reasonably possible after conclusion of an audit, a smaller relevant body must display a notice in a conspicuous place or places in the area of the body for a period of at least 14 days stating that the audit has been completed and that the last approved relevant accounting statements required by these Regulations and auditor's report are available for inspection by local government electors on reasonable notice and including—

- (a) a statement of the rights conferred on local government electors by section 29 (inspection of statements of accounts and auditors' reports) of the 2004 Act;
- (b) details of the manner in which notice should be given of an intention to exercise the right of inspection; and
- (c) if the body has a website, details of where the last approved statement of accounts and auditor's report can be found on that website.

## PART 6

### Particular Relevant Bodies

#### **Internal drainage boards**

**19.** An internal drainage board must charge to a revenue account an amount equal to the payments and contributions statutorily payable for that year under an arrangement accounted for as a defined benefit pension plan or as other long-term employee benefits (as defined in accordance with proper practices in relation to accounts).

#### **Joint committees etc.**

**20.—**(1) Any joint committee, fire and rescue authority or National Park authority to which these Regulations apply must deposit with each constituent authority—

- (a) where the committee is a smaller relevant body, within the period of 14 days specified by regulation 18, a copy of the auditor's report and the accounting statements; and
- (b) otherwise, on giving notice under regulation 13, a copy of the auditor's report and the statement of accounts.

(2) In this regulation "constituent authority" ("*awdurdod cyfansoddol*") means any county council, county borough or community council for the time being entitled to appoint members of the committee or authority in question and in relation to a National Park authority it includes the Welsh Ministers.

## PART 7

### Audit Procedure

#### **Appointment of date for the exercise of rights of electors**

**21.** The auditor must, for the purpose of the exercise of rights under sections 30(2) (inspection of documents and questions at audit) and 31(1) (right to make objections at audit) of the 2004 Act, appoint a date on or after which those rights may be exercised, and must notify that date to the relevant body concerned.

#### **Public inspection of accounts**

**22.** A relevant body notified under regulation 21 must make the accounts and other documents mentioned in section 30 (inspection of documents and questions at audit) of the 2004 Act available in accordance with the procedure specified for larger

relevant bodies in regulation 11, or for smaller relevant bodies in regulation 16, as appropriate.

#### **Alteration of accounts**

**23.** Except with the consent of the auditor, accounts and other documents must not be altered after the date on which they are first made available for inspection in pursuance of either regulation 11 or regulation 16.

#### **Notice of public rights**

**24.** A relevant body must give notice of public rights in accordance with the procedure specified for larger relevant bodies in regulation 12, or for smaller relevant bodies in regulation 17.

#### **Written notice of objection**

**25.** Any written notice of an objection given in pursuance of section 31(2) of the 2004 Act must state the facts on which the local government elector relies, and contain, so far as possible—

- (a) particulars of any item of account which is alleged to be contrary to law, and
- (b) particulars of any matter in respect of which it is proposed that the auditor could make a report under section 22 (immediate and other reports in the public interest)(1) of that Act.

#### **Notice of conclusion of audit**

**26.** A relevant body must give notice of conclusion of audit in accordance with the procedure specified for larger relevant bodies in regulation 13, or for smaller relevant bodies in regulation 18, as appropriate.

#### **Publication of annual audit letter**

**27.** As soon as reasonably possible after it is received, a local government body must—

- (a) publish the annual audit letter received from the auditor; and
- (b) make copies available for purchase by any person on payment of such sum as the relevant body may reasonably require.

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(1) 2004 c .23; section 22(2) was amended by the Public Audit (Wales) Act 2013 (anaw 3), Schedule 4, paragraphs 20 and 27.

### **Extraordinary audit**

**28.**—(1) Where, under section 37 (extraordinary audit)(1) of the 2004 Act, the Auditor General for Wales directs an auditor to hold an extraordinary audit of accounts of a relevant body, the body must—

- (a) in the case of a larger relevant body, give notice by advertisement, and
- (b) in the case of a smaller relevant body, display a notice in a conspicuous place or places in the area of the body,

concerning the right of any local government elector for the area to which the accounts relate to make objections to any of those accounts.

(2) Where the auditor referred to in paragraph (1) is the Auditor General for Wales, the reference to the Auditor General directing an auditor to hold an extraordinary audit is to be read as the Auditor General for Wales holding an extraordinary audit.

## **PART 8**

### **Amendments and Revocations**

#### **Amendment to the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007**

**29.**—(1) Schedule 1 (functions not to be the responsibility of an authority’s executive) to the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007(2) is amended as follows.

(2) For the entry in column 2 of paragraph 1 of Part I (Miscellaneous functions) there is substituted “Regulations made under section 39 of the Public Audit (Wales) Act 2004 (c. 23)”.

#### **Revocation and saving of instruments**

**30.**—(1) Subject to paragraph (2) the following instruments are revoked—

- (a) the Accounts and Audit (Wales) Regulations 2005(3);
- (b) the Accounts and Audit (Wales) (Amendment) Regulations 2007(4);

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(1) 2004 c. 23; section 37 was amended by the Public Audit (Wales) Act 2013 (anaw 3), Schedule 4, paragraphs 20 and 42.

(2) S.I. 2007/399 (W. 45), amended by S.I. 2008/1430, 2009/2983 (W. 260), 2010/630 (C. 42) and 2013/2902 (W. 281) and 3005 (W. 297).

(3) S.I. 2005/368 (W. 34).

(4) S.I. 2007/388 (W. 39).

(c) the Accounts and Audit (Wales) (Amendment) Regulations 2010<sup>(1)</sup>; and

(d) the Accounts and Audit (Wales) (Amendment) Regulations 2013<sup>(2)</sup>.

(2) The Regulations in paragraph (1) are saved in so far as they apply to accounts for the financial years ending on or before 31 March 2014 and the audit of those accounts.

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(1) S.I. 2010/683 (W. 66).

(2) S.I.2013/217 (W. 29).

*Leighton Andrews*  
Minister for Public Services, one of the Welsh  
Ministers

22 December 2014

## **Explanatory Memorandum to The Accounts and Audit (Wales) Regulations 2014**

This Explanatory Memorandum has been prepared by Local Government and Communities Department 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 Accounts and Audit (Wales) Regulations 2014.

**Leighton Andrews**  
**Minister for Public Services**  
22 December 2014

## **1. Description**

- 1.1. The Accounts and Audit (Wales) Regulations 2014 replace the Accounts and Audit (Wales) Regulations 2005 (“the 2005 Regulations”) along with other related amending Regulations. The changes include consolidating all previous amendment Regulations, defining smaller and larger relevant bodies and providing clarity of the requirements for those bodies.
- 1.2. This Statutory Instrument revokes the 2005 Regulations and amending Regulations.

## **2. Matters of special interest to the Subordinate Legislation Committee**

- 2.1. None.

## **3. Legislative Background**

- 3.1. Sections 39 and 58 of the Public Audit (Wales) Act 2004 (“the 2004 Act”) conferred powers on the National Assembly for Wales to make regulations in relation to the accounts and audit of local government bodies in Wales. Those powers are now vested in the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.
- 3.2. The 2005 Regulations provide the regulatory regime underpinning the financial reporting and accounting of local government bodies in Wales. In order to designate “proper [accounting] practices” for internal drainage boards and port health authorities, it is necessary, first, to use the power contained in sections 23(2) and 24 of the Local Government Act 2003 to specify the boards as “local authorities” for the purposes of then designating a proper practice, and secondly, under section 21 of that Act, to make the designation of proper practice. Sections 13, 105 and 106 of the Local Government Act 2000 authorise the Welsh Ministers to make regulations concerning the executive arrangements in local authorities. All these powers are powers of the Welsh Ministers.
- 3.3. These Regulations are made using the negative resolution procedure.

## **4. Purpose and intended effect of the legislation**

- 4.1. The Accounts and Audit (Wales) Regulations 2014 will revoke and replace the following legislation:-
  - the Accounts and Audit (Wales) Regulations 2005
  - S.I. 2007 No 388 (W.39)
  - S.I. 2010 No 683 (W.66)
  - S.I. 2013 No 217 (W.29)
- 4.2. Clarity  
To provide clarity for all the different types of public bodies to whom the Regulations apply, namely, County and County Borough Councils, Community Councils, Police and Crime Commissioners, Chief Constables,

National Park Authorities, Fire and Rescue Authorities, Port Health Authorities, Internal Drainage Boards, Conservation Boards and Joint Committees.

The current Regulations intertwine the different requirements affecting the types of bodies making them difficult to understand. To assist relevant bodies to identify how the provisions apply to them and what is required of them; a change to the presentation of the Regulations has been made. To facilitate this, the types of relevant bodies are separated into 2 broad areas. First, "larger relevant bodies" - those required to follow accounting practices contained in the Chartered Institute of Public Finance & Accountancy CIPFA code of practice and have the freedoms provided by the prudential system of capital controls set out in part 1 of the Local Government Act 2003. Secondly, "smaller relevant bodies" - those permitted by the existing Regulations to prepare simpler published accounts and who are subject to less demanding procedural requirements. Relevant bodies are now identified specifically in the Regulations, rather than by reference to other pieces of legislation.

#### 4.3. Smaller Relevant Body

The following will be classed as smaller relevant bodies: Community Councils, Internal Drainage Boards, Port Health Authorities, and Conservation Boards whose gross income or expenditure was no more than £2.5m in the year of account or either of the 2 preceding years. For any newly established bodies this would be applied to the year of account in its first or second years.

#### 4.4. Larger Relevant Body

Larger relevant bodies are now defined as County or County Borough Councils, National Park Authorities, Fire and Rescue Authorities, Police and Crime Commissioners, Chief Constables and any other body which does not meet the financial qualifying condition of a smaller relevant body.

Larger relevant bodies are now required to include publication of the organisation's pay multiple, specified as the ratio between the highest paid employee and the median earnings across the organisation as a means of illustrating the relationship. This follows a recommendation from the Hutton Review on Fair Pay in the Public Sector and provides synergy between the Regulations and the requirements of the pay policy statements.

#### 4.5. Proper Practices

Under the 2005 Regulations bodies which fall into the larger relevant body category (other than a chief constable) are required to prepare a statement of accounts in accordance with proper practices which, as defined in the Local Authorities (Capital Finance and Accounting) Regulations, is the "Code of practice on Local Authority Accounting in the UK" issued jointly by CIPFA and Local Authority Scotland Accounts Advisory Committee (LASAAC). This provision will be applied to the

smaller relevant bodies and require them to prepare accounting statements in accordance with proper practices.

As stipulated in the Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003, Community Councils and Minor Joint Committees will be required to follow the accounting practices contained in the “Governance and accountability for Local Councils: A practitioners guide” issued by One Voice Wales and the Society of Local Council Clerks.

The 2005 Regulations define proper practices for Internal Drainage Boards as the “Governance and Accountability in Internal Drainage Boards in England: A Practitioners Guide 2006” (revised in 2007) and this will continue to be applied to Internal Drainage Boards in Wales.

#### 4.6. Port Health Authorities

The new Regulations specify “proper [accounting] practice” for Port Health Authorities to follow in respect of the preparation of accounting statements, namely the “Governance and Accountability for Local Councils: A Practitioners Guide 2008 (Wales)”, the same as Community Councils.

#### 4.7. Remuneration

An amendment in 2010 to the 2005 Regulations introduced additional disclosure notes relating to remuneration of senior officers. The new Regulations have been amended to improve the clarity of the requirements to ensure a consistent approach is applied by Welsh Local Government Bodies for the disclosures relating to remuneration.

#### 4.8. Signing, Approval & Publication

The Regulations have been amended to reinstate these existing arrangements and make them apply to both smaller and larger bodies.

### **5. Implementation.**

- 5.1. These Regulations come into force on 31 March 2015 and will affect the completion of 2014-15 financial accounts.

### **6. Consultation**

- 6.1. Appropriate stakeholders were invited to comment on the proposed changes to the regulations. There were 29 replies in total, 21 from Community and Town Councils, 4 from Local Authorities including a response from the Chief Accountants Group which represents all 32 Local Government Bodies in Wales and 4 from “other” bodies, notably the Wales Audit Office (WAO) and The Chartered Institute of Public Finance and Accountancy (CIPFA). A summary of the responses can be provided by contacting Local Government Finance at [LGFPMail@wales.gsi.gov.uk](mailto:LGFPMail@wales.gsi.gov.uk).

## **7. Regulatory Impact Assessment (RIA)**

- 7.1. A regulatory impact assessment has not been produced for this instrument as the Regulations do not create an additional regulatory burden. No impact on business, charities or the voluntary sector is foreseen.

## **8. Post implementation review**

- 8.1. The current regulatory framework has been in place since April 2005. Since that time the effectiveness of the system in place has been kept under regular review by Welsh Government officials and in regular formal and informal situations with interested stakeholders, examples being local authorities, Welsh Local Government Association, Wales Audit Office and One Voice Wales. This will continue under the new Regulations.

## **9. Summary**

- 9.1. The 2014 Regulations have provided an opportunity to review, update and consolidate the framework and processes for accounting and auditing in Welsh local government bodies. The main changes made should help to improve information available for public scrutiny and also improve the effectiveness of scrutiny and streamline the certification and approval processes.

# Agenda Item 3.2

## Constitutional and Legislative Affairs Committee Draft Report

CLA(4)-02-15

### **CLA483** – The Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014

These composite regulations implement requirements relating to the EU common fisheries policy. They extend to England, Northern Ireland and Wales (and partly to Scotland).

The regulations provide a points system for UK masters of fishing boats who have committed serious infringements of EU fisheries law. For example, a master who has been allocated 18 points is suspended from mastering a fishing boat for 2 months. A master who (at any one time) has 90 points is disqualified from mastering a fishing boat.

It is an offence to employ a master to master a UK fishing boat while the master is suspended or disqualified.

The regulations also provide that the Marine Management Organisation (MMO) sets up a register of UK masters, recording details of points allocated to masters.

**Procedure:** Composite Negative

### **Technical Scrutiny**

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

#### **1. Definition of “British national”**

1.1. The definition of “British national” in regulation 2 includes 3 categories of persons. One category is ‘British citizen’ – this is not defined any further. Another category is ‘British subject’ –

this is defined by reference to Part IV of the British Nationality Act 1981.

- 1.2. The meaning of British citizen can be found in Part I of the British Nationality Act 1981. It is unclear why British citizen is not defined by reference to the 1981 Act, when British subject is.

Standing Order 21.2(v): that for any particular reason the form or meaning of the instrument needs further explanation.

## **2. Specifying the suspension start date in the register**

- 2.1. Points can be allocated in respect of convictions in the UK and in respect of convictions outside the UK.
- 2.2. If points are added to the MMO register following a conviction in the UK, and this triggers a suspension or disqualification, the start date of the suspension or disqualification must be at least one day after it is included in the register.
- 2.3. However, there is no corresponding requirement if the points are added following a conviction outside the UK.
- 2.4. It is unclear why there is an inconsistency.

Standing Order 21.2(v): that for any particular reason the form or meaning of the instrument needs further explanation.

## **3. Commencement of suspension period**

- 3.1. Regulation 10 provides for different suspension periods, depending on how many points a master has accumulated. If the master has accumulated 18 to 35 points, the master is suspended for 2 months. If the master has accumulated 36 to 53 points, the master is suspended for 4 months.

- 3.2. A situation could arise where a master is serving a 2 month suspension, and during that suspension period another infringement comes to light. Conviction for that latter infringement could take the master into the territory of a 4 month suspension.
- 3.3. It is not clear from the regulations at what point in time the 4 month suspension would commence. Does the 4 month period start to run straight away (therefore overlapping with the 2 month period), or does the 2 month suspension have to be served in full first?
- 3.4. Suspension from mastering a fishing boat is taking away someone's livelihood, so clarity as to when the suspension period starts is important.

Standing Order 21.2(v): that for any particular reason the form or meaning of the instrument needs further explanation.

#### **4. English language only**

- 4.1 These composite regulations are subject to parliamentary procedure at Westminster, and so are in English only.

Standing Order 21.2(ix): the instrument is not made or to be made in both English and Welsh.

#### **Merits Scrutiny**

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

#### **Legal Advisers**

Constitutional and Legislative Affairs Committee  
January 2015

**2014 No. 3345**

**SEA FISHERIES**

**The Sea Fishing (Points for Masters of Fishing Boats)  
Regulations 2014**

<i>Made</i> - - - -	<i>18th December 2014</i>
<i>Laid before Parliament</i>	<i>19th December 2014</i>
<i>Laid before the National Assembly for Wales</i>	<i>19th December 2014</i>
<i>Coming into force</i> - -	<i>12th January 2015</i>

The Secretary of State and, in relation to Wales, the Welsh Ministers, are designated<sup>(a)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(b)</sup> in relation to the common agricultural policy of the European Union.

These Regulations make provision for a purpose mentioned in that section and it appears to the Secretary of State and the Welsh Ministers that it is expedient for the references to the EU Regulations referred to in regulations 2(1) and 4(5) to be construed as references to those Regulations as amended from time to time.

The Secretary of State, in relation to England and Northern Ireland, and (but only as regards regulations 3(1), 4, 7, 8(5) and 11) in relation to Scotland, and the Welsh Ministers, in relation to Wales, make these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972<sup>(c)</sup>.

**Citation, commencement, extent and application**

**1.**—(1) These Regulations may be cited as the Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014 and come into force on 12th January 2015.

(2) They extend to England and Wales and to Northern Ireland, and regulations 3(1), 4, 7, 8(5) and 11 also extend to Scotland.

(3) Regulation 14 applies only in relation to England.

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- (a) The Secretary of State is designated under S.I. 1972/1811, the Schedule. The function of the former Minister of Agriculture of making regulations under section 2(2) was transferred to the Secretary of State by the Ministry of Agriculture, Fisheries and Food (Dissolution) Order (S.I. 2002/794), article 2(2). The Welsh Ministers are designated under S.I. 2010/2690, article 3.
- (b) 1972 c. 68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a) and the European Union (Amendment) Act 2008 (c. 7), Part 1 of the Schedule.
- (c) Paragraph 1A of Schedule 2 was inserted by the Legislative and Regulatory Reform Act 2006, section 28 and amended by the European Union (Amendment) Act 2008, Part 1 of the Schedule and S.I. 2007/1388.

## Interpretation

### 2. —(1) In these Regulations—

“administrative sanction” means a sanction other than a criminal sanction imposed by the authorities of another member State or third country on a master in respect of a serious infringement;

“British national” means a British citizen, a person who is a British subject by virtue of Part IV of the British Nationality Act 1981(a) and who has the right of abode in the United Kingdom and is therefore exempt from United Kingdom immigration control, or a British overseas territories citizen who has acquired citizenship from a connection with Gibraltar(b);

“the Control Regulation” means Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy(c);

“conviction” has the meaning given by regulation 6;

“corresponding Scottish enactment” means, in relation to a provision of these Regulations, an enactment which in Scotland has the corresponding effect;

“DARD” means the Department of Agriculture and Rural Development in Northern Ireland;

“English fishing boat” means a UK fishing boat which is registered in England;

“fishing boat” means a vessel equipped for the commercial exploitation of living aquatic resources, including sea fish;

“master” means a British national who is the master of a fishing boat, and includes a person who carries out the functions of a master after disqualification or during a period of suspension under regulation 10;

“Northern Ireland fishing boat” means a UK fishing boat which is registered in Northern Ireland;

“points authority” has the meaning given by regulation 3(2);

“the points information” has the meaning given by regulation 7(5);

“prosecuting authority” has the meaning given by regulation 3(3);

“the register” means the register set up and maintained by the Marine Management Organisation under regulation 4(1);

“Scottish fishing boat” means a UK fishing boat which is registered in Scotland;

“serious infringement” has the meaning given by—

(a) Article 42 of Council Regulation (EC) No. 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing(d); and

(b) Article 90 of the Control Regulation;

“statutory notification” means a notification under any enactment having effect in Scotland and requiring the notification in question by the Scottish Ministers;

“third country” means a country which is not a member State;

“UK fishing boat” means a fishing boat which—

(c) is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995(e);  
or

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(a) 1981 c. 61; section 31 in Part IV was amended by the British Overseas Territories Act 2002 (c. 8), section 1(1)(b). Section 33 was repealed by the Nationality, Immigration and Asylum Act 2002 (c. 41), Schedule 2, paragraph 1(i) and Schedule 9.

(b) See the 1972 and 1982 UK Declarations to the Final Act of the 1972 Accession Treaty (OJ No. L 73, 27.3.1972, p. 196 and OJ No. C 23, 28.1.1983, p. 1) and the Declaration attached to the Final Act of the Intergovernmental Conference on the Treaty of Lisbon, annexed to the Final Act of the Treaty on European Union (OJ 1992 No. C 191, 29.7.1992, p. 98), which define “British national” for EU law purposes.

(c) OJ No. L 343, 22.12.2009, p. 1, as last amended by Regulation (EU) No. 508/2014 (OJ No. L 149, 20.5.2014, p. 1).

(d) OJ No. L 286, 29.10.2008, p.1, as last amended by Commission Regulation (EU) No. 202/2011 (OJ No. L 57, 2.3.2011, p. 10).

(e) 1995 c. 21; section 15 in Part 2 was amended by S.I. 2002/794.

- (d) is wholly owned by persons qualified to own British ships for the purposes of that Part;  
“Welsh fishing boat” means a UK fishing boat which is registered in Wales.

(2) In this regulation and in regulation 4(5), references to EU Regulations are references to those EU Regulations as amended from time to time.

### Relevant authorities

3.—(1) The Marine Management Organisation is the competent authority for the purposes of Article 89(4) of the Control Regulation, insofar as it relates to serious infringements by masters of fishing boats.

(2) The “points authority” is—

(a) the Marine Management Organisation, if—

- (i) a master is convicted of a serious infringement by a court in the United Kingdom in relation to a fishing boat other than a Welsh, Northern Ireland or Scottish fishing boat; or
- (ii) a master of any fishing boat, other than a Welsh, Northern Ireland or Scottish fishing boat, is—
  - (aa) charged with a fisheries offence in another member State or in a third country;
  - (bb) convicted of a serious infringement by a court in another member State or in a third country; or
  - (cc) given an administrative sanction for a serious infringement in another member State or a third country;

(b) the Welsh Ministers, if—

- (i) a master is convicted of a serious infringement by a court in the United Kingdom in relation to a Welsh fishing boat; or
- (ii) a master of a Welsh fishing boat, is—
  - (aa) charged with a fisheries offence in another member State or in a third country;
  - (bb) convicted of a serious infringement by a court in another member State or in a third country; or
  - (cc) given an administrative sanction for a serious infringement in another member State or a third country;

(c) DARD, if—

- (i) a master is convicted of a serious infringement by a court in the United Kingdom in relation to a Northern Ireland fishing boat; or
- (ii) a master of a Northern Ireland fishing boat, is—
  - (aa) charged with a fisheries offence in another member State or in a third country;
  - (bb) convicted of a serious infringement by a court in another member State or in a third country; or
  - (cc) given an administrative sanction for a serious infringement in another member State or a third country.

(3) The “prosecuting authority” is—

(a) in relation to prosecutions in England—

- (i) the Marine Management Organisation; or
- (ii) the Inshore Fisheries Conservation Authority prosecuting in relation to an alleged offence in its inshore fisheries conservation district<sup>(a)</sup>;

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(a) Inshore fisheries and conservation districts and authorities were set up under sections 149 and 150 of the Marine and Coastal Access Act 2009 (c. 23).

- (b) in relation to prosecutions in Wales, the Welsh Ministers or the Counsel General;
  - (c) in relation to prosecutions in Northern Ireland, DARD.
- (4) Where the Marine Management Organisation is the points authority, regulations 7(1)(b) and (4)(c)(ii) and 8(3)(b) do not require it to notify itself.

#### **Register of masters of fishing boats**

4.—(1) The Marine Management Organisation must set up and maintain a register of masters who have been allocated points under regulation 7 or 8.

(2) The register must also include any points relating to serious infringements which the Scottish Ministers have notified to the Marine Management Organisation by statutory notification.

(3) The register must set out—

- (a) the name of each master who has been allocated points;
- (b) the total number of points allocated to each master;
- (c) the dates of each serious infringement in respect of which a master has been allocated points;
- (d) in relation to each serious infringement, which points authority allocated the points or, where the points were allocated by the Scottish Ministers, the fact that they were allocated by them;
- (e) the start and end date of—
  - (i) any period during which a master is suspended from mastering a fishing boat under regulation 10(1);
  - (ii) any period notified by the Scottish Ministers to the Marine Management Organisation by statutory notification as a period during which they have suspended a master from mastering a Scottish fishing boat by reason of points allocated to the master for serious infringements;
- (f) whether a master has been disqualified under regulation 10(3) or under a corresponding Scottish enactment; and
- (g) the date of any such disqualification.

(4) The Marine Management Organisation must ensure that the information in paragraph (3) is available to the public on its website.

(5) In this regulation and in regulations 5, 7 and 8, “the points relating to the serious infringement” are the points assignable in relation to the serious infringement under Article 126 of and Annex XXX to Commission Implementing Regulation (EU) No. 404/2011 laying down detailed rules for the implementation of the Control Regulation(a), which, for the purposes of these Regulations, is deemed to apply to serious infringements by masters.

#### **Notification of prosecution for serious infringements**

5. Where a master is to be prosecuted for a serious infringement, the prosecuting authority must notify the master in writing—

- (a) that the master is to be prosecuted for a serious infringement;
- (b) of the points relating to the serious infringement; and
- (c) of the period of any suspension or disqualification which would be triggered by the allocation of those points.

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(a) OJ No. L 112, 30.4.2011, p.1, subject to a corrigendum (OJ No. L 328, 10.12.2011, p. 58).

### **Meaning of conviction**

6. For the purposes of these Regulations, a master is only to be treated as convicted of a serious infringement—

- (a) on the expiry of the period for appealing against that conviction; or
- (b) on the date on which the conviction is upheld by the final court to which the master appeals.

### **Allocation of points in respect of UK convictions**

7.—(1) If a master of an English, Welsh or Northern Ireland fishing boat is convicted in the United Kingdom of a serious infringement, the points authority must, within 7 days of the conviction or, if the conviction was in a Scottish court, of receiving statutory notification from the Scottish Ministers—

- (a) allocate to the master the points relating to the serious infringement; and
- (b) notify the allocation of points to the Marine Management Organisation.

(2) If a master of a Scottish fishing boat is convicted in England, Wales or Northern Ireland, the prosecuting authority must notify the Scottish Ministers within 7 days of the conviction.

(3) If the prosecuting authority is an Inshore Fisheries Conservation Authority, the Authority must notify the conviction to the Marine Management Organisation within 7 days.

(4) The Marine Management Organisation must—

- (a) within 7 days of receiving notification under paragraph (1)(b), include in the register against the master's name the points allocated to the master by the points authority;
- (b) within 7 days of receiving a statutory notification from the Scottish Ministers that they have allocated points to a master of a Scottish fishing boat for a serious infringement relating to that boat, include in the register against the master's name the points so allocated;
- (c) notify the points information to—
  - (i) the master (or, if they allocated the points to the master, the Scottish Ministers);
  - (ii) the points authority; and
  - (iii) if the prosecuting authority was an Inshore Fisheries Conservation Authority, that Authority.

(5) The points information in this regulation and in regulation 8 is information as to—

- (a) the points included in the register;
- (b) whether the inclusion of the points has triggered a suspension or disqualification under regulation 10 or under a corresponding Scottish enactment; and
- (c) the start date of any suspension or disqualification.

(6) If the allocation of points under this regulation triggers a suspension or disqualification under regulation 10 or under a corresponding Scottish enactment, the Marine Management Organisation must ensure that the start date of the suspension or disqualification is at least one calendar day after it is included in the register.

(7) If a suspension starts while the master is mastering a fishing boat engaged in fishing, the Marine Management Organisation must extend the period of the suspension by the number of calendar days the master spends at sea between the start date set out in the register and the date on which the master returns to port.

### **Allocation of points in respect of convictions and administrative sanctions in other member States and third countries**

8.—(1) A master (“M”) who is charged with an offence in another member State or a third country may request that the points authority notify M—

- (a) whether the offence is a serious infringement;
- (b) of the points relating to any such serious infringement; and
- (c) whether the inclusion of those points in the register would trigger a suspension or disqualification under regulation 10.

(2) The points authority must provide this information to M within 7 days of receiving M's request.

(3) The points authority must, within 7 days of being satisfied that M has been convicted of, or received an administrative sanction in respect of, a serious infringement in another member State or a third country—

- (a) allocate to M the points relating to the serious infringement; and
- (b) notify the Marine Management Organisation of the allocation of points.

(4) The Marine Management Organisation must, within 7 days of allocating points under paragraph (3)(a) or of receiving notice under paragraph 3(b)—

- (a) include the points allocated by the points authority against M's name; and
- (b) notify the points information to M and the other points authorities.

(5) The Marine Management Organisation must, within 7 days of receiving a statutory notification from the Scottish Ministers that they have allocated points to the master of a Scottish fishing boat in respect of a serious infringement in another member State or a third country—

- (a) include the points allocated by the Scottish Ministers against M's name; and
- (b) notify the Scottish Ministers that it has done so.

#### **Allocation of points in respect of serious infringements committed on the same occasion**

**9.**—(1) If a master has committed two or more serious infringements and these are detected by an enforcement officer in the course of one inspection, the total number of points to be allocated to the master by the points authority under regulation 7 or 8 in respect of those serious infringements is the sum of the points for each infringement, but must not exceed 12 points.

(2) An enforcement officer is—

- (a) a person appointed for the purposes of Article 74 of the Control Regulation—
  - (i) by a prosecuting authority; or
  - (ii) in the case of a charge brought in another member State, by that member State; or
- (b) in the case of a charge brought in a third country in respect of a fishing activity which is a serious infringement, the person appointed in that country who carried out the inspection or surveillance which led to the charge being brought.

#### **Suspension and disqualification**

**10.**—(1) A master who has, at any one time, accumulated at least 18 points but fewer than 90 points in the register is suspended from mastering a relevant fishing boat.

(2) The duration of the suspension is—

- (a) 2 months, on the accumulation of 18 to 35 points inclusive;
- (b) 4 months, on the accumulation of 36 to 53 points inclusive;
- (c) 8 months, on the accumulation of 54 to 71 points inclusive;
- (d) 12 months, on the accumulation of 72 to 89 points inclusive.

(3) A master who has, at any one time, accumulated 90 points or more is disqualified from mastering a relevant fishing boat.

(4) A suspension or disqualification under this regulation starts—

- (a) on the start date set out in the register; or

- (b) if the master is mastering a relevant fishing boat engaged in fishing when a suspension or disqualification is triggered, on the day following the day on which the master returns to port.
- (5) It is an offence for a master to master a relevant fishing boat—
- (a) while suspended from doing so; or
  - (b) if disqualified from doing so.
- (6) In this regulation, “a relevant fishing boat” is a UK fishing boat which is not a Scottish fishing boat.

### **Deletion of points**

**11.**—(1) If the Marine Management Organisation is not aware of any serious infringement committed by a master (“M”) within 3 years of the date on which M last committed a serious infringement, it must delete all points listed against M’s name in the register and remove M’s name from the register.

(2) This regulation does not apply if M has accumulated 90 points or more and been disqualified under regulation 10(3) or under a corresponding Scottish enactment.

### **Prohibition of employing suspended or disqualified masters**

**12.** It is an offence for a person to employ a master to master a UK fishing boat if the register indicates that the master is suspended or has been disqualified.

### **Penalties**

**13.** A person convicted of an offence under these Regulations is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

### **Review**

**14.**—(1) The Secretary of State must, from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review, the Secretary of State must, as far as is reasonable, have regard to how Articles 89, 92 and 93 of the Control Regulation are executed and enforced in other member States.

(3) The report must, in particular—

- (a) set out the objectives intended to be achieved by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system which imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years which starts on the day on which these Regulations come into force.

(5) Each subsequent report must be published before the end of the period of five years which starts on the day on which the previous report was published.

18th December 2014

*Carl Sargeant*  
Minister for Natural Resources, one of the Welsh Ministers

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations implement Article 92(6) of Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (OJ No. L 343, 22.12.2009, p. 1) (“the Control Regulation”). They extend mainly to England, Wales and Northern Ireland, although regulations 3(1), 4, 7, 8(5) and 11 also extend to Scotland. Regulation 14 applies only in relation to England.

The Regulations set up a system for the allocation of points to the UK masters of fishing boats who have committed serious infringements of EU fisheries law. They also provide for the Marine Management Organisation to set up a register of UK masters with details of the points which have been allocated to them.

Regulation 4 provides for the setting up and maintenance of the register. Regulation 5 requires prosecuting authorities to notify masters of the points they will be allocated if they are convicted of serious infringements of EU fisheries law.

Regulations 7 and 8 provide for the allocation of points to masters. Regulation 9 limits to twelve the total number of points that may be allocated in respect of multiple serious infringements detected by an enforcement officer in the course of one inspection.

Regulation 10(1) and (2) provides for masters to be suspended from mastering fishing boats for various periods, depending on the number of points they accumulate. Under regulation 10(3), masters are disqualified from mastering fishing boats if they accumulate 90 points at any one time.

Regulation 11 provides that the Marine Management Organisation must delete points if a master has not committed a serious infringement for 3 years.

Regulation 12 makes it an offence for a person to employ a disqualified or suspended master on a UK fishing boat.

Regulation 13 provides that a person convicted of an offence under these Regulations is liable to a fine. These Regulations are enforceable by marine enforcement officers under section 238 of the Marine and Coastal Access Act 2009 (c. 23).

Regulation 14 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

The Marine Management Organisation maintains a register of points for fishing boat owners, which is enforced through fishing boat licensing systems. Details of this scheme are available at <http://www.marinemanagement.org.uk/fisheries/monitoring/points.htm>.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector in England is available at [www.gov.uk/defra](http://www.gov.uk/defra) or from the Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London, SW1P 3JR and is annexed to the Explanatory Memorandum which is available alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory assessment has been prepared as to the likely costs and benefits of complying with these Regulations in Wales. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

**EXPLANATORY MEMORANDUM TO**  
**THE SEA FISHING (POINTS FOR MASTERS OF FISHING BOATS) REGULATIONS**  
**2014**

**2014 No. 3345**

1. This explanatory memorandum has been prepared by Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty. It contains information for the Joint Committee on Statutory Instruments.
2. **Purpose of the instrument**
  - 2.1 These Regulations set up a system for the allocation of points to masters of English, Welsh and Northern Irish fishing boats who have committed serious infringements of EU fisheries law. They provide for the setting up and maintenance of a register that details the points allocated to convicted masters. The Regulations are intended to discourage repeat offending.
3. **Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Context**
  - 4.1 The key purpose of these Regulations is to ensure compliance with the rules of the Common Fisheries Policy. Specifically, the EU Fisheries Control Regulation (Council Regulation 1224/2009) requires Member States to establish a points system for masters of fishing vessels who commit “serious infringements” of fisheries law. A list of serious infringements is set out in Annex XXX of the Control Regulation detailed rules (Commission Regulation 404/2011)
  - 4.2 The Regulations will apply to the masters of all fishing vessels registered in England, Wales and Northern Ireland. Separate Regulations are being made in the Scottish Parliament to implement points for masters in Scotland but there will be a UK register showing the points allocated to UK masters of fishing vessels.
5. **Territorial Extent and Application**
  - 5.1 This instrument extends to England, Wales and Northern Ireland. Some provisions also extend to Scotland. Regulation 14 (review of the Regulations) only applies in England.
6. **European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

What is being done and why

7.1 The Common Fisheries Policy (CFP) requires Member States to limit and control catch volumes and to comply with technical rules and effort schemes. The Control Regulation is at the heart of CFP and sets out a control and enforcement system for ensuring compliance with its rules. The Control Regulation requires Member States to apply points to vessel licences and also to the masters of fishing vessels when serious infringements of the CFP occur.

7.2 Full details of the points scheme for fishing vessel licences are set out in the Control Regulation and are directly applicable in the UK. The Control Regulation does not however specify the details of the points scheme for masters, these must be put in place by Member States and are the subject of these Regulations. To aid industry understanding and transparency, the Regulations will apply points to masters on as close a basis as possible to the existing vessel licencing system.

## **8. Consultation outcome**

8.1 A 6 week consultation was carried out, ending on 19 November. There were 20 responses to the consultation from a range of sectors including the fishing industry, the recreational sector, environmental NGOs and local authorities (IFCAs) with the majority supporting the proposal. The key reactions were:

- 60% broadly agreed with the proposal to base the number of points on the system already used for vessel licences and among those who did not agree no clear option or consensus for an alternative approach emerged.
- 65% supported the proposal to prohibit a master who reaches a points threshold from acting as master of a fishing vessel or thought the sanction should be tougher.
- 65% supported the proposed periods of suspension for those reaching points thresholds or felt they should be tougher.
- 65% agreed that vessel owners should be required to check that any master they put in charge of their vessels is not currently suspended.

8.2 Given that responses were mainly positive and no clear alternatives to our proposals emerged, no changes have been made to the measures as set out in the consultation document.

## **9. Guidance**

9.1 Formal Defra Guidance is not required. The MMO, as the administrators of the new system, will be responsible for making the fishing industry aware of the changes.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is low .

10.2 The impact on the public sector is expected to be minimal as there is already a UK database of infringements which requires only minor modification to include masters.

10.3 An Impact Assessment is attached to this memorandum and is published alongside the Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website.

## **11. Regulating small business**

11.1 These Regulations apply to small business. There are some large operators in the fisheries sector but in the main this industry is made up of small to medium sized businesses. Industry will incur minimal costs. As this measure relates to actions that occur as a result of illegal activity (i.e. receiving points and licence suspension) it does not of itself impose a burden on business.

## **12. Monitoring & review**

12.1 The Regulations will be regularly reviewed to ensure that they remain fit for purpose.

## **13. Contact**

13.1 Jacinta Vaz at the Department for Environment, Food and Rural Affairs, Tel: 0207238 4434 or email: [jacinta.vaz@defra.gsi.gov.uk](mailto:jacinta.vaz@defra.gsi.gov.uk) can answer any queries regarding the instrument.

## STATUTORY INSTRUMENT CONSENT MEMORANDUM

### **The Public Bodies (Abolition of the Advisory Committees on Pesticides) Order 2015**

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales (“Assembly”) if a UK Statutory Instrument makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.
2. The Public Bodies (Abolition of the Advisory Committee on Pesticides) Order 2015 was laid before Parliament on 15 December 2014 and before the Assembly on 16 December 2014. The order can be found at:  
<http://www.legislation.gov.uk/ukdsi/2015/9780111125656/contents>
3. Section 9(6) of the Public Bodies Act 2011 requires the consent of the Assembly in circumstances where an Order made under sections 1 to 5 of that Act makes provision which would be within the legislative competence of the Assembly if it were contained in an Act of the National Assembly.

#### **Summary of the Order and its objective**

4. The objective of this Order is to abolish the Advisory Committee on Pesticides (the “ACP”) and the Advisory Committee on Pesticides (Northern Ireland) (the ACP(NI)), both committees are jointly referred to in this document as the ACPs. The ACPs were established under section 16(7) of the Food and Environment Protection Act 1985 (FEPA) as statutory non-departmental public bodies (NDPBs). Following abolition, the intention is to replace the ACPs with a non-statutory expert committee of the Department for Environment, Food and Rural Affairs (Defra).
5. This Order also makes repeals and revocations associated with the abolition of the ACPs, including the repeal of sections 16(7) and 16(9) of FEPA. Section 16(7) enables the establishment of a committee to provide advice on any matters relating to the control of pests in furthering the general purposes of Part III of FEPA. Section 16(9) imposes a duty to consult the committee as described in paragraph 8 below.
6. The ACPs were established under Section 16(7) of FEPA to advise the Welsh Ministers, the Secretary of State and others on any matters

relating to the control of pests in furthering the general purposes of Part III of FEPA.

7. The general purposes are set out in section 16(1) of FEPA which provides that Part III of that Act shall have effect:
  - a. with a view to the continuous development of means:
    - i. to protect the health of human beings, creatures and plants;
    - ii. to safeguard the environment; and
    - iii. to secure safe, efficient and humane methods of controlling pests.
  - b. with a view to making information about pesticides available to the public.
8. Section 16(9) of FEPA requires that the Welsh Ministers and others consult the ACPs as to the regulations which they contemplate making; the approvals of pesticides they contemplate giving, revoking or suspending; and the conditions to which they contemplate making approvals subject.
9. This Order extends to Wales, England, Scotland and Northern Ireland.

**Provision to be made by The Public Bodies (Abolition of the Advisory Committees on Pesticides) Order 2015 for which consent is sought**

10. This draft Order abolishes the ACP and the ACP (NI) established under FEPA. It makes repeals and revocations associated with the abolition including those described at paragraph 5 above.
11. It is the view of the Welsh Government that the provisions described in paragraph (10) above falls within the legislative competence of the National Assembly for Wales in relation to:
  - a. agriculture, animal health and welfare and plant health pursuant to (Subject 1 Agriculture, forestry, animals, plant and rural development) Schedule 7 of the Government of Wales Act 2006 (GoWA);
  - b. environmental protection, including pollution, nuisances and hazardous substances pursuant to (Subject 6 Environment) Schedule 7 of GoWA; and
  - c. promotion of health, prevention, treatment and alleviation of disease, illness, disability and mental disorder pursuant to (Subject 9 Health and health services) Schedule 7 of GoWA.
12. It is the view of Welsh Government that taking these subjects together that it is within the competence of the National Assembly of Wales to establish (or enable the establishment of) a committee that advises on the control of pests within the context of human, animal and plant health; safeguarding the environment; and securing safe efficient and

humane methods of controlling pests. To the extent that the National Assembly has the competence to create such a body, it would also have the competence to abolish it and make associated repeals and revocations.

### **Why is it appropriate for the Order to make this provision**

13. The Welsh Government considers that this Order represents the most appropriate and proportionate legislative vehicle to deal with the abolition of the ACP which covers Wales, England and Scotland, and the ACP(NI); which is also being abolished in the Order.
14. The abolition of the ACPs as statutory NDPBs is as an outcome of the UK Government's 2010 review of public bodies. Since the ACPs were established the regulatory system for pesticides has changed considerably. In the 1980s, all the decisions on the approval of pesticides were taken by UK Ministers following a scientific assessment of risks to people and the environment. This was then a new system under FEPA and required high levels of expertise to establish precedents and build a robust and consistent regulatory system. A team within the then Ministry of Agriculture, Fisheries and Food was set up to project manage the work and to carry out the technical assessment. In these early days, the expertise of the ACPs was central to carrying out all the necessary risk assessments.
15. Since the 1980s the in house Government expertise within the Health and Safety Executive, which carries out the day to day regulatory functions on behalf of the Welsh Ministers, has developed significantly. The expertise of the ACPs is therefore now to provide an independent check and challenge rather than an integral part of the assessment as was formerly the case.
16. In addition since the 1990s decisions on the approval of active substances falling within the remit of the ACPs have increasingly been taken at European Union level under the provisions of legislation covering plant protection products. Regulation (EC) 1107/2009 (published 24 November 2009) has further harmonised the regulatory system for plant protection products.
17. These developments mean the role for the UK Regulator (the Health and Safety Executive) and for independent expert advice to support and challenge the work has changed. As a result there is less need for UK specific expert advice on UK applications for approval which is what the ACP was set up to do. There however remains a strong need for independent advice on broader risk assessment and risk management issues.
18. Therefore while it is appropriate for the ACPs to be abolished there is the intention following the abolition to establish a non-statutory scientific committee as a successor body which will provide expert,

independent and impartial advice to Ministers, including the Welsh Ministers. The new committee will be more efficient because currently the requirement to consult the ACPs under FEPA is very broad. The proposed expert committee would be able to offer advice on any matter within its remit, but in contrast to the ACPs would not routinely be asked for advice to support decisions which do not raise new or contentious issues. This will enable the new committee to devote more time to the most important questions.

19. The successor body will also be for the public benefit and in the interests of ensuring Ministers, including Welsh Ministers and others continue to receive expert, impartial and independent advice against a changing regulatory landscape.
20. In addition, the new non-statutory body will be more flexible and nimble as its remit can be adapted through changes to its terms of reference.

### **Financial implications**

21. The ACPs are funded entirely by Defra. The new non-statutory scientific committee will continue to be funded by Defra, so following the reconstitution there will be no financial implications for Wales.

**Rebecca Evans AM**  
**Deputy Minister for Farming and Food**  
**December 2014**



In accordance with section 11(4) of the Act, a draft of this Order has been approved by a resolution of each House of Parliament after the expiry of the 40-day period referred to in that provision.

### **Title and commencement**

**1.**—(1) This Order may be cited as the Public Bodies (Abolition of the Advisory Committees on Pesticides) Order 2015.

(2) It comes into force on the day after the day on which it is made, except as provided by paragraph (3).

(3) The entry for the Public Bodies Act 2011 in the table of repeals in Part 1 of the Schedule, and article 3 so far as relating to that entry, come into force on the second day after the day on which the Order is made.

### **Abolition of advisory committees**

**2.** The following bodies established under section 16(7) of the Food and Environment Protection Act 1985(a) are abolished—

- (a) the Advisory Committee on Pesticides(b); and
- (b) the Advisory Committee on Pesticides for Northern Ireland(c).

### **Repeals and revocations**

**3.** The Schedule (repeals and revocations) has effect.

Date \_\_\_\_\_ *Name*  
Parliamentary Under Secretary of State  
Department

## SCHEDULE

Article 3

### Repeals and revocations

#### PART 1

##### Repeals

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Parliamentary Commissioner Act 1967 (c.13) (d)	In Schedule 2, the entry relating to the Advisory Committee on Pesticides.
Food and Environment Protection Act 1985 (c.48)	Section 16(7), (8) and (9). In section 25(4), the words “and Schedule 5 to this Act”.

- (a) 1985 c. 48.
- (b) The Advisory Committee on Pesticides was established by article 3 of the Control of Pesticides (Advisory Committee on Pesticides) Order 1985 (S.I. 1985/1516).
- (c) The Advisory Committee on Pesticides for Northern Ireland was established by article 4 of the Control of Pesticides (Advisory Committee) Order (Northern Ireland) 1987 (S.R. (NI) 1987 No 341).
- (d) Schedule 2 to the Parliamentary Commissioner Act 1967 was amended by S.I. 2011/2986.

	Schedule 5.
Food Standards Act 1999 (c. 28)	In Schedule 3, paragraph 16(6).
Freedom of Information Act 2000 (c. 36)	In Schedule 1— <ul style="list-style-type: none"> <li>(a) in Part 6, the entry relating to The Advisory Committee on Pesticides;</li> <li>(b) in Part 7, the entry relating to The Advisory Committee on Pesticides for Northern Ireland.</li> </ul>
Public Bodies Act 2011 (c. 24)	In Schedule 1, the words “Advisory Committee on Pesticides and Advisory Committee on Pesticides for Northern Ireland (bodies established under section 16(7) of the Food and Environment Protection Act 1985).”.

## PART 2

### Revocations

<i>Instrument</i>	<i>Reference</i>	<i>Extent of revocation</i>
The Control of Pesticides (Advisory Committee on Pesticides) Order 1985	S.I. 1985/1516(a)	The whole Order.
The Control of Pesticides (Advisory Committee on Pesticides) (Terms of Office) Regulations 1985	S.I. 1985/1517(b)	The whole Regulations.
The Control of Pesticides (Advisory Committee) Order (Northern Ireland) 1987	S.R. (NI) 1987 No 341.	The whole Order.
The Control of Pesticides (Advisory Committee) (Terms of Office) Regulations (Northern Ireland) 1987	S.R. (NI) 1987 No 342.	The whole Regulations.
The Scotland Act 1998 (Cross-Border Public Authorities) (Specification) Order 1999	S.I. 1999/1319(c)	In the Schedule, the entry in the table relating to the Advisory Committee on Pesticides.
The Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc)	S.I. 1999/1747(d)	Schedule 2.

- (a) As amended by S.I. 1999/1747.  
(b) As amended by S.I. 1999/1747.  
(c) There are amendments not relevant to this Order.  
(d) There are amendments not relevant to this Order.

Order 1999

The Scotland Act 1998  
(Agency Arrangements)  
(Specification) Order 1999

S.I. 1999/1512(a)

In Schedule 2—

- (a) paragraph 2;
- (b) paragraph 3.

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### EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order abolishes the Advisory Committee on Pesticides and the Advisory Committee on Pesticides for Northern Ireland established under section 16(7) of the Food and Environment Protection Act 1985. It makes repeals and revocations associated with the abolition (including the repeal of the power to appoint a committee).

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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(a) There are amendments not relevant to this Order.







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**EXPLANATORY DOCUMENT TO**  
**THE PUBLIC BODIES (ABOLITION OF THE ADVISORY COMMITTEES ON**  
**PESTICIDES) ORDER 2015**  
**2015 No. [xxxx]**

1. This explanatory document has been prepared by the Department for Environment, Food and Rural Affairs (Defra) and is laid before Parliament under section 11(1) of the Public Bodies Act 2011.
2. **Purpose of the instrument**
  - 2.1 This instrument abolishes the Advisory Committee on Pesticides (the ACP) and the Advisory Committee on Pesticides (Northern Ireland) (the ACP (NI) – jointly referred to in this document as the ACPs). The ACPs were established by section 16(7) of the Food and Environment Protection Act 1985 and abolition is part of the Government’s public body reform programme.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Context**
  - 4.1 The ACPs are statutory bodies set up by Ministers under section 16 (7) of the Food and Environment Protection Act 1985 to advise on all matters relating to the control of pesticides. The Advisory Committee on Pesticides is established by the Control of Pesticides (Advisory Committee on Pesticides) Order 1985, SI No 1985/1516; and the Advisory Committee on Pesticides for Northern Ireland by the Control of Pesticides (Advisory Committee) Order (Northern Ireland) 1987, S.R. (NI) 1987 No 341. In practice the same body of experts has been appointed under both regulations, meaning that there is a single committee serving as both legal entities.
  - 4.2 As statutory Non-Departmental Public Bodies (NDPBs), the ACPs should be abolished in their present form before they are reconstituted as a committee of experts. Both bodies were therefore included in Schedule 1 to the Public Bodies Act 2011, which allows abolition of the listed bodies by secondary legislation. This instrument, made under the Act, provides for the abolition of the ACPs.
  - 4.3 The legislation which established the ACPs (the Food and Environment Protection Act 1985) does not provide for their abolition. Therefore, the ACPs were included in Schedule 1 to the Public Bodies Act 2011 in order to achieve their legislative dissolution. An announcement on Defra’s proposals to reform a number of public bodies, including the ACPs, was made in July 2010 by the then Secretary of State for Environment, Food and Rural Affairs.

4.4 The Minister for the Cabinet Office announced the outcome of the Public Body Review on 14 October 2010, which included the proposal to abolish the ACPs. The Review examined whether a body's functions are needed and, if they are, whether the body should continue to operate at arm's length from Government. This decision was based upon three tests:

- Does it perform a technical function?
- Do its activities require political impartiality?
- Does it need to act independently to establish facts?

## **5. Territorial Extent and Application**

5.1 This instrument applies to the United Kingdom. The ACP covers England, Scotland and Wales and the ACP (NI) covers Northern Ireland. Sections 16(7), 16(8), 16(9) of, and Schedule 5 to, the Food and Environment Protection Act 1985 are repealed by this instrument and Section 25(4) is amended. Those parts of the Act apply to the whole of the UK.

## **6. European Convention on Human Rights**

6.1 Lord de Mauley, Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (the "Minister") has made the following statement regarding Human Rights:

"In my view the provisions of the Public Bodies (Abolition of the Advisory Committees on Pesticides) Order 2015 are compatible with Convention rights".

## **7. Policy background**

### What is being done and why

7.1 The Government is proposing to abolish the ACPs as statutory NDPBs and to replace them with an expert committee of Defra. This committee would work for a number of UK Departments and for the Devolved Administrations as set out below.

7.2 The ACPs are established under section 16(7) of the Food and Environment Protection Act 1985 (FEPA) to advise Ministers, either when requested to do so or otherwise, on any matters relating to the control of pests in furthering the general purposes of Part III of FEPA. The general purposes (set out in section 16(1) of FEPA) are that the provisions of Part III shall have effect:

- (i) with a view to the continuous development of means:
  - (a) to protect the health of human beings, creatures and plants;
  - (b) to safeguard the environment; and
  - (c) to secure safe, efficient and humane methods of controlling pests; and
- (ii) with a view to making information about pesticides available to the public.

- 7.3 Under section 16(9), Ministers are required to consult the ACPs:
- (i) as to regulations which they contemplate making;
  - (ii) as to approvals of pesticides which they contemplate giving, revoking or suspending; and
  - (iii) as to conditions to which they contemplate making approvals subject.
- 7.4 Sections 16(7) and (9) of FEPA provide the terms of reference for the ACPs. The ACPs have a membership of about 18. Most members are academics working in areas relevant to assessing the risks and benefits of pest control – including pesticides. The remainder are appointed specifically to consider the issues from a lay perspective, or to bring practical experience of farming and horticulture.
- 7.5 The ACPs operate cross-border advising Ministers in Defra, DWP, DH, the Scottish and Welsh Governments and the Northern Ireland Executive. Collectively, these Ministers are referred to in this document as “the Ministers”. Appointments are made by Defra Ministers in agreement with the Ministers and in accordance with the Code of Practice of the Commissioner for Public Appointments<sup>1</sup>. One of the members is appointed on the basis of a nomination by the Food Standards Agency (FSA).
- 7.6 Since the ACPs were established, the regulatory system for pesticides has changed considerably. In the 1980s, all decisions on the approval of pesticides were taken by UK Ministers following a scientific assessment of risks to people and to the environment. This was then a new system under FEPA and required high levels of expertise to establish precedents and build a robust and consistent regulatory system. A team within the then Ministry of Agriculture, Fisheries and Food was set up to project manage the work and to carry out the technical assessment. In these early days, this team of in-house experts was spread thin in some areas and the expertise of the ACPs was central to carrying out all the necessary risk assessments.
- 7.7 The in-house Government expertise is now within the Health and Safety Executive (HSE), which carries out the day to day regulatory functions on behalf of the Ministers. The in-house team is very much stronger than was the case in the early stages of FEPA and the expertise of the ACPs therefore provides an independent check and challenge rather than an integral part of the assessment. The ACPs normally provide input on
- The first approval of an active substance in the UK;
  - Special reviews of active substances (reviews triggered by new information. There is also a routine review programme within the EU);
  - Emergency authorisations determined case by case on the basis of pressing need and safety assessment;

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<sup>1</sup> <http://publicappointmentscommissioner.independent.gov.uk/the-code-of-practice/>

- Other applications that do not fit within the framework specified by the ACP or are of particular significance in terms of science or policy.
- 7.8 The EU has come to play an increasingly important role in the evaluation and approval of pesticides. Since the 1990s, decisions on the approval of active substances falling within the remit of the ACPs have increasingly been taken at EU level under provisions of legislation covering plant protection products and biocidal products. That transition from UK to EU decision-making for active substances is now almost complete. The process for deciding whether an active substance can be approved for use in the EU involves all Member States, an independent Agency (the European Food Safety Authority (EFSA) for plant protection products or the European Chemicals Agency for biocidal products) and the European Commission.
- 7.9 Decisions on the approval of products containing approved active substances are taken at national level but according to an increasingly tightly defined body of EU rules and guidance. Regulation (EC) No. 1107/2009 (which came into force in 2011) has further harmonised the regulatory system for plant protection products. In particular, previous arrangements that allowed provisional approval in Member States alongside applications for EU approval have been discontinued unless there are significant delays in the EU decisions.
- 7.10 Regulation (EU) No. 528/2012, which came into force on 1 September 2013, continues to offer a derogation to Member States allowing the issue of provisional authorisations for biocidal products, following a complete evaluation of the active substance and agreement of the Member States receiving an application for provisional authorisations that the product is likely to meet the requirements of the regulation.
- 7.11 These developments mean the role for the UK regulator (the Health and Safety Executive, reporting to the Ministers) and for independent expert advice to support and challenge this work has changed.
- 7.12 The proposed abolition of the ACPs as statutory NDPBs, and their reconstitution as a single expert scientific committee, is an outcome of the Government's 2010 review of public bodies. The Cabinet Office review aimed to increase the transparency and accountability of public bodies and to reduce their number and cost. Each body was tested under three criteria detailed in 4.4.
- 7.13 The ACPs were tested under these criteria and it was concluded that there was a continuing need for their work. However, it was concluded that this could be better delivered through a different model. On 14 October 2010, Defra announced its intention to reconstitute the majority of its advisory bodies as committees of experts. The announcement read as follows.

“Recognising their excellent work for Defra, the department has reviewed the role and functions of its scientific and technical advisory bodies to determine the scope for rationalisation where it is relevant and appropriate to do so. The number of Defra's scientific and

technical advisory NDPBs is to be reduced significantly, with the majority of them becoming expert committees to the department. This will improve transparency and accountability, provide for stronger co-ordination whilst allowing Defra to have continued access to independent, authoritative and cost-effective advice to support its policies.”

- 7.14 Also in 2010, Professor Charles Godfray led a review of Defra’s Science Advisory Council (SAC)<sup>2</sup>. Following that review and informed by advice from the Government Chief Scientific Adviser (CSA), Professor Sir John Beddington, the then Secretary of State for Environment, Food and Rural Affairs, Caroline Spelman, made a statement to Parliament on 26 January 2011<sup>3</sup>.
- 7.15 The SAC remained a Non-Departmental Public Body with a strengthened role in supporting the CSA in the oversight of all Defra expert scientific committees. The reformed SAC provides independent advice to Ministers and the CSA on the science underpinning a wide range of Defra policies. The new SAC and the CSA have an oversight function for Defra’s science bodies.
- 7.16 The Government has given a commitment that, where Departments are considering reconstituting bodies as expert scientific committees, they should put in place a number of safeguards. Such committees must provide independent advice in line with the Government’s Principles for Scientific Advice<sup>4</sup> and the Code of Practice for Scientific Advisory Committees<sup>5</sup>. Escalation routes must be in place to ensure advice from expert scientific committees can be submitted directly to Ministers, as appropriate. These requirements will be met in establishing the successor to the ACPs and will be written into the draft terms of reference.
- 7.17 The ACPs must be abolished before their successor is put in place. The successor body will continue to provide expert, impartial and independent advice to the Ministers and to the FSA. In respect of Defra’s interests, it will operate within an enhanced framework for scientific bodies in Defra, and with new terms of reference which reflect changes in the regulatory landscape for pesticides since the ACPs were established.
- 7.18 Following the announcement of the review referred to at 7.13 above, Defra’s Secretary of State wrote to each of the Devolved Administrations to outline the overall plans for changing the status of a number of Defra advisory bodies. In her letter, she recognised that arrangements would be needed to ensure that the

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<sup>2</sup> <http://sac.defra.gov.uk/2010/11/02/scientific-advice-to-defra-praised-in-independent-review-2-november-2010/>.

<sup>3</sup> <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110126/wmstext/110126m0001.htm#11012644000014>

<sup>4</sup> <https://www.gov.uk/government/publications/scientific-advice-to-government-principles/principles-of-scientific-advice-to-government>

<sup>5</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/278498/11-1382-code-of-practice-scientific-advisory-committees.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278498/11-1382-code-of-practice-scientific-advisory-committees.pdf)

Devolved Administrations and all UK Government Departments with an interest in pesticides policy and regulation had access to the new body and to the advice it will provide in the same way as at present.

7.19 Before the ACPs can be abolished, the Public Bodies Act 2011 requires: consultation with the Committee itself and other interested parties; scrutiny by the UK Parliament; and the consent of the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. In addition, as the proposal is to abolish a cross-border body, Defra is required to consult with Scottish Ministers in accordance with section 88(2) of the Scotland Act 1998 and with Welsh Ministers in accordance with section 63(1) of the Government of Wales Act 2006.

7.20 Following official level discussions, Defra Ministers will shortly write to all Devolved Ministers seeking their agreement to the proposed changes to the ACPs, providing information on how the new body is intended to work and asking them to request the consent of their Assembly/Parliament. The Devolved Administrations – and all interested Whitehall Departments - will be fully engaged with all aspects of the successor body. In brief, this means that all will:

- Participate in the appointment process and agree appointments;
- Agree changes to the terms of reference including if there was ever a proposal to abolish the new committee;
- Receive and be able to commission advice from the new committee;
- Be able to nominate a representative (“Assessor”) to attend meetings and receive papers and advice from the committee.

## **8. Satisfying the requirements of section 8(1) of the Public Bodies Act 2011**

8.1 Section 8 of the Public Bodies Act 2011 states that a Minister may make an order under that Act only where it is considered that the order serves the purpose of improving the exercise of public functions, having regard to efficiency, effectiveness, economy and securing appropriate accountability to Ministers. The Minister has reviewed the proposed legislative abolition of the ACPs and considers that this Order serves the purpose of improving the exercise of public functions in section 8(1) of the 2011 Act, having regard to efficiency, effectiveness, economy and securing appropriate accountability to Ministers.

8.2 The public function in question is set out at paragraphs 7.2 and 7.3 above. In summary it is the provision of advice to the Ministers on pesticides regulation and approvals. There are a number of strong features of the current ACPs, which include their independence, right of direct access to the Ministers, technical expertise and transparency. The proposed successor arrangements – which will cover the current range of issues – will retain these strengths. However, there will be several areas of improvement, arising in particular from the greater flexibility enabled by the new body’s non-statutory nature. These are outlined in paragraphs 8.3 to 8.13 below.

### Efficiency

8.3 The abolition of the ACPs and their replacement with an expert committee will be more efficient. This is because the requirement to consult the ACPs currently set out in the Food and Environment Protection Act 1985 is very broad. The proposed expert committee would be able to offer advice on any matter within its remit. But it would not routinely be asked for advice to support decisions which do not raise new or contentious issues. This will enable the new committee to devote more time to the most important questions.

### Effectiveness

8.4 There are two broad ways in which the new arrangements should be more effective than those they replace. First, a non-statutory basis will provide greater flexibility, particularly because terms of reference can be updated to reflect the changing EU regulatory regimes. Second, the new body will take its place in a more coherent system for science advice across Defra. The work of the new body will fall under new arrangements to strengthen the science and evidence base to support policy across Defra. The new body will operate within a closer network of expert bodies overseen by Defra's CSA, supported by his SAC. This will provide greater co-ordination of scientific advice and evidence gathering within the Department, making the process as a whole more effective and flexible. These arrangements sit within wider Government reform for Arms-Length Bodies and measures led by the Government's Chief Scientific Adviser.

8.5 One difficulty with the current static statutory arrangements derives from the fact that the regulatory systems for pesticides now derive from two EU regimes on plant protection products (PPPs - agricultural, horticultural, amenity and garden pesticides) and biocidal products. Under these two regimes, decisions on the approval of active substances are taken at the EU level. Product authorisations are determined nationally but according to common rules. Even authorisation is taking an increasingly transnational dimension with decisions being taken on a European 'zonal' basis for PPPs and the possibility of 'Union authorisations' for biocides. Mutual recognition of authorisations in between member states is a common efficiency measure for both PPPs and biocides under their respective regulations.

8.6 All this means that there is less need for UK specific expert advice on UK applications for approval. There remains a strong need for independent advice on broader risk assessment and risk management issues. However, the role is changed and the bodies carrying it out need to be adaptable in the face of constantly developing EU regimes.

8.7 Non-statutory advisory bodies are inherently more flexible and nimble and can be adapted, for example to acquire new terms of reference. The change of status to the ACPs will allow the successor body to take on new, more flexible and strategic terms of reference. It will then be more straightforward to adapt the terms of reference in future to meet currently unforeseen changes in demand.

## Economy

- 8.8 The costs of the ACPs are modest. Defra pays around £25,000 per year for administering meetings, meeting Members' travel and subsistence costs, and for recruitment campaigns. The costs to Defra of the Secretariat based in the Health and Safety Executive amount to around £40,000 per year. Similar amounts are also drawn from industry funding. The costs of the successor expert committee are likely to be slightly less. The size of the committee is likely to be similar to the ACPs but, as a result of the changes outlined at 8.3, the new committee may not need to meet so frequently. Minor savings in the costs of recruiting members are expected for the successor body, as it is anticipated there will no longer be a requirement to involve independent Office of the Commissioner for Public Appointments (OCPA) assessors.
- 8.9 There are no potential jobs impacts arising from this proposal – the size of the very small Secretariat for this body (within the Health and Safety Executive) will remain unchanged.
- 8.10 Immediate transitional costs will be negligible. The existing and proposed Committees will require a similar range of expertise in meeting the demand for the type of advice required in the near future. Current members of the ACPs are fully aware that, subject to the completion of the transition, their membership will carry across to the successor body.

## Accountability to Ministers

- 8.11 Across the Defra evidence network, the reconstitution of advisory NDPBs as expert scientific committees has been focussed on improving transparency and securing appropriate accountability to Ministers.
- 8.12 The new expert committee will retain the high degree of independence and transparency that characterised the ACPs. It will carry out an independent and technical advisory function in a sensitive area which Government requires, which society values, and which is best delivered through other arrangements, for which the status of expert scientific committee best describes its role and function.
- 8.13 The new expert committee will bring together independent scientific experts and will work independently of Government and in an open manner. It will provide advice to the Ministers and to the FSA. It will be able to put advice direct to any of the Ministers where the Members consider this appropriate. The Ministers will be closely engaged with the committee's work, commissioning some of that work and considering its advice. They will also be involved in recruiting and appointing committee members. They will not control the committee's operations, which will remain at arms' length.

## **9. Compliance with the conditions in section 8(2) of the Public Bodies Act 2011**

- 9.1 Section 8(2) of the Public Bodies Act 2011 provides that a Minister may make an order under sections 1 to 5 only if the Minister considers that—
- (a) the order does not remove any necessary protection, and

- (b) the order does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

- 9.2 The Minister considers that the conditions in Section 8(2) are met. The ACPs statutory functions as advisory bodies have no impact on personal protections, rights or freedoms. It follows that abolition of the ACPs functions will not remove any necessary protection nor prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise. The proposals would not impose any new costs, administrative burdens, or information obligations on companies or third sector organisations.
- 9.3 The Government intends to reconstitute the committee as an expert scientific committee to continue its work after the draft Order comes into force. This will maintain the flow, openness and independence of advice.

## **10 Parliamentary activity during passage of the Public Bodies Act**

- 10.1 The debates that took place during the passage of the Public Bodies Bill are summarised below. Hyperlinks are provided to the full Hansard transcripts.
- 10.2 **During the Committee Stage of the Public Bodies Bill, 2nd sitting, 29 November 2010, in the House of Lords an amendment was tabled by Lord Whitty<sup>6</sup>** seeking to remove the ACPs from Schedule 1 of the Bill. The proposer expressed concern at the prospect that these bodies, together with the Advisory Committee on Hazardous Substances (ACHS), might be abolished and not replaced. Lord Henley, the then Defra Minister, explained why abolition was proposed and how the issues covered by the Committees would be covered in the future. The amendment was withdrawn.
- 10.3 **During the Report Stage of the Public Bodies Bill, 1<sup>st</sup> sitting, 23 March 2011, in the House of Lords an amendment was tabled by Baroness Quin<sup>7</sup>** seeking to remove the Advisory Committee on Pesticides from Schedule 1 of the Bill. The proposer again asked why the ACPs and ACHS were to be abolished, saying that they had done good work on sensitive public issues. Lord Henley described the proposed arrangements and how the proposed changes fitted with those planned for other Defra science advisory bodies. The amendment was withdrawn.
- 10.4 **During the Committee Stage of the Public Bodies Bill, 2nd sitting, 8 September 2011, in the House of Commons an amendment was tabled by Roberta Blackman-Woods and Jon Trickett<sup>8</sup>** seeking to remove the Advisory Committee on Pesticides from Schedule 1 of the Bill. Dr Blackman-Woods asked how the proposed expert committee would do a better job than

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<sup>6</sup> <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/101129-0003.htm>

<sup>7</sup> <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/110323-0001.htm#11032365000810>

<sup>8</sup> <http://www.publications.parliament.uk/pa/cm201011/cmpublic/publicbod/110908/pm/110908s01.htm>

the existing committees. David Heath, the then Defra Minister, explained how the arrangements would work and why they would be more effective. The amendment was withdrawn.

## 11 Consultation outcome

11.1 In accordance with Section 10 of the Public Bodies Act, a public consultation inviting comments on the Government's proposals on the future of the ACPs was carried out. It was launched on 8 March and closed on 15 May 2012. The three options in the consultation were:

- Option A Maintain the status quo - the ACPs continue as statutory, advisory Non-Departmental Public Bodies;
- Option B Abolish the ACPs and put nothing in their place;
- Option C Abolish the ACPs and reconstitute as an expert scientific committee.

11.2 The consultation explained that the Government's preferred option was to abolish the Committees as statutory NDPBs and to reconstitute them as a new expert scientific committee. However, the Government wished to consider alternative approaches and to hear respondents' views on their proposals.

11.3 Forty five responses were received. Thirty responses were received from the farming/growing industry and businesses, six from government advisory bodies and nine from the public or Non-Government Organisations (NGOs). Of these:

- No respondent supported Option B (to abolish the ACPs and put nothing in their place).
- Twelve respondents stated specifically that they are opposed to the abolition of ACPs and wished to maintain the status quo (Option A) but some suggested that they could accept Option C if the new body were constituted so as to address their concerns (which, as set out at paragraph 11.6 below, is the intention).
- Twenty four respondents supported the Government's preferred option (Option C) to abolish the ACPs and reconstitute as an expert scientific committee. However, some respondents in favour of this option attached a number of caveats in their support of its abolition.
- Eight respondents did not favour one option over the other, but provided comments on the remit and operation of the committee.
- One respondent suggested an alternative option - to abolish the committee and replace it with a new committee advising on the overall aspects of pest management with the priority on non-chemical pest control.
- Many respondents highlighted similar views as to the strengths of the ACPs and the qualities which they would wish to see replicated in any expert committee. These included: independence; impartiality; scientific expertise;

transparency; a direct line to Ministers; and the ability to initiate its own lines of enquiry.

- 11.4 The Minister wrote to the Chair of the ACPs on 16 October 2010 to inform them of the intention to abolish. The Committees were consulted, as required by Section 10(1)(a) of the PBA, on the proposal to abolish and were also consulted (at their 15 May 2012 meeting) on the remit and terms of reference of the proposed successor body.
- 11.5 In view of the support expressed during this consultation for the Government's preferred option, Defra is proceeding as planned to lay a draft Order to abolish the ACPs. The Government will work with the ACPs on the transitional and subsequent on-going arrangements.
- 11.6 The consultation showed strong support for a body to provide expert, impartial and independent advice on pesticides to the Ministers and FSA. The Government reaffirms that the proposed successor body to the ACPs would continue to take this role. The Committee would operate in line with the Government's Principles for Scientific Advice and the Code of Practice for Scientific Advisory Committees.
- 11.7 The new committee would normally provide advice to officials supporting the Ministers on request but, as at present, would be entitled to choose its own subjects for consideration and to put advice direct to the Ministers.
- 11.8 The new committee would draw together an appropriate range of experts – and the Government will invite the current members to transfer to the new body. Future members would be chosen in a similar way as at present (although appointments would be made by a senior official rather than by a Minister). The new committee would not be regulated by the Code of Practice of the Commissioner for Public Appointments but recruitment would be carried out in line with the guidance and principles on public appointments set by the Office of the Commissioner for Public Appointments. Members would be expected to act impartially and to follow the seven 'Nolan' principles of public life.
- 11.9 The Government's response to the consultation was published on 14 November 2014 and can be found on the Single Government Website at <https://www.gov.uk/government/consultations/the-future-of-the-advisory-committee-on-pesticides>

## **12. Guidance**

- 12.1 This instrument abolishes a body providing expert advice to Ministers. It is not necessary to publish guidance for stakeholders or enforcement agencies in relation to this measure.

### **13. Impact**

- 13.1 This Order has no impact on business or civil society bodies. It does not impose any new costs, administrative burdens or information obligations. No Impact Assessment has therefore been prepared for this instrument.
- 13.2 The abolition of the ACPs and replacement with an expert committee will retain a number of good features of the ACPs but will produce improvements in effectiveness and efficiency.
- 13.3 The impact on the public sector is essentially neutral as a successor body will be established with the same level of Secretariat support from the Chemicals Regulation Directorate (a directorate of the Health and Safety Executive). Transitional costs will be negligible and ongoing savings will be small.
- 13.4 An Equality Impact Assessment initial screening was carried out for the ACPs. This showed no equality impact – ACP Members and the Secretariat will continue in similar roles as at present.

### **14. Regulating small businesses**

- 14.1 The legislation does not affect small businesses.

### **15. Monitoring and review**

- 15.1 The body which replaces the ACP will continue to work openly, and papers for meetings will continue to be available with agendas and minutes routinely published and detailed papers available on request in line with freedom of information legislation (Freedom of Information Act and Environmental Information Regulations). Members of the public, specialist press and other stakeholders will be able to attend annual open meetings. The terms of reference for the new committee will be kept under review, in line with Cabinet Office guidelines for such bodies. The openness of the replacement body will continue to be kept under review in line with the Code of Practice for Scientific Advisory Committees. The oversight of the successor committee by the Defra CSA, supported by the Defra SAC, will provide an additional level of peer review and scrutiny.

### **16. Contact**

- 16.1 David Williams at the Department for Environment, Food and Rural Affairs (Tel. 01904 455363 or e-mail [davidp.williams@defra.gsi.gov.uk](mailto:davidp.williams@defra.gsi.gov.uk)) can answer any queries regarding the instrument.

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# Agenda Item 6

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**BMA**  
CYMRU  
WALES

## MAKING LAWS IN THE FOURTH ASSEMBLY

### Inquiry by the National Assembly for Wales' Constitutional and Legislative Affairs Committee

#### Response from BMA Cymru Wales

National Office

Swyddfa Genedlaethol

30 June 2014

#### INTRODUCTION

BMA Cymru Wales is pleased to provide a response to the Constitutional and Legislative Affairs Committee's inquiry entitled 'Making Laws in the Fourth Assembly'.

The British Medical Association represents doctors from all branches of medicine all over the UK; and has a total membership of over 150,000 including more than 3,000 members overseas and over 19,000 medical student members.

The BMA is the largest voluntary professional association of doctors in the UK, which speaks for doctors at home and abroad. It is also an independent trade union.

BMA Cymru Wales represents some 7,000 members in Wales from every branch of the medical profession.

#### RESPONSE

BMA Cymru Wales does not offer a response to every question put forward in the Committee's consultation letter, but does put forward responses to the following specific questions:

#### **Question 2. What impact has the Assembly's conferred powers model of legislative competence had on the drafting of Bills? What would be different if the Assembly had a reserved powers model?**

BMA Cymru Wales considers there is constant risk of legal challenge and referral to the Supreme Court directly arising from the current conferred powers model. We believe that this constant risk of legal challenge is extremely unhelpful in determining policy and advising Assembly Members.

Meanwhile, we note that Scotland and Northern Ireland have the ability to legislate freely without the constraints of the conferred powers model – and more importantly, without the risk of their legislation being regularly subject to constitutional challenge.

It is our view that the National Assembly's powers to legislate would be more clearly defined under a reserved powers model. There would then no longer be a need to preface advice with a constitutional law lecture regarding what can or cannot be done. In short, we consider that uncertainty would be removed for those uninitiated in the constitutional technicalities of the Welsh devolution settlement.

#### **Question 3. What is your view of the content of the Explanatory Memoranda which accompany Bills and how useful are they in explaining the purposes of Bills?**

We believe that these explanatory memoranda do serve to make the understanding of proposed legislation more accessible to stakeholder organisations. This may make it easier for such organisations, which may lack

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legal expertise, to engage with the democratic process and law-making. We therefore consider them to be helpful.

**Question 4. In a single chamber legislative system, what value to you place on the use of:**

**a) draft Bills for consideration before a Bill is formally introduced;**

A draft bill offers a clearer indication as to the Welsh Government's legislative intent – any such clarity is always to be welcomed. It can also offer greater opportunity for stakeholders and other interested parties to shape new legislation, something which may be of benefit in particular circumstances depending on the substance of what is being considered.

**b) more time for Stage 1 scrutiny;**

On some occasions the timeframe for responding to a Stage 1 consultation has proved challenging for a membership-based organisation such as ourselves. As such, it has sometimes been difficult for us to adequately consult with our members within the time available regarding points that they may wish to see included as well as to then seek endorsement of a draft response by the wider membership ahead of its submission.

There have also been occasions – e.g. during the Stage 1 scrutiny of the Human Transplantation (Wales) Bill – when we would have welcomed the opportunity to follow up our written evidence with the chance to present oral evidence to the committee considering the legislation. This was not, however, possible due to time constraints within the timetable the committee had adopted.

It also has to be remembered that, in addition to responding to consultations on proposed Bills, organisations such as BMA Cymru Wales may well be wishing to respond to numerous Welsh Government consultations and inquiries by National Assembly committees (and other organisations) that are not related to proposed legislation. This can provide a very challenging workload, particularly in an area like health. When balancing so many different consultations, it is therefore helpful if each is given an adequate timeframe within which organisations can respond. As a minimum, we would suggest that each consultation should be of at least two months' duration, and longer than that where possible. We note that this is not always the case.

**Question 5. What is your view of the need for, and impact of, curtailed scrutiny of Bills?**

We would suggest that this should be a more exceptional course of action than may have been the case up till now. Curtailed scrutiny creates a greater risk of poor legislation being enacted and reduces the opportunity for those legislating to consult with those who might have an interest in a new law being passed, including those who might be directly affected by it.

Whilst we note that both the Control of Horses (Wales) Bill and the National Health Services Budgets (Wales) Bill bypassed Stage 1 committee scrutiny, we are unconvinced that either of these Bills could be regarded of being of sufficient urgency for this to have been warranted. We would therefore suggest that clearer criteria should be adopted that would permit such curtailed scrutiny only when it is specifically justified by needs of urgency.

**Question 7. What is your view of the Welsh Government's and the National Assembly's capacity to legislate?**

The National Assembly's capability to legislate has improved greatly since the implementation of Part IV of the Government of Wales Act 2006, but Wales is still in an inferior position in comparison with the legislative competence which currently applies in both Scotland and Northern Ireland.

In relation to capacity, we are concerned that there does not always appear to have been time for committees to have undertaken sufficient scrutiny of certain Bills. We have observed on a couple of occasions, for instance, that a substantial number of amendments being considered by committees at Stage

2 of the legislative process have been disposed of within a single committee meeting. One example was the Health and Social Care Committee's consideration of 42 amendments to the Human Transplantation (Wales) Bill on 22 May 2013. This was dealt with in a single meeting lasting just over three hours. A second example was the Enterprise and Business Committee's consideration of the Active Travel (Wales) Bill on 4 July 2013 which disposed of 57 amendments in less than two and a half hours. This would suggest that many of these amendments were not considered in any great depth.

There is also perhaps a capacity issue as a result of the fact that the National Assembly's subject committees double-up as legislative scrutiny committees. This may mean that, at times, they have difficulty finding sufficient time to perform both roles as effectively as they would like. For instance we note that in July 2013, in order to accommodate more time to scrutinise the Social Services and Wellbeing (Wales) Bill, a planned oral evidence session on the 2013 measles outbreak in which we were scheduled to participate had to be cancelled by the Health and Social Care Committee late in the day. We are also aware that an inquiry by the Children and Young People Committee into childhood obesity had to be put on hold last year as it was determined that more committee time was required for scrutiny of the Further and Higher Education (Governance and Information) (Wales) Bill.

Taken together, these two examples might suggest that the current committee arrangements in the National Assembly do not provide sufficient capacity for them to undertake both roles. There is a danger that if National Assembly committees have too great a remit, then the work they undertake may be rushed or lacking in depth. This, in turn, can mean that there is inadequate time available for effective scrutiny of Bills under consideration.

**Question 8. What is your view of the Welsh Government's management of the legislative programme?**

Our observed impression is one of muddle. For instance, we have observed a lack of clarity concerning the interrelationship (or otherwise) between the proposed Future Generations (Wales) Bill and the proposed Public Health (Wales) Bill.

We further note that no explanation has been provided regarding the rationale for the dropping of a proposal for Health Impact Assessments between the publication of the Public Health (Wales) Green Paper and the more recent Public Health (Wales) White Paper. Nor has it been made clear why the proposed approach of the intended Bill appears to have been significantly narrowed in scope.

These examples imply a lack of a clear direction in the Welsh Government's legislative approach.

**Question 10. What other comments would you like to make about the making of laws?**

There can be no justification in our view for the current constitutional confusion that is caused to the medical profession (and wider civil society) by Wales having an inferior model of devolution compared to that which pertains in Scotland and Northern Ireland.

The sooner that Wales achieves a reserved powers model of devolution the better for all who have to both operate and work or engage within this system.

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By virtue of paragraph(s) vi of Standing Order 17.42

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## WLGA RESPONSE

### Constitutional and Legislative Affairs Committee Inquiry: Making Laws in the Fourth Assembly

30<sup>th</sup> June 2014



The WLGA welcomes this second inquiry in the law making in Wales and looks forward to continued engagement throughout the Committee's Inquiry and consideration of any forthcoming recommendations. The themes of the WLGA's response have also been discussed by Lawyers in Local Government, the society that represents Monitoring Officers in Wales.

#### **1. What constitutes good practice in the drafting of a Bill? For example in relation to:**

##### **(a) the policy development process leading up to introduction;**

The Welsh Government's policy development process varies across Ministerial portfolios and often varies within a portfolio depending on the nature and scope of a prospective Bill. Earlier informal and formal dialogue and engagement with stakeholders, notably with those public service bodies expected to exercise any prospective powers or duties, is critical not only in the development of the overarching policy direction but, in particular, the practicability of implementation of the legislation, including financial implications and any unforeseen impact.

In terms of formal consultation, the statutory Local Government Partnership Scheme states that:

"Normally twelve weeks will be allowed for consultation. However there may be circumstances, for example where the Welsh Government is constrained by legislative or other timetables, when a shorter period is necessary. The Welsh Government will endeavour to keep such instances to a minimum, but if this is not possible, an eight-week period could be considered realistically achievable."

The WLGA believes that twelve weeks consultation around each of the policy provisions and the draft legislation is necessary to allow appropriate and informed engagement with stakeholders.

Explanatory Memoranda could also be improved if there was greater consistency in including summarised detail of the policy consultation process. This would aid Assembly Members (AMs) in understanding whether (and, if so, why and by whom) it was contested that there was a need for legislation in the first place or whether the scope of the legislation was appropriate, which could inform AMs' or Committees' lines of inquiry.

Similarly, there is often an inconsistent approach across Welsh Government Departments regarding the level of engagement in either drafting or testing key clauses in legislation. Early constructive and mature dialogue with relevant external stakeholders, in particularly those bodies expected to implement the legislation, helps ensure that better legislation is drafted.

On a related point, it would provide greater clarity to the Assembly and the relevant committee if the Explanatory Memorandum included a Register of Organisations included in Pre-Legislative Discussions to ensure AMs could see the details of who, if anybody, had been engaged or involved in discussions on the drafting of a Bill.

**(b) the drafting accuracy and completeness of a Bill on introduction;**

The WLGA does not have any strong views on the drafting accuracy of Bills, however, there have been occasions where Draft Bills (for example, the draft Planning (Wales) Bill) have been incomplete, this means that it can prove difficult to provide informed comment on an incomplete Bill and some instances where there was little or no opportunity for consultation on or Assembly or stakeholder scrutiny of some substantial sections.

**(c) the balance between what is included on the face of a Bill and what is left to subordinate legislation;**

Whilst there are fewer examples than in the previous Assembly, there are still a number of framework Bills being introduced (such as the Active Travel (Wales) Act), the Social Services and Wellbeing (Wales) Act and the proposals outlined in the Environmental Bill White Paper).

Given such legislation allows statutory implements and statutory guidance to be introduced subsequently, there is often reduced consultation and scrutiny, and scope for post-hoc 'policy-creep'. Whilst this may have capacity implications, a more complete legislative package, including accompanying statutory guidance (at least in draft form) would improve the process and avoid the need for post-legislative amendments in some instances.

The forthcoming Future Generations Bill is a good example of the challenges of a Framework Bill; it is difficult to disagree with the high level targets that it is assumed will appear on the face of the Bill but the critical issue for the Bill will be the guidance that follows. If that is well thought through the Bill could have a substantial impact and help to drive performance across a wide range of services. However, if the guidance is poor it could encourage a 'compliance-based' tick box approach that has little impact on outcomes.

**(d) the accessibility of the language used (both English and Welsh);**

Explanatory Memoranda seek to provide a summary of objectives and rationale of a piece of legislation, a plain English/Cymraeg Clir summary of the draft and final Bill would improve accessibility and the general understanding of the public and, in some cases, the public service bodies subject to the legislation.

**(e) the way in which a Bill is structured;**

The structure of Bills could be improved significantly, notably where sections of a Bill seeks to amend previous legislation. It would be good practice and be much clearer and accessible if a Bill could restate the whole amended section rather than including 'drafting instructions' such as "after x, delete y and insert z'. Whilst this may have been a necessary drafting style during an era where legislation was read in a printed medium, this appears unnecessary and undermines accessibility and clarity in an era of modern electronic communications.

**(f) their fitness for purpose;**

Earlier dialogue and policy development consultation and engagement (as noted above) should lead to more relevant and proportionate legislation. There are some clauses in Bills, notably where new duties are conferred on local authorities, which have been questioned either because the new duties will not deliver the outcomes intended or would create a disproportionate regulatory burden.

**(g) the use of consolidation provisions;**

The WLGA supports the increased use of consolidation provisions, particularly where it improves the clarity and consistency of complementary legislation. That said, there are, on occasions, several Bills introduced in 'complementary' policy areas (for example in Planning, Environment, Future Generations) and it is not always clear how the Bills interrelate or connect. More explanation could therefore be included in Explanatory Memoranda and/or in consultation documents.

**(h) any other matter you consider to be of relevance.**

The Assembly's approach to managing amendments should be reviewed.

Whilst AMs are expected to complete a 'Notice of Amendment' form, Section 4 on 'Amendment Explanation' is marked as 'Optional'. This section should be mandatory, and AMs should state the rationale behind an amendment which should then be published to provide clarity, context and understanding, in effect, a supplement to the Explanatory Memorandum that the Government is expected to produce outlining the rationale for the Bill in the first place.

The Assembly should produce a summary of Amendments at Stage 3 and Report Stage for each Bill, as it does as a matter of course at the end of Stage 2 process. The approach to introducing a summary Report at the end of Stage 3 proceedings (e.g. for the Mobile Homes (Wales) Bill and the Social Services and Well-being (Wales) Bill) is a welcome innovation and should be introduced as the norm.

The Assembly should introduce a referral mechanism into the legislative process, whereby significant amendments (either in number or nature) introduced at Stage 3 may have a significant impact on the scope or practicability of the Bill and may require further Stage 1 scrutiny and engagement with relevant stakeholders. It may

not be a necessary process for all Bills, however, would be a valuable safeguard for scrutiny in a unicameral legislature.

The Assembly should keep an up-to-date schedule of commencement for each Act; whilst it may be clear when a Bill has been enacted there are various timescales and mechanisms for particular sections of an Act to be commenced and it is often unclear to organisations subject to the legislation to determine whether and when sections are in force. It would also be beneficial if the Assembly could with the UK Parliament to also include the commencement dates of Welsh or UK Bills with Welsh clauses passed in the UK Parliament. For example, the commencement provisions under S127 of the Housing (Wales) Bill are as follows:

**"127 Commencement**

*(1) The following provisions come into force on the day on which this Act receives Royal*

*Assent—*

*(a) section 124;*

*(b) section 125;*

*(c) this section;*

*(d) section 128.*

*(2) Sections 115 to 119 in Part 5 (Housing Finance) come into force after the end of the period of 2 months beginning with the day on which this Act receives Royal Assent.*

*(3) The remaining provisions of this Act are to come into force on a day appointed by the Welsh Ministers in an order made by statutory instrument.*

*(4) An order under this section may—*

*(a) appoint different days for different purposes;*

*(b) include such transitory, transitional or saving provision as the Welsh Ministers consider appropriate."*

Such a complicated and often protracted approach to commencement means that professionals and service users are unclear whether or when law is in force and, currently, the only way to find this out is to invest in often expensive access to commercial legislative databases.

**2. What impact has the Assembly's conferred powers model of legislative competence had on the drafting of Bills? What would be different if the Assembly has a reserved powers model?**

The WLGA supported the Silk Commission's recommendation that the UK Government should introduce a Bill introducing a reserved powers model in the Assembly. Such an approach would provide greater clarity around which powers could or could not be exercised by the Assembly. Currently, under the conferred model of legislative competence, there is less clarity and, crucially, differences in legal opinion around some areas of the Assembly's competence which has resulted in three referrals to the Supreme Court (Local Government Byelaws (Wales) Bill, the Agricultural Sector (Wales) Bill and the Recovery of Medical Costs for Asbestos Diseases (Wales) Bill).

Given the conferred powers model of legislative competence remains in place for the Assembly, it would be preferable for any inter-governmental discussions over competence to be settled in advance during initial legislative planning or where consensus was not possible, an early referral to the Supreme Court should be allowed. An earlier referral would avoid the risk of wasting considerable Welsh Government, National Assembly and stakeholders' resources and time shaping legislation through the Assembly's legislative process only for it to, potentially, be ruled out of competence once completed. Inevitably, there will remain a need for referral at the end of the legislative process to cover any amendments that may exceed competence, but this is less likely to undermine the substantive competence underpinning the wider Bill if this was approved at or before Stage 1.

### **3. What is your view of the content of the Explanatory Memoranda which accompany Bills and how useful are they in explaining the purposes of Bills?**

Explanatory Memoranda could also be improved if there was greater consistency in including summarised detail of the policy consultation process, as noted in 1a) above.

Explanatory Memoranda should also be strengthened in terms of their assessment of the financial implications of legislation. Good policy development and consultation should include a thorough assessment of the any financial implications, in particular for local authorities. New powers conferred upon local authorities tend to lead to increased spending. If this is not funded by Welsh Government it leads to an increase in council tax which confuses local accountabilities or impacts on the resources available for existing services. The UK Communities and Local Government Department provide UK Government Departments with good guidance for assessing the financial implications and justification of new powers and duties as part of its New Burdens' Doctrine. It would be useful to adopt such an approach in Wales.

### **4. In a single chamber legislative system, what value to you place on the use of:**

- (a) draft Bills for consideration before a Bill is formally introduced;**
- (b) more time for Stage 1 scrutiny;**
- (c) the optional Report stage at the end of Stage 3 proceedings (as for example in the Mobile Homes (Wales) Bill and the Social Services and Well-being (Wales) Bill.**

The WLGA would support the greater use of Draft Bills in aiding earlier engagement in the legislative process.

The WLGA would also welcome more time for Stage 1 to allow wider engagement, exploration and scrutiny of legislation. Although some Bills are narrow in scope and perhaps require less extensive engagement and scrutiny, many are broad and are inevitably complex requiring extensive consultation and engagement with relevant experts and stakeholders. The WLGA is often one of the earlier stakeholders to be invited to give evidence during the Stage 1 process, often with an expectation of written and/or oral evidence to be submitted within

a month or two a Bill being published. Most pieces of Assembly legislation often have significant and far-reaching resource or procedural ramifications for local authority governance or service delivery arrangements and the brevity of the current Stage 1 process can prove a challenge in gathering local authority professional or political perspectives, particularly those which have been through Councils' local democratic and decision-making processes.

As noted above, the introduction of a summary Report at the end of Stage 3 proceedings (e.g. for the Mobile Homes (Wales) Bill and the Social Services and Well-being (Wales) Bill) is a welcome innovation and should be introduced as the norm.

**5. What is your view of the need for, and impact of, curtailed scrutiny of Bills? In considering this issue you may wish to consider the scrutiny arrangements that applied to the following Bills in the 4th Assembly:**

**(a) the Agricultural Sector (Wales) Bill (procedures for Emergency Government Bills used)**

**(b) the Control of Horses (Wales) Bill (bypassed Stage 1 committee scrutiny)**

**(c) the National Health Service Budgets (Wales) Bill (bypassed Stage 1 committee scrutiny)**

Whilst it may be necessary for Governments to have some flexibility to introduce Emergency Government Bills on occasion, it should be a back-stop power and should follow clear agreed criteria set out in Standing Orders. It is important that each piece of legislation is subject to appropriate levels of scrutiny, both within and outside of the Assembly. It might therefore be appropriate that Standing Orders should build in post-legislative scrutiny where emergency legislation is introduced to be commenced after a set-period of time, in order to assess whether the legislation is effective or could be improved.

**6. What is your view of the scope for "fast-tracking" Bills within the Assembly's existing procedures?**

See above.

**7. What is your view of the Welsh Government's and the National Assembly's capacity to legislate?**

The WLGA notes that some of the Welsh Government's proposed legislative programme has not progressed within the timescales as originally set out (15 of the 20 Bills outlined in the Welsh Government's legislative programme for the years 2011-12, 2012-13 and 2013-14 have so far been introduced and/or enacted); this may be due to re-prioritisation of legislation, emerging policy developments and new priorities or may reflect capacity constraints.

The National Assembly's capacity to legislate (and stakeholders' capacity to engage in the legislative process) is inevitably impacted upon by the Welsh Government's planned management of the legislative programme, notably:

- the timetabling of legislation generally;
- the number (and scope) of Bills under scrutiny at any one time;
- the introduction of legislation at or around dates of Assembly Recess;
- the introduction of Emergency or urgent legislation (which may be introduced bypassing Stage 1 as noted above); and
- the tabling of substantial Stage 2 or Stage 3 Government amendments.

**8. What is your view of the Welsh Government's management of the legislative programme?**

See above.

**9. If you have had experience of following plenary and committee proceedings on the scrutiny of Bills, or participating in the process, what are your views on this experience and what improvements, if any, could be made?**

See above.

**10. What other comments would you like to make about the making of laws?**

The National Assembly is to be commended on the accessibility and navigability of its website, particularly around the legislative process, for example, the 'Guide to the Legislative Process' section (<http://www.assemblywales.org/bus-home/bus-legislation/bus-legislation-guidance.htm>) provides an excellent introduction to the process and the 'Progress of Assembly Bills' section (<http://www.assemblywales.org/bus-home/bus-legislation/bus-legislation-progress-bills.htm>) provides an easy to read summary of progress of each of the Bills, along with links to key accompanying documents or explanatory guidance around the legislative process.



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## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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<b>TITLE</b>	<b>Consultation on the draft National Assembly for Wales (Disqualification) Order 2015</b>
<b>DATE</b>	<b>14 January 2015</b>
<b>BY</b>	<b>Carwyn Jones AM, First Minister</b>

A consultation document seeking views on the draft National Assembly for Wales (Disqualification) Order 2015 has been published today on the Welsh Government website <http://wales.gov.uk/consultations/finance/disqualification-order/?&lang=en>

Section 16 of the Government of Wales Act 2006 allows an Order in Council made by Her Majesty to designate particular offices so that, if a person holds one of those offices, they are disqualified from being an Assembly member. Prior to each Assembly election a new Disqualification Order is made which sets out an updated list of disqualifying offices. These offices are additional to those which have been made disqualifying offices by the Government of Wales Act 2006 and other legislation.

This consultation seeks views on which offices should be included in that Order. I am keen to hear the views of stakeholders and will consider these carefully before the final draft of the Order is prepared. The consultation on these proposals will run for 8 weeks until 11 March 2015. Details of how to respond are set out in the consultation document. Following consideration of the responses, the draft Order will be brought forward for the Assembly's approval before formal submission to Her Majesty in Council later this year.

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