

REGULATORY APPRAISAL

LOCAL GOVERNMENT, WALES

THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) (VARIATION) (WALES) ORDER 2005

Purpose and intended effect of the measure

1. This Order relates to the Assembly's powers to vary Schedule 12A of the Local Government Act 1972. Schedule 12A sets out the categories of information which "principal councils" (i.e. county and county borough councils, National Park Authorities, fire authorities and also police authorities in Wales) should regard as "exempt information" and which may not be available for public access in respect of their meetings and documents, their committees and sub-committees. This revision is required to ensure compatibility with the Freedom of Information Act 2000, which became fully operational on 1 January 2005, and also the Data Protection Act 1998.
2. The Local Government (Access to Information) Act 1985 inserted a new Part VA to the Local Government Act 1972, which provided greater public access to meetings and documents of principal councils, committees and sub-committees than was previously the case. The 1985 Act also inserted a new Schedule 12A into the 1972 Act, which set out a number of categories and circumstances of exemption where "principal councils" are able to withhold information from disclosure to the public. Section 100I of the 1972 Act enables the Secretary of State to vary the items included in Schedule 12A. This power has been devolved to the Assembly.
3. Section 100J of the Local Government Act 1972, as inserted by the Local Government (Access to Information) Act 1985, includes National Park Authorities, police authorities and fire authorities within the definition of "principal councils".
4. The types of information included in Schedule 12A concern, in the main, information about individual employees, tenants or other members of the public, children, commercial contracts and negotiations, legal advice, crime and informants.
5. The Local Government (Access to Information) (Variation) Order 2005 will shortly be introduced in England. That England Order will, in broad terms, amend Schedule 12A to the Local Government Act 1972 in respect of English councils. The Assembly Order will also amend Schedule 12A to the 1972 Act so as to replicate the new English provisions and apply them to authorities in Wales.
6. Some of the descriptions of information listed in the existing Schedule 12A will be replaced by simpler and clearer descriptions:

- a single paragraph (paragraph 12 in the Schedule to the Order) will replace the current six paragraphs concerning personal information. The new paragraph is of wider application in respect of information relating to any particular individual rather than specified categories of particular individuals;
 - a replacement paragraph (paragraph 13 in the Schedule to the Order), which is of wider application in respect of information which would be likely to reveal the identity of an individual, such as a protected informant;
 - a single paragraph (paragraph 14 in the Schedule to the Order) will replace the four current paragraphs which deal with information relating to the financial or business affairs of any particular person (including the local authority which holds the information);
 - the wording in the paragraph, relating to the information which is the subject of legal professional privilege, has been simplified (see paragraph 16 in the Schedule to the Order).
7. Certain of the qualifications, which currently relate to descriptions of “exempt information” listed in Schedule 12A will be replaced by a single public interest test. The effect of the test is that information, which would otherwise be exempt information, will only be exempt if the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Also, some definitions have been updated or, where they have become superfluous as a consequence of the above amendments, have been removed.

Risk Assessment

8. The Order simplifies Schedule 12A, whilst at the same time bringing it into line with the provisions made in the Freedom of Information Act 2000 (FOI Act) and the Data Protection Act 1998. Failure to introduce the Order would mean that the existing Schedule 12A would not meet the requirements of the Freedom of Information Act 2000 or be fully compatible with the Data Protection Act 1998. “Principal councils” could be faced with balancing the requirements of conflicting pieces of legislation.

Options

Option 1: Do Nothing

9. Failure to introduce the Order would mean that the existing Schedule 12A would not meet the requirements of the FOI Act, or be fully compatible with the Data Protection Act 1998. “Principal councils” could be faced with additional costs as they would have to action FOI applications using potentially conflicting pieces of legislation. This could lead to an aggrieved applicant taking their case to court.

Option 2: Making the Legislation

10. This Order is concerned with primarily technical matters, designed to bring the existing Schedule 12A in line with the requirements of subsequent legislation and ensures that Schedule 12A is compatible with both the FOI Act and the Data Protection Act.

Benefits

11. Approval of the Order will ensure that Schedule 12A is compatible with the Freedom of Information Act 2000 and the Data Protection Act. The more simplified Schedule 12A will assist “principal councils” in their operation of the Freedom of Information Act.

Costs

12. The costs arising from the preparation of the Order will be met from existing Welsh Assembly Government running costs and “principal councils” will meet the cost of administration from within their existing budgets. Therefore, there are no additional financial implications arising from the introduction of this Order for either the Assembly or “principal councils”.

Competition Assessment

13. The introduction of this Order will not have any impact on other sectors and no competition filter is necessary.

Consultation

With Stakeholders

14. An 8 week consultation took place between 4 November 2004 and 31 December 2004. Those consulted were Chief Executives and Legal Officers of County and County Borough Councils, the Welsh Local Government Association, the Audit Commission in Wales, the Local Government Ombudsman, Fire Authorities, Police Authorities and the Information Commissioner for Wales.

15. The consultation was based on the document prepared by the Office of the Deputy Prime Minister (ODPM). “Local Authority Access to Information – a Consultation”, which contained the recommendations of their Review Group. This document contained a draft of the proposed ODPM Order. Wales consultees were invited to submit comments on whether similar arrangements should be introduced in Wales.

16. Twelve responses were received from Wales: nine were from representatives of local authorities; one from a fire authority; a joint response from the Police Authorities of Wales; and one from the Information Commissioner’s Office for Wales. Respondents welcomed the introduction of a similar order for Wales but raised concerns on two issues. The first concerned the initial proposal to remove exemptions from the current Schedule 12A, which deal with personal data. As a result of these concerns information relevant to the individual is now included in the Order

in one unified exemption (paragraph 12 of the Schedule to the draft Order).

17. The consultation also proposed that the draft Order incorporate provisions which would enable Standards Committees to treat the following as exempt information:
 - information relating to the personal circumstances of any person;
 - information which is subject to any obligation or confidentiality;
 - information which relates in any way to matters concerning national security; and
 - the deliberations of standards committees or their sub-committees in reaching any finding in relation to allegations of misconduct by local government members.
18. Respondents agreed that such Committees should have the right to operate in closed session if that was deemed appropriate. However, concern was expressed with the use of the term “deliberations” which is used in the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003, in operation in England. They considered that this could be interpreted too narrowly and instead favoured the term “proceedings”.
19. This will be given further consideration as part of the forthcoming review of the Regulations on Standards Committees planned for later this year. As such, provisions relating to Standards Committees have not been incorporated in the Local Government (Access to Information) (Variation) (Wales) Order 2005.
20. Owing to an administrative oversight the National Park Authorities were not included in the consultation. This oversight has now been corrected. On 11 May 2005 National Park Authorities were sent a copy of the original consultation papers together with a copy of the draft Order. Comments were asked for by 17 June 2005.
21. One response has been received – from the Snowdonia National Park Authority (SNPA). The SNPA have given their support to the inclusion of provisions relating to personal data. They are also in agreement that Standards Committees should operate in closed session but are concerned about the delay that will arise from their being considered for inclusion in regulations planned for later this year, as opposed to inclusion in this particular Order.
22. It is not proposed to make any policy changes to the draft Order as a result of the consultation with National Park Authorities.

With Subject Committee

23. The consultation paper, which issued on 4 November 2004, was also sent to Members of the Local Government and Public Services Committee. The Local Government and Public Services Committee also considered the draft Order and the draft Regulatory Appraisal at its meeting on 11 May

2005 (LGPS 05-05(p.2)). Subject to the outcome of the consultation with the National Park Authorities, the Committee recommended approval of the draft Order without amendment.

24. The Minister for Finance, Local Government and Public Services has since written to the Committee Chair advising her of the results of the consultation exercise with National Park Authorities.

Review

25. The impact of these policies is predictable and they are unlikely to need review in the foreseeable future.

Summary

26. This particular Order will impact on county and county borough councils, National Park Authorities, fire authorities and police authorities in Wales. The Order is designed to simplify Schedule 12A and ensure that it is compatible with the Freedom of Information Act 2000 and is compatible with the Data Protection Act 1998.