

Draft Regulatory Impact Assessment

This draft regulatory impact assessment has been developed for the draft Regulations following consideration of two options:

- Option 1: Maintain the status quo.
- Option 2: Make the General Power of Competence (Commercial Purpose) (Conditions) (Wales) Regulations 2021 as presented in the draft Regulations

Option 1: Maintain the status quo

Under this option the authorities would not be subject to any additional conditions when doing a thing for commercial purpose in the exercise of the general power of competence.

Authorities would be required to comply with the limitations, restrictions and conditions prescribed on the face of the 2021 Act (or in any other regulations made by the Welsh Ministers under their powers in the 2021 Act) when using the general power to do something for a commercial purpose.

Costs

There are no additional costs associated with this option.

Benefits

This option would deliver no additional benefits.

Option 2: Make the General Power of Competence (Commercial Purpose) (Conditions) (Wales) Regulations 2021 as presented in the draft Regulations

Under option 2 Regulations would be made to provide that:

- before exercising the power, an authority, namely a principal council, must prepare and approve a business case in support of the proposed exercise of the power.
- where an authority has supplied anything to the company through which the general power is being exercised, the authority must recover its costs from that company

The business case would be required to detail:

- (a) the aims and objectives of the proposed exercise of the general power
- (b) the costs, investments and other resources required to achieve those aims and objectives
- (c) the financial outcomes that are expected to be achieved by the proposed exercise of the general power

- (d) any other relevant outcomes that are expected to be achieved by the proposed exercise of the general power
- (e) any risks associated with the proposed exercise of the general power including an assessment of the severity of those risks, and any actions that the authority proposes to take to mitigate those risks.

Costs

It is anticipated that the requirements of the draft Regulations may result in some additional opportunity and administrative costs for local authorities.

It is envisaged that the majority of business cases would be prepared 'in-house' by authorities and as such the costs would be in respect of staff time to complete this work. Where an authority was considering doing a particularly large or complex thing for a commercial purpose they may consider engaging external contractors which would involve additional costs.

A key factor in calculating the costs to authorities of complying with these requirements will be the frequency at which they seek to exercise the general power to do something for a commercial purpose and the complexity of what they were seeking to do.

The general power is an enabling power, giving authorities the discretion to use the power if they wish to do so. As such the frequency with which the power would be exercised in this manner is uncertain.

Currently principal councils are required, under the Local Government (Best Value Authorities) (Power to Trade) (Wales) Order 2006 ("the trading order"), to prepare and approve a business case before exercising the power to trade provided to them in that order.

Principal councils have been trading under the trading order since 2006 and will have the systems in place so as to provide for the preparation of a business case if they wish to exercise that power. As such it is not anticipated that these Regulations would give rise to any transitional costs (such as familiarisation or training costs) to authorities.

These regulations will require principal councils to comply with the same requirements whether they are undertaking a trading operation under the power to trade provided in the trading order or in exercise of the general power of competence. Where an authorities wishes to trade in relation any of their ordinary functions they would be subject to the requirements of the trading order.

The requirement to recover costs from the company through which the authority is doing something for a commercial purpose may result in some administrative costs to the authority. It is anticipated these costs would be nugatory as it is expected that authorities would already have the relevant systems in place to complete this task. This requirement will also result in a transfer from the

company to the local authority, with the value reflecting the costs incurred by the authority in support of the commercial activity.

The Welsh Government are seeking to develop the cost estimates and it is intended that this draft Regulatory Impact Assessment will be refined and informed by the responses to the consultation.

Benefits

The preparation and approval of a business case before authorities exercise the general power of competence for a commercial purpose would help ensure that authorities fully consider what they are seeking to achieve, why and how they are going to achieve this, the likely financial implications and the benefits to their communities. This will support transparent and robust decision making, enabling decisions to be made in recognition of the potential consequences or risks and after their careful consideration.

While an authority might reasonably support the start-up of such a company, continuing subsidy or funding could both distort the market unfairly to the detriment of any existing businesses or potential entrants to the market. The requirement that an authority recover the full costs of any support or services it provides to the company through which the general power is being exercised for a commercial purpose will help ensure this does not occur.