
WELSH STATUTORY INSTRUMENTS

2022 No. 424 (W. 105)

LOCAL GOVERNMENT, WALES

**The Local Government (Relevant Authorities)
(Power to Trade) (Wales) Order 2022**

<i>Made</i>	- - - -	<i>4 April 2022</i>
<i>Laid before Senedd Cymru</i>		<i>6 April 2022</i>
<i>Coming into force</i>	- -	<i>5 May 2022</i>

The Welsh Ministers make the following Order in exercise of the powers conferred on them by sections 95(1)(a) and (3)(1), 96(1), (3)(b) and (c)(2) and 123(1) of the Local Government Act 2003(3).

Title, commencement, application and interpretation

1.—(1) The title of this Order is the Local Government (Relevant Authorities) (Power to Trade) (Wales) Order 2022 and it comes into force on 5 May 2022.

(2) This Order applies in relation to Wales.

(3) In this Order—

“company” (“*cwmni*”) means a company within the meaning of Part 5 of the Local Government and Housing Act 1989(4);

“ordinary functions” (“*swyddogaethau cyffredin*”) has the meaning given in section 95(7) of the Local Government Act 2003;

“relevant authority” (“*awdurdod perthnasol*”) means—

(a) county councils or county borough councils;

(1) Section 126 of the Local Government Act 2003 defines the appropriate person, in relation to Wales, as the National Assembly for Wales. The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32). Section 95 was amended by paragraph 3(5) of Schedule 7 to the Local Government and Public Involvement in Health Act 2007 (c. 28), paragraph 28 of Schedule 1 to the Local Government (Wales) Measure 2009 (nawm 2), S.I. 2021/356 (W. 107) and S.I. 2022/372 (W. 92). There are other amendments not relevant to this Order.

(2) Section 96 was amended by paragraph 3(6) of Schedule 7 to the Local Government and Public Involvement in Health Act 2007.

(3) 2003 c. 26.

(4) 1989 c. 42.

- (b) community councils which are eligible community councils within the meaning of section 30(1) of the Local Government and Elections (Wales) Act 2021 (“the 2021 Act”) **(5)**;
- (c) National Park authorities;
- (d) fire and rescue authorities, constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004**(6)** or a scheme to which section 4 of that Act applies;
- (e) corporate joint committees established by regulations made under Part 5 of the 2021 Act.

Authorisation to trade in function-related activities and conditions to be met before exercising the power to trade

2.—(1) Subject to paragraphs (2) and (3), a relevant authority is authorised to do for a commercial purpose anything which it is authorised to do for the purpose of carrying on any of its ordinary functions.

- (2) Before exercising the power conferred by paragraph (1), the relevant authority must—
 - (a) prepare a business case in support of the proposed exercise of the power, and
 - (b) approve that business case.
- (3) A “business case” under article 2(2) means a comprehensive statement as to—
 - (a) the aims and objectives of the proposed exercise of the 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 power;
 - (d) any other relevant outcomes that are expected to be achieved by the proposed exercise of the power;
 - (e) any risks associated with the proposed exercise of the power including an assessment of the severity of those risks, and any actions that the authority proposes to take to mitigate those risks;
 - (f) the impact (including on the terms and conditions of employment) on any staff that it intends to supply to a company through which it proposes to exercise the power;
 - (g) the intended arrangements for the staffing of the company through which it proposes to exercise the power, including the proposed terms and conditions of employment of any staff to be employed.

Publication of business case

3. A relevant authority must publish any business case approved in accordance with article 2(2) (b) as soon as reasonably practicable.

Requirement to recover costs etc

4. A relevant authority must recover the costs of any accommodation, goods, services, staff or any other thing that it supplies to a company through which it is exercising the power conferred by article 2(1), from that company.

(5) 2021 asc 1.

(6) 2004 c. 21.

Revocation

5. The Local Government (Best Value Authorities) (Power to Trade) (Wales) Order 2006(7) is revoked.

4 April 2022

Rebecca Evans
Minister for Finance and Local Government, one
of the Welsh Ministers

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Order)

Section 95 (power to trade in function-related activities through a company) of the Local Government Act 2003 (“the Act”) confers a power on the Welsh Ministers, by order, to authorise relevant authorities to do for a commercial purpose anything which they are authorised to do for the purpose of carrying on any of their ordinary functions (“the power to trade”) and to make further provision in relation to a relevant authority’s exercise of the power to trade. Section 96 of the Act confers a power on the Welsh Ministers to impose conditions on the exercise of the power to trade.

Under section 95(4) of the Act, the power to trade must only be exercisable through a company.

Article 1 of this Order specifies the relevant authorities to which this Order applies.

Article 2 authorises relevant authorities to do for a commercial purpose anything which they are authorised to do for the purpose of carrying on any of their ordinary functions. It also prescribes the conditions that a relevant authority must meet before exercising the power to trade.

Article 3 requires a relevant authority to publish any business case approved in accordance with article 2(2)(b) as soon as reasonably practicable.

Article 4 requires a relevant authority to recover any costs incurred by it for anything that it supplies to a company through which it is exercising power to trade, from that company.

Article 5 revokes the Local Government (Best Value Authorities) (Power to Trade) (Wales) Order 2006.

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