

**EXPLANATORY MEMORANDUM TO**  
**THE NATIONAL ASSEMBLY FOR WALES COMMISSION (CROWN**  
**STATUS) ORDER 2007**

**2007 No. 1118**

1. This explanatory memorandum has been prepared by the Wales Office and is laid before Parliament by Command of Her Majesty.

2. **Description**

The Order makes provision for the Assembly Commission to be treated as a Crown body for certain purposes and is made under paragraph 12 of Schedule 2 to the Government of Wales Act 2006 (GOWA 2006). It is necessary given the changes in the structure of the devolution settlement in Wales under GOWA 2006.

3. **Matters of special interest to the Joint Committee on Statutory Instruments on Statutory Instruments**

None

4. **Legislative Background**

- 4.1 Currently, under the Government of Wales Act 1998 (GOWA 1998), the National Assembly for Wales (“the GOWA 1998 Assembly”) is a corporate body which exercises its functions on behalf of the Crown. Under GOWA 2006, this corporate body will cease to exist and there will be a separate legislature (the National Assembly for Wales, “the new Assembly”) and executive (the Welsh Assembly Government, including the Welsh Ministers). GOWA 2006 also sets up the National Assembly for Wales Commission, which will provide property, staff and services to the Assembly. The executive functions that are currently vested in the GOWA 1998 Assembly will be transferred to and vested in the Welsh Ministers. The new Assembly will have new legislative powers to pass Assembly Measures.
- 4.2 Separation will help clarify the respective roles of the legislature and the executive. However, post separation, unlike the Welsh Ministers, the National Assembly for Wales Commission (“the Assembly Commission”) will not be a Crown body (i.e. a body which is a servant or agent of the Crown, such as government departments).
- 4.3 The Order provides that the Assembly Commission should be treated as a Crown body for certain purposes of the following enactments –
  - (a) the Employers Liability (Compulsory Insurance) Act 1969
  - (b) the Building Act 1984

- (c) the Value Added Tax 1994
- (d) the Data Protection Act 1998
- (e) the Licensing Act 2003
- (f) the Communications Act 2003
- (g) the Regulatory Reform (Fire Safety) Order 2005

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

The instrument technically extends to the whole of the UK but in practice its application is limited to Wales.

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

The Secretary of State for Wales has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of The National Assembly for Wales Commission (Crown Status) Order 2007 are compatible with the Convention rights.

## **7. Policy background**

- 7.1 GOWA 2006 received Royal Assent on 25 July 2006. The purpose of GOWA 2006 is to make provision about the government of Wales.
- 7.2 The Act effects the formal separation between the executive and legislative arms of the GOWA 1998 Assembly; it establishes the Welsh Assembly Government (made up of the First Minister, Welsh Ministers and their deputies and the Counsel General) as an entity separate from, but accountable to, the new Assembly. Most of the statutory functions of the GOWA 1998 Assembly will become functions of the Welsh Ministers.
- 7.3 The dissolution of the GOWA 1998 Assembly and the creation of the new Assembly and Assembly Commission will take place following the election in May 2007.
- 7.4 It is considered appropriate that the Assembly Commission should be treated for the purposes of certain enactments as a Crown body and thus subject to those enactments in the same way as Crown bodies. This will place the Assembly Commission in the same position as government departments and the Welsh Ministers under those enactments and will ensure that the Assembly is treated in the same way as other legislative bodies such as the Scottish Parliamentary Corporate Body and the Parliamentary Corporate Bodies. The Order provides that the Assembly Commission shall be treated as a Crown body for certain purposes of the following enactments:

Building Act 1984 – This Act provides for the making of building regulations. By virtue of this Order the Assembly Commission shall be treated as a government department for the purposes of section 44 and

section 87 of the Act. Section 44 applies the requirements of building regulations to the Crown and section 87 enables Crown bodies to agree with the relevant local authority that particular provisions of the Act shall apply in relation to Crown property. Section 87 of the Act has been commenced; however, section 44 has not. Consequently the Crown is not, at present, subject to building regulations. By treating the Assembly Commission as a Crown body, the Assembly Commission will be able to enter into agreements under section 87 of the Act and will not be subject to the requirements of building regulations.

Regulatory Reform (Fire Safety) Order 2005 – This 2005 Order reforms the law relating to fire safety in non-domestic premises and imposes general duties to ensure the safety of employees, take reasonable fire precautions and carry out a risk assessment. Article 49 of the 2005 Order provides that the Order shall apply to the Crown subject to certain exceptions. These exceptions exclude the application to the Crown of certain provisions of the 2005 Order (relating to alteration and enforcement notices, and criminal liability) and provide that others (the powers of inspectors and prohibition notices) shall bind the Crown only so far as they apply to premises owned by the Crown but not occupied by it. Article 49 also provides that nothing in the 2005 Order authorises the entry onto any premises occupied by the Crown. By virtue of this Order, these exceptions will also apply to the Assembly Commission.

Value Added Tax Act 1994 – The Order provides that the Assembly Commission shall be treated as a Crown body for the purposes of the VAT Act 1994. Treating the Assembly Commission as a Crown body will enable the Commission to be VAT registered without the need to meet the normal threshold for taxable activity. The Order also enables the Treasury to designate any part of the Assembly Commission as a government department under section 41(6) of the Act and ensures that a person acting on behalf of the Assembly Commission is always authorised to issue an invoice showing VAT.

Data Protection Act 1998 – The Data Protection Act 1998 binds the Crown, although the Act makes certain exceptions in relation to data processed by Crown bodies such as government departments (mainly either in the exercise of their functions or relating to their employee records). The Order applies these exceptions to the Assembly Commission. It provides that the Assembly Commission shall be treated as a government department for the purposes of section 63 of the Act. Thus the Act will bind the Assembly Commission which shall be treated as a person separate from any other government department. However, the Assembly Commission shall not be liable to prosecution under the Act.

The Order also provides that the Assembly Commission shall be treated as a government department for the purposes of paragraph 5(c)

of Schedule 2 and paragraph 7(1)(c) of Schedule 3 to the Act. Schedule 2 sets down a number of conditions, one of which must be met for the processing of personal data to comply with one of the limbs of the first Data Protection principle. The condition in paragraph 5(c) of Schedule 2 is that the processing is necessary for the exercise of any functions of a government department which, by virtue of this Order, shall include the Assembly Commission. Schedule 3 deals with the processing of sensitive personal data and the Order makes identical provision in relation to paragraph 7(1)(c) of that Schedule.

The Order provides that references to employment by or under the Crown or to a person in the service of the Crown in certain provisions of the Act shall be treated as including employment as a member of staff of the Assembly. Thus by virtue of section 33A of the Act, manual data concerning personnel matters in relation to members of staff of the Assembly, shall be exempt from the Data Protection principles and Part II of the Act. Secondly under section 63(5), a member of staff of the Assembly shall be subject to section 54A and 55 of, and paragraph 12 of Schedule 9 to, the Act. Finally under paragraph 4 of Schedule 7 to the Act, the Secretary of State will have the power by order to exempt from the subject information provisions of the Act personal data processed for the purposes of assessing any person's suitability for employment as a member of staff of the Assembly.

Licensing Act 2003 – Whilst the Crown is subject to the provisions of the Licensing Act 2003 (which reformed the alcohol and entertainment licensing systems), section 195 (3) of the Act provides that the Crown cannot be prosecuted under the Act. The Order provides that the Assembly Commission shall be treated as a Crown body for the purposes of section 195(3) and hence not liable to prosecution under the Act.

Communications Act 2003 – The Crown is exempt from the requirement for a television license. By virtue of this Order, the Assembly Commission will also be exempt from this requirement.

Employers Liability (Compulsory Insurance) Act 1969 – The Act requires employers to take out insurance to cover claims arising from personal injury to their employees. Crown bodies, such as government departments are exempt from this requirement. The Order provides that the Assembly Commission shall be treated as a Crown body for the purposes of the Act and thus exempt from this requirement also.

### *Consultation*

- 7.5 This Order makes provision to deal with the transition from the GOWA 1998 Assembly to the new arrangements under GOWA 2006,

and does not contain new policy on which public consultation is required. However, relevant interested parties have been consulted.

**8. Impact**

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

**9. Contact**

Susan Olley at the Wales Office Tel: 02920898568 or email: [susan.olley@walesoffice.gsi.gov.uk](mailto:susan.olley@walesoffice.gsi.gov.uk) can answer any queries regarding the instrument.