

**EXPLANATORY MEMORANDUM TO**  
**THE GOVERNMENT OF WALES ACT 2006 (TRANSITIONAL**  
**PROVISIONS) ORDER 2007**

**2007 No. 1270**

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

2. **Description**

This Order makes a number of transitional provisions which are appropriate given the changes in the structure of the devolution settlement in Wales under the Government of Wales Act 2006 (GOWA 2006)

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

None

4. **Legislative Background**

- 4.1 This Order, amongst others, is required to make provision for the transition from the National Assembly for Wales constituted by the Government of Wales Act 1998 (“the current Assembly”), and the new arrangements under GOWA 2006.
- 4.2 The current Assembly is a corporate body, and there is no legal separation of the executive and legislature within that body. Under GOWA 2006, this corporate body will cease to exist and there will be a separate legislature (the National Assembly for Wales constituted by GOWA 2006, “the new Assembly”) and executive (the Welsh Assembly Government, including the Welsh Ministers). GOWA 2006 also sets up the National Assembly for Wales Commission (“the Commission”) that will provide property, staff and services to the new Assembly. The executive functions that are vested in the current Assembly will generally be transferred to and vested in the Welsh Ministers, while the new Assembly will have legislative powers to pass Assembly Measures.
- 4.3 Schedule 11 of GOWA 2006 makes detailed provision relating to the arrangements necessary to ensure an effective transition from the current Assembly to the new Assembly and Welsh Assembly Government. Section 162(2) confers power on the Secretary of State to make appropriate further transitional provision including modification of Schedule 11.
- 4.4 Paragraphs 33 to 35 of that Schedule 11 specify the procedures of the new Assembly (“Assembly procedures”) that will apply to subordinate legislation made by the Welsh Ministers (using functions that will transfer from the current Assembly). The Order (article2(2)) inserts new paragraph

35A to make provision for the Assembly procedures to be followed for subordinate legislation made by the Welsh Ministers under section 2(2) of the European Communities Act 1972 (“the 1972 Act “) (as applied by section 59 of GOWA 2006 Act ) in conjunction with an enabling power in another enactment .

- 4.5 It is not generally possible for a statutory instrument made under an enabling power in one Act to be combined with an instrument made under an enabling power in another Act, if the Parliamentary procedures to be followed under the two Acts differ. That bar will apply equally to Assembly procedures, that is, the procedures of the new Assembly in relation to statutory instruments of the Welsh Ministers, the First Minister for Wales and the Counsel General to the Welsh Assembly Government: see the amendments made to the Statutory Instruments Act 1946 by paragraphs 1 to 3 of Schedule 10 to GOWA 2006. In practice, nearly all subordinate legislation of the Welsh Assembly Government will be made by the Welsh Ministers.
- 4.6 This bar is a particular difficulty where it is desired to exercise the power under section 2(2) of the 1972 Act together with another power to create a single new regime. If the powers are subject to different procedures, it may not have been possible to do this in a single instrument.
- 4.7 That difficulty was addressed in relation to statutory instruments made under section 2(2) of the 1972 Act and which are subject to Parliamentary procedures by amendments to Schedule 2 to the 1972 Act by section 29 of the Legislative and Regulatory Reform Act 2006. It is that difficulty in relation to Assembly procedures and statutory instruments made by the Welsh Ministers under section 2(2) of the 1972 Act that the new paragraph 35A in Schedule 11 to GOWA 2006 is addressing. It does so by applying the new paragraphs 2A and 2B of Schedule 2 to the 1972 Act to Assembly procedures governing statutory instruments made by Welsh Ministers under section 2(2) of the 1972 Act and which include provisions under powers in other enactments .The resulting Assembly procedures correspond to the Parliamentary procedures applying under paragraphs 2A and 2B .
- 4.8 The Order (article 2(3)) also inserts new paragraph 42A into Schedule 11 to GOWA 2006 which makes provision for the transfer of any criminal liability of the current Assembly. Although the current Assembly, as a Crown body, would not normally be subject to criminal liability, there are some instances where it could be subject to such liability. Under this provision, this liability will, upon abolition of the current Assembly, generally transfer to the Welsh Assembly Government, but in connection with the property rights and other liabilities of the current Assembly that are transferred to the Commission under the National Assembly for Wales (Transfer of Property, Rights and Liabilities) Order 2007 (S.I. 2007/1269) this liability will transfer to the Commission. This provision to make specific transfer of such liability is considered appropriate in light of case law such as *R.v Pennine Acute Hospitals Trust* [2006] 1All ER 1324

(C.A). Without this transitional provision, the criminal liability of, and therefore any possible prosecution against, the current Assembly could lapse upon its abolition.

4.9 Schedule 8 of the Government of Wales Act 1998 makes provision for a procedure to resolve a devolution issue arising in proceedings in relation to the current Assembly. A devolution issue means an issue for determination by the court or tribunal as to whether the existing Assembly has the power to do something, has acted outside its powers, or has failed to act when it should have done. Article 3 of the Order makes transitional provision with regard to devolution issues raised in relation to the current Assembly but which are undetermined by the time that body is abolished. Such issues will be treated as if they were raised in relation to the Welsh Ministers or the First Minister or the Counsel General to the Welsh Assembly Government under Schedule 9 to GOWA 2006 (which makes similar provision for devolution issues in relation to the new devolution settlement in Wales).

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

This Order is of UK extent but generally applies only 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 Government of Wales Act 2006 (Transitional Provisions) 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 GOWA 2006 effects the formal separation between the executive and legislative arms of the current Assembly; it establishes the Welsh Assembly Government (made up of the First Minister, other 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 current Assembly will become functions of the Welsh Ministers.

7.3 The dissolution of the current Assembly and the creation of the new Assembly will take place following the Assembly election in May 2007.

## *Consultation*

7.4 This Order makes provision to deal with the transition from the current Assembly and the new arrangements under GOWA 2006. It does not contain new policy on which public consultation is required, however, relevant interested parties have been consulted.

## 8. **Impact**

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

## 9. **Contact**

Cedric Longville at the Wales Office Tel: 020 7270 0552 or email: [cedric.longville@walesoffice.gsi.gov.uk](mailto:cedric.longville@walesoffice.gsi.gov.uk) can answer any queries regarding the instrument.