

AGRICULTURE (NORTHERN IRELAND) ORDER 2004

S.I. 2004 No. 3327 (N.I. 23)

EXPLANATORY MEMORANDUM

INTRODUCTION

1. The Agriculture (Northern Ireland) Order 2004, S.I. 2004 No. 3327 (N.I. 23) (referred to in this document as “the Order”) was made on 16 December 2004.
2. This Explanatory Memorandum has been prepared by the Department of Agriculture and Rural Development (“the Department”) in order to assist the reader in understanding the Order. It does not form part of the Order.

BACKGROUND AND POLICY OBJECTIVES

3. In 2001 the then Agriculture Minister, Mrs Brid Rodgers MLA, commissioned a review of the arrangements for higher education and research and development in agriculture and food science. The review, under the chairmanship of Professor Daniel O’Hare, concluded in 2002.
4. On 31 March 2003 the Parliamentary Under Secretary of State for Northern Ireland, Ian Pearson MP, announced the Government’s decisions on the O’Hare Report to the House of Commons. Key aspects were that a new independent body should be set up to deliver agricultural and related science services, the provision of education by the Department at the School of Agriculture and Food Science (SAFS) should be transferred to a University (Queen’s University Belfast was successful after a competitive selection process), and that the functions of the Agricultural Research Institute of Northern Ireland (ARINI) should be subsumed within that new body.
5. The Order is an important stage in preparing the legal framework that will enable these new structures to be established and allow them to function effectively as a core part of the Department’s ongoing programme for change.

CONSULTATION

6. There has previously been widespread consultation on these issues:
 - Professor O’Hare issued a Consultation Paper in September 2001 inviting comments to be taken into account during the course of his review.
 - The O’Hare Report was published in April 2002 and public consultation was invited until the end of August 2002.
 - Details of the Department’s response to the O’Hare proposals were announced in November 2002 and another public consultation period was facilitated on the measures until the end of February 2003.
 - Following that a Ministerial announcement of decisions was made in March 2003.
7. Further specific consultation on the Order was completed on 17 September 2004.

OPTIONS CONSIDERED

8. The O'Hare Report was produced by an independent review panel under a broad remit that allowed it to consider all of the available options in relation to future arrangements for agri-food higher education and provision of science services. It was also able to take cognisance of the comments and suggestions by interested parties that responded to its consultation exercise. The Department has accepted most of the proposals in the O'Hare Report and the policy decisions outlined at paragraph 4 above form the basis of the Order.
9. There will be a number of implications for staffing
 - No Department staff involved in teaching at SAFS will transfer to Queen's University – all staff employed in the Department's Science Service will transfer to AFBI under this Order;
 - ARINI staff will all transfer to AFBI; and
 - Employee rights under the Transfer of Undertakings (Protection of Employment) (TUPE) provisions will be fully guaranteed.

MAIN ELEMENTS OF THE ORDER

10. The Order has three main purposes:
 - to create a new organisation (AFBI) as an executive Non Departmental Public Body that will carry out a range of statutory and other scientific work - including research and development, across a range of agriculture and similar disciplines – for the Department, other government bodies and the private sector;
 - to repeal the Queen's University of Belfast Act (NI) 1928 and to amend provisions within the Agriculture Act (NI) 1949 for teaching and higher education science courses relating to agriculture, food and the environment; and
 - to dissolve ARINI, which has undertaken research and development in agriculture related subjects since 1927, and subsume its functions within the new AFBI; and accordingly, to repeal the Agricultural Research Station Acts (Northern Ireland), 1927 and 1931.

COMMENTARY ON ARTICLES

11. After the introductory and commencement provisions the order has three main parts reflecting the three main purposes described above.

Note: comments are not given where the wording is considered to be self-explanatory.

Article 1 – in addition to the title of the Order this Article sets out the commencement arrangements. Some provisions come into effect one month after the Order is made while others will be brought into effect by subordinate legislation at appropriate times to fit with the implementation timetable.

Article 3 creates AFBI and sets out its functions. It provides that the functions can be altered by subordinate legislation. It also introduces Schedule 1 in which much of the detailed arrangements are set out (status, arrangements for the Board, remuneration, staffing, assistance, committees, finance, annual reports, Commissioner for Complaints and Freedom of Information provisions).

Articles 4- 6 provide that work assigned by the Department and agreed in a work programme will become a statutory obligation on AFBI to do. In seeking commercial work AFBI must not prejudice the agreed work programme. This Article also contains important powers for the Department to give directions to AFBI though these directions should not put AFBI in breach of an existing contractual obligation.

Article 7 provides some of the enabling freedoms normally enjoyed by NDPBs. However where appropriate there are stipulations for obtaining prior approvals from the Department and the Department of Finance and Personnel.

Article 8 introduces Schedule 2 which sets out the detailed arrangements for the transfer to AFBI of certain property, rights, liabilities and staff of the Department. Schedule 2

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(Northern Ireland) Order 2004 No. 3327 (N.I. 23)*

provides for transfer orders to be made at appropriate times (to allow flexibility in case of variations to timetables).

Article 9 – provides powers to dissolve AFBI.

Article 10 provides for the dissolution of ARINI and introduces Schedule 3 which sets out the detailed arrangements for the transfer to the Department or AFBI of certain property, rights, liabilities and staff of ARINI. As with Schedule 2, Schedule 3 provides for transfer orders to be made at appropriate times (to allow flexibility in case of variations to timetables). Schedule 3 also provides for transitional accounting and reporting arrangements for ARINI.

Article 11 amends Section 5 of the Agriculture Act (Northern Ireland) 1949. The revised wording updates and clarifies the 1949 Act provisions. In particular it makes it clear that educational provision can include providing financial assistance and that assisting with research can be in any manner the Department thinks fit.

Article 12(1) provides that subordinate orders to amend the functions of AFBI or to dissolve AFBI have to be subject to affirmative resolution of the Assembly.

Article 12(2) relates to the need to provide for any sub-delegation in an Order. In this Order the power is only likely to be used in connection with Article 9 (possible future dissolution of AFBI).

Article 12(3) means that the orders transferring assets do not have to be printed, published, numbered and indexed as statutory rules on the basis that the orders are not of general public interest.

COMMENCEMENT

18. The main enabling provisions of the Order come into operation one month after the making of the Order. Other provisions will be enacted as the need arises. It is anticipated that AFBI will become fully functional in April 2006.