

EXPLANATORY MEMORANDUM TO
THE NATIONAL ASSEMBLY FOR WALES COMMISSION (CROWN
STATUS) (No.2) ORDER 2007

2007 No. 1353

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 will be made under paragraph 12 of Schedule 2 to the Government of Wales Act 2006 (GOWA 2006). It is appropriate 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**

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 Health and Safety at Work etc. Act 1974
 - (b) Ancient Monuments and Archaeological Areas Act 1979

- (c) Town and Country Planning Act 1990
- (d) Planning (Listed Buildings and Conservation Areas) Act 1990
- (e) The Welsh Language Act 1993
- (f) Health Act 2006

4.4. In order to understand the full range of purposes for which the Assembly Commission will be treated as a Crown body, it is necessary to read this Order together with the National Assembly for Wales Commission (Crown Status) Order (SI 2007/1118) which was made on 4th April 2007.

5. Territorial Extent and Application

The instrument technically extends to the whole of the UK but in practice its application is likely to be limited to Wales as the Assembly Commission will largely be exercising its functions in 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) (No 2) 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 other Crown bodies. This will place the Assembly Commission in a similar position to government departments and the Welsh Ministers under those enactments. This policy is effected by Order in Council made by Her Majesty under Schedule 2 paragraph 12 to GOWA 2006. Her Majesty has similar order making powers in relation to the Parliamentary

Corporate bodies (under sections 1(6) and 2(6) of Parliamentary Corporate Bodies Act 1992) ; the Scottish Parliamentary Corporate Body (under Schedule 2 paragraph 7 to the Scotland Act 1998) ; and the Northern Ireland Assembly Commission (under Schedule 5 paragraph 6 to the Northern Ireland Act 1998). Those bodies provide similar support services to their legislatures as the Assembly Commission will provide to the new Assembly.]

7.5 In considering for which purposes the Commission should be accorded Crown status, one relevant factor is the fact that the Commission and Assembly Government will continue to share certain premises following separation – this is relevant for example in relation to how to deal with health and safety legislation. It is also expected that the Commission will comply with the spirit of the legislation, even where it is not expressly bound by it because it has been accorded Crown status for certain purposes.

7.6 The Order provides that the Assembly Commission shall be treated as a Crown body for certain purposes of the following enactments:

(a) article 2 makes provision in respect of the Health and Safety at Work etc. Act 1974.

.It treats references to the Crown in section 36 (offences due to fault of other person) and section 48(1), (2), (3) and (4) (application to the Crown) as including the Assembly Commission. The main effect is that the Assembly Commission, like Crown bodies such as government departments, can not be prosecuted for offences under that Act.

(b) article 3 makes provision in respect of the Ancient Monuments and Archaeological Areas Act 1979 .

It treats the Assembly Commission as a government department for the purposes of section 50 (application to Crown land). This means that a monument on Assembly Commission land can be “scheduled” under the Act, but there is no power of entry over its land; and its interest in land can not be compulsorily acquired without its consent

(c) article 4 makes provision in respect of the Town and Country Planning Act 1990.

Part 13 of this Act as amended by the Planning and Compulsory Purchase Act 2004 applies to the Crown but only to the extent provided in that Part.

Article 4(2) treats references to the Crown and emanations of the Crown as including the Assembly Commission for specified provisions of that Act. In particular, the Assembly Commission, like other Crown bodies, will not be subject to prosecution for offences under that Act nor to enforcement action by a local planning authority except with its consent. Also land in which it has an interest can not be compulsory purchased without its consent.

.Article 4 (3) of the Order treats the Assembly Commission as a government department for the purposes of section 293. In

consequence, Part 13 of that Act applies to land in which the Assembly Commission has an interest as it does to land in which the Crown has an interest. It also makes the Assembly Commission the appropriate authority under Part 13 in relation to land belonging to it.

(d) article 5 makes provision in respect of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Listed Buildings Act”). It does so in similar fashion as article 4 and the Town and Country Planning Act 1990.

The Listed Buildings Act, as amended by the Planning and Compulsory Purchase Act 2004, applies to the Crown to the extent provided in section 82 A.

Article 5(2) treats references to the Crown in specified provisions of the Listed Buildings Act as including the Assembly Commission. This means that like other Crown bodies the Assembly Commission will not be subject to prosecution for offences under the Listed Buildings Act nor to enforcement action by the local planning authority except with its consent. It also means that compulsory purchase of land on which a listed building is in need of repair requires the consent of the Assembly Commission where it has an interest in that land.

Article 5(3) treats the Assembly Commission as a government department for the purposes of section 82 C. (expressions relating to the Crown). This means that land in which the Assembly Commission has an interest is treated for the purposes of the Listed Buildings Act as land in which the Crown has an interest. It also makes the Assembly Commission the appropriate authority for land belonging to it..

(e) article 6 makes provision in respect of the Welsh Language Act 1993. It does so by treating the Assembly Commission as the servant or agent of the Crown for the purposes of Part 2 of that Act. This means that the Assembly Commission is not a public body for the purposes of Part 2 of that Act and so can not be made subject to an order under section 6 (1)(o) requiring it to prepare a Welsh language scheme. The power to make an order under section 6 (1)(o) will vest in the Welsh Ministers on the abolition of the existing Assembly. By excluding the Assembly Commission from being a public body for these purposes, this maintains the proper separation of the Assembly Commission as servant of the new Assembly as legislature from the regulatory powers of the Welsh Assembly Government under Part 2 of that Act. In addition to the expectation that the Assembly Commission will, like other Crown bodies in Wales, adopt its own Welsh Language scheme voluntarily under Part 2 of that Act., Schedule 2 paragraph 8(3) to GOWA 2006 imposes on the Assembly Commission a duty to treat the Welsh and English languages on the basis of equality in exercising its functions.

(f) article 7 makes provision in respect of Chapter 1 of Part 1 of the Health Act 2006. Chapter 1 of Part 1 of the Health Act 2006 makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke free. It does not apply to the Crown

and so Crown property is exempt from the smoking ban introduced by virtue of Part 1. By virtue of this Order, the Assembly Commission and its land will be similarly exempt.

Consultation

7.7 The 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 e-mail: susan.olley@walesoffice.gsi.gov.uk can answer any queries regarding the instrument.