

# Explanatory Memorandum to the Welsh Language (Wales) Measure 2011 (Transfer of Functions, Transitional and Consequential Provisions) Order 2012

This Explanatory Memorandum has been prepared by the Department for Education and Skills of the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

## **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Welsh Language (Wales) Measure 2011 (Transfer of Functions, Transitional and Consequential Provisions) Order 2012 and I am satisfied that the benefits outweigh any costs.

*Leighton Andrews AM*

Minister for Education and Skills

2 March 2012

## **Description**

1. The Order transfers the Welsh Language Board's function of promoting and facilitating the use of the Welsh language to the Welsh Government, makes provision about the preparation of the Board's final statement of accounts and annual report and makes changes to other legislation to repeal a reference to the Welsh Language Board and to substitute references to the Welsh Language Board with references to the Welsh Language Commissioner. The Order will come into force on 1 April 2012.

## **Matters of special interest to the Constitutional and Legislative Affairs Committee**

2. None.

## **Legislative background**

3. This Order is made under sections 150 (Orders and regulations), sub-section (5) and section 154 (Transitional and consequential provision etc) of the Welsh Language (Wales) Measure 2011 ('the Measure').

4. The Order is subject to approval of the Assembly (the affirmative procedure). Section 150(2)(k) provides that an order made under section 154 that contains a provision amending, repealing or otherwise modifying an enactment (other than an enactment contained in subordinate legislation) may not be made unless a draft of the instrument has been laid before and approved by a resolution of the National Assembly for Wales. This Order contains provision amending, repealing and modifying enactments and has therefore been laid before the National Assembly for Wales for approval by resolution of the National Assembly for Wales.

## **Purpose & intended effect of the legislation**

### *Transfer of functions*

5. On 1 April 2012, the Welsh Language Commissioner will be established and the Welsh Language Board abolished. On that date, the functions conferred on the Board by section 3 of the Welsh Language Act 1993, functions of promoting and facilitating the use of the Welsh language, will transfer to the Commissioner under section 143(2) of the Measure. Section 143(3) of the Measure envisages that an order under section 154 of the Measure may, in addition, transfer the Board's functions under section 3 of the 1993 Act to the Welsh Ministers.

6. Article 3 of the Order, which is made under section 154 of the Measure, provides for the transfer of the Board's functions under section 3 of the 1993 Act to the Welsh Ministers in addition to the transfer of those functions to the Commissioner under section 143(2) of the Measure.

7. This will result in the Welsh Ministers, as well as the Commissioner, having the function of promoting and facilitating the use of the Welsh language. Some of activities undertaken by the Board to promote and facilitate the Welsh language, including providing financial support to Welsh language organisations such as the Urdd and Mentrau Iaith, will be carried out by the Welsh Government after 1 April 2012. It is anticipated that the Commissioner will focus on the regulatory functions conferred upon the Commissioner by the Measure.

#### *Transitional provisions*

8. On 1 April 2012, the Board will be abolished before it can comply with paragraphs 12 (Accounts) and 13 (Annual reports) of Schedule 1 to the Welsh Language Act 1993 by completing its final statement of accounts in relation to the financial year 1 April 2011 to 31 March 2012 and completing its annual report on the exercise of its functions during the same period..

9. Article 4 of the Order provides that the Board's final statement of accounts will be prepared by the Welsh Ministers, and submitted by them to the Auditor General for Wales before 31 August 2012. The Auditor General for Wales will be required to examine, certify and report on the statement of accounts. The Auditor General for Wales is also required by the Order to lay a copy of the report before the National Assembly for Wales.

10. Article 5 of the Order provides that the Board's final annual report must be prepared by the Welsh Ministers and a copy laid by them before the National Assembly for Wales.

#### *Consequential provisions*

11. Articles 6 to 13 make amendments to various items of primary and secondary legislation which currently refer to the Welsh Language Board. The amendments include, where appropriate, repeal of references to the Board and replacement of references to the Board with references to the Commissioner.

12. Article 6 repeals the reference to the Welsh Language Board in Part I of Schedule 4 of the Government of Wales Act 1998. The bodies contained in that Part of Schedule 4 (Public bodies subject to reform by the Assembly) can by order made by the Welsh Ministers gain or lose their statutory functions. The abolition of the Board means that the reference to the Board in this Schedule is no longer required.

13. Article 7 changes the reference to the Board to a reference to the Commissioner. This means that from 1 April 2012 onwards the Children's Commissioner for Wales may review the effect on children that the exercise or proposed exercise of the Commissioner's functions may have.

14. Article 8 changes the reference to the Board to a reference to the Commissioner in Schedule 1 of the Freedom of Information Act 2000. As a result, from 1 April 2012, the Commissioner will be a 'public authority' for the

purposes of section 1 of the Freedom of Information Act 2000. Section 1 of the Freedom of Information Act 2000 provides that a person making a request of a public authority is entitled to be informed in writing whether that authority holds information of the description specified in the request, and, if that is the case, to have that information communicated to him, subject to the exemptions and to other provisions set out in the Freedom of Information Act 2000.

15. Article 9 changes the reference to the Board to a reference to the Commissioner so that the Commissioner will be a 'listed authority' for the purposes of the Public Services Ombudsman (Wales) Act 2005. This means that, from 1 April 2012, certain complaints about the Commissioner's exercise of his or her functions may be investigated by the Public Services Ombudsman for Wales.

16. Article 10 changes the reference to the Board in the Commissioner for Older People (Wales) Act 2006 to a reference to the Commissioner to ensure that, from 1 April 2012 onwards, the Older People's Commissioner for Wales may review the effect on older people that the discharge or proposed discharge of the Commissioner's functions may have..

17. Article 11 changes the reference to the Board to a reference to the Commissioner in Schedule 19 of the Equality Act 2010. Section 149 of the Equality Act 2010 imposes duties on public authorities to have regard, in exercising their functions, to, for example, the need to eliminate discrimination. Public authorities are specified in Schedule 19 and include the Board. The effect of this article will be that, from 1 April 2012, the Commissioner will be a public authority for the purposes of section 149 of the Equality Act 2010.

18. Article 12 replaces the reference to the Board in section 16 of the Local Government (Wales) Measure 2009 with a reference to the Commissioner. The Local Government (Wales) Measure 2009 confers powers and imposes duties on relevant regulators. Relevant regulators are specified in section 16 of the Measure and include the Board in the exercise of its functions of investigating breaches of Welsh language schemes under section 17 of the 1993 Act. The Board's functions under section 17 of the 1993 Act will transfer to the Commissioner on 1 April 2012 under section 143 of the Measure. The effect of this article will be that the Commissioner will be a relevant regulator from 1 April 2012 in the exercise of its functions under section 17 of the 1993 Act.

19. Article 13 replaces the reference to the Board in the Children and Young People's Plan (Wales) Regulations 2007 with a reference to the Commissioner. As a result, from 1 April 2012, before preparing a Children and Young People's plan, a local authority will have to consult with the Commissioner.

## **Consultation**

20. Information under this heading is included in the Regulatory Impact Assessment at Part 2.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **Options**

#### **Option 1: make the legislation**

21. Welsh Ministers are able to make this Order under sections 150(5) and 154 of the Welsh Language (Wales) Measure 2011 (“the Measure”).

#### **Transfer of functions**

22. Section 143(2) of the Measure will be brought into force on 1 April 2012 and will transfer to the Welsh Language Commissioner the functions conferred upon the Welsh Language Board by section 3 of the Welsh Language Act 1993, functions of promoting and facilitating the use of the Welsh language. Making this Order enables the same functions to be transferred also to the Welsh Ministers on 1 April 2012..

23. Therefore, if this Order is made, following abolition of the Welsh Language Board and the establishment of the Welsh Language Commissioner on 1 April 2012, Welsh Ministers as well as the Welsh Language Commissioner, subject to the approval of this Order by the National Assembly for Wales, will have the functions of promoting and facilitating the use of Welsh.

#### **Transitional provisions**

24. Paragraphs 12 and 13 of Schedule 1 to the Welsh Language Act 1993 require the preparation by the Welsh Language Board in relation to each accounting year (from 1 April to 31 March in the following year) of a statement of accounts and an annual report on the exercise by it of its functions during that accounting year. Because of the abolition of Welsh Language Board on 1 April 2012, the Board will be unable to comply with this requirement for the period 1 April 2011 to 31 March 2012. This Order makes provision to ensure that a statement of accounts and an annual report are prepared in relation to the Welsh Language Board for the period 1 April 2011 to 31 March 2012. This Order requires the Welsh Ministers to prepare the statement of accounts and the annual report. This Order also prescribes the procedures to be followed in both cases, and in the case of the statement of accounts it also imposes functions upon the Auditor General for Wales.

25. Welsh Ministers are best placed, as sponsors of the Welsh Language Board, to prepare the statement of accounts and the annual report. It would not be appropriate for the Welsh Language Commissioner, which will have had no role in overseeing the Welsh Language Board, to carry out this duty.

#### **Consequential amendments**

26. Making this Order also provides for changes to primary and subordinate legislation to remove references to the Welsh Language Board from other legislation and, in some cases, to replace those references with a reference to the Welsh Language Commissioner.

27. This will ensure that the Welsh Language Commissioner, to whom many of the Welsh Language Board's functions will transfer on 1 April 2012, will be subject to the same legislation as the Welsh Language Board, such as duties in relation to freedom of information and under equality legislation.

## **Option 2: do nothing**

28. Welsh Ministers could decide not to exercise their powers, under sections 150 (5) and 154 of the Welsh Language (Wales) Measure 2011, to make this Order.

29. However, this would result in a failure to transfer the functions to promote and facilitate the Welsh language, under section 3 of the Welsh Language Act 1993, to the Welsh Ministers.

30. Failure to make this order will mean that no statement of accounts and annual report in relation to the Welsh Language Board will be prepared for the period 1 April 2011 to 31 March 2012.

31. In addition, failure to make this Order will mean that, for example, the Welsh Language Commissioner will not be subject to the statutory duties which apply to the Welsh Language Board in relation to freedom of information and under equality legislation.

## **Costs and benefits**

### **Option 1: make the legislation**

32. There are no costs associated with this option for the business, voluntary sector, local government and others.

33. As previously estimated in the RIA to the Welsh Language (Wales) Measure 2011, the staff costs associated with implementing the Measure is around £200k in 2011-12, which is being met from the Welsh Government's existing budgets. A small proportion of this total staff cost will be incurred in delivering the work associated with this Order.

### **Option 2: do nothing**

34. There are no costs associated with this option. However, failure to make the Order would result in, for example, failure to prepare a statement of accounts and annual report for the Welsh Language Board for the period 1 April 2011 to 31 March 2012 and failure to amend legislation to ensure that the Welsh Language Commissioner is subject to the same statutory duties as the Welsh Language Board.

### **Consultation**

35. No public consultation has been carried out in relation to the policy underpinning the Order or on the draft Order, as the Order will not have a direct impact on the public, private or voluntary sectors.

### **Competition Assessment**

36. No competition assessment has been undertaken as this Order will not affect business, charities or the voluntary sector.

### **Post implementation review**

37. The arrangements will be reviewed as part of the project closure procedures of the project to implement the Welsh Language (Wales) Measure 2011.