

Explanatory Memorandum to the Welsh Language Board (Transfer of Staff, Property, Rights and Liabilities) 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 Board (Transfer of Staff, Property, Rights and Liabilities) Order 2012 and I am satisfied that the benefits outweigh any costs.

Leighton Andrews AM

Minister for Education and Skills

7 March 2012

Description

1. The Order provides for the transfer of the Welsh Language Board's ('the Board') staff, property, rights and liabilities to either the Welsh Language Commissioner ('the Commissioner') or the Welsh Ministers. The Order also makes associated provision regarding the Welsh Ministers' and the Commissioner's rights of access to Board records. 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 section 150 (Orders and regulations), subsection (5) and section 146 (Other provision) of and paragraphs 1 and 2 of Schedule 12 (Abolition of Welsh Language Board: other provision) to the Welsh Language (Wales) Measure 2011 ('the Measure').

4. The Order is to come into force on 1 April 2012, when the Board is abolished and the Commissioner is established. As a result of the abolition of the Board, provision needs to be made in legislation regarding the Board's staff, property, rights and liabilities. The Order transfers the Board's staff, property, rights and liabilities to either the Welsh Ministers or the Commissioner.

5. The Board's function of promoting and facilitating the use of Welsh under section 3 of the Welsh Language Act 1993 will transfer on the 1 April to the Commissioner. The transfer of this function to the Commissioner will occur as a result of the commencement, by order, of section 143(2) of the Measure. It is proposed that in addition to transferring to the Commissioner, the Board's section 3 functions will also transfer to the Welsh Ministers on 1 April by virtue of an order made by the Welsh Ministers under section 154 of the Measure. That order is subject to the affirmative resolution procedure and the National Assembly will have the opportunity to approve that draft order by resolution on the 27 March 2012.

6. This Order is subject to the negative resolution procedure of the National Assembly for Wales.

Purpose & intended effect of the legislation

Transfer of staff, property, rights and liabilities

7. On 1 April 2012, the Board's staff, property, rights and liabilities will transfer, under this Order, to either the Welsh Ministers or the Commissioner.

8. On 1 April 2012 30 members of the Board's staff who accepted an offer to transfer to the employment of the Welsh Government will transfer and become Welsh Government staff. This transfer of staff is necessary as a result of the Welsh Government's decision to assume responsibility from 1 April for much of the Board's work in relation to the provision of grants for the promotion and facilitation of the use of Welsh. These transferring staff will continue with the activities they currently undertake, for example, providing and monitoring grants to bodies such as the Urdd and the Mentrau Iaith. The remainder of the Board's staff who accepted an offer to transfer to the employment of the Commissioner will transfer to the Commissioner on 1 April.

9. Apart from certain exceptions, the majority of the Board's property will transfer, under this Order, to the Commissioner. The property excepted from the transfer to the Commissioner will transfer to the ownership of the Welsh Ministers.

10. One specialist chair, for use by a member of staff transferring to Welsh Government, will transfer to the ownership of the Welsh Ministers. Board property which relates exclusively to particular projects undertaken by the Board, including 'Twf' and 'Mae dy Gymraeg di'n grêt' will also transfer to the ownership of the Welsh Ministers.

11. In addition, the majority of the Board's records will transfer to the Welsh Ministers, apart from some exceptions. These exceptions relate to those areas of the Board's work, such as the approval and monitoring of Welsh language schemes and in relation to terminology and translation, which will, as of 1 April, be continued by the Commissioner.

12. The Order makes provision for rights of access to Board records that will transfer to either the Welsh Ministers or the Welsh Language Commissioner on the transfer date.

13. The Order provides for the transfer of the Board's rights and liabilities to either the Welsh Ministers or the Commissioner. For example, where the responsibility for grants to bodies transfer to the Welsh Ministers, rights and liabilities arising in relation to these grants will also transfer and become rights and liabilities of the Welsh Ministers.

14. The Board's rights and liabilities in relation to members of staff who have not accepted an offer to transfer to either the Commissioner or the Welsh Government and former members of staff will also transfer to the Welsh Ministers.

Consultation

15. 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

16. The Welsh Ministers are able to make this legislation under section 150 (Orders and regulations), subsection (5) and section 146 (Other provision) of and paragraphs 1 and 2 of Schedule 12 (Abolition of Welsh Language Board: other provision) to the Measure.

17. This legislation is necessary since, as a result of the abolition of the Board, provision needs to be made regarding the transfer of staff, property, rights and liabilities of the Board.

Option 2: do nothing

18. The Welsh Ministers could decide not to exercise their powers under section 150, subsection (5) and section 146 of and paragraphs 1 and 2 to Schedule 12 to the Measure.

19. However, failure to make the legislation would mean that no staff, property, rights or liabilities of the Board would transfer on the Board's abolition to either the Welsh Ministers or the Commissioner.

Option 3: transfer all staff, property, rights and liabilities to either the Welsh Ministers or the Commissioner

20. The Welsh Ministers could, under the Measure, provide for the transfer of the entirety of the Board's staff, property, rights and liabilities to transfer in one direction: to either the Commissioner or the Welsh Ministers exclusively.

21. This approach would not accord with the Welsh Ministers' decision, as issued in a written statement of 8 February 2011 ('Transferring the activities of the Welsh Language Board') that the Welsh Government, on abolition of the Board, would assume responsibility for the majority of the Board's work in relation to grants for the promotion and facilitation of the use of Welsh and in light of the fact that the Board's regulatory work in relation to language schemes will be continued by the Commissioner.

Costs and benefits

Option 1: make the legislation

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

23. As previously estimated in the RIA to the Measure, 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

24. There are no costs associated with this option, apart from those associated with staff costs in implementing the Measure. However, failure to make the Order would result in the Board's staff, property, rights and liabilities not transferring to either Welsh Ministers or the Commissioner.

Option 3: transfer all staff, property, rights and liabilities to either the Welsh Ministers or the Commissioner

25. There are no costs associated with this option apart from those associated with staff costs in implementing the Measure. However, following this approach would mean that either the Welsh Ministers or the Commissioner would not have the capacity to deliver on the function of promoting and facilitating the use of Welsh, which will transfer to both bodies under the Measure on 1 April 2012.

Consultation

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

Competition Assessment

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

Post implementation review

28. The arrangements will be reviewed as part of the project closure procedures of the project to implement the Measure.