

Explanatory Memorandum to Government of Wales Act 2006 (Commencement of Assembly Act Provisions, Transitional and Saving Provisions and Modifications) Order 2011

This Explanatory Memorandum has been prepared by the Department of the First Minister and Cabinet and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of Government of Wales Act 2006 (Commencement of Assembly Act Provisions, Transitional and Saving Provisions and Modifications) Order 2011.

Carwyn Jones AM
First Minister

8 March 2011

1. Description

1.1 The draft instrument provides for the coming into force of the Assembly Act provisions following the yes vote in the referendum on the law-making powers of the National Assembly for Wales. The order will commence the Assembly Act provisions in Part 4 of the Government of Wales Act 2006 (GOWA 2006) which give the Assembly the power to make Assembly Acts. The order sets out the coming into force date, saving provisions for any remaining Assembly Measures passed by the Assembly and makes modifications to existing legislation appropriate with the coming into force of Assembly Act provisions.

2. Matters of special interest to the Constitutional Affairs Committee

2.1 None.

3. Legislative background

3.1 A referendum has been held in accordance with section 103 GOWA 2006. Section 105 (2) of the Government of Wales 2006 provides that if there is a "yes" vote in the referendum Welsh Ministers may by order make provision for the Assembly Act provisions to come into force on a specified date. The Assembly Act provisions as defined in section 103(8) of GOWA, are sections 107 and 108, and sections 110 to 115. These provisions set out the procedure for making Acts of the Assembly and extent of the Assembly's

legislative competence. When the Assembly Act provisions come into force section 106 provides that Part 3 of GOWA 2006, which contains provisions relating to the making of Assembly Measures, will cease to have effect. Section 105(3) details that this order can also make modifications of enactments, prerogative instruments or any other instrument or document appropriate in connection with the coming into force of the Assembly Act provisions. This instrument will be made in pursuance of sections 105(2) and (3) and 157(2) and the draft is subject to the approval of the Assembly (the affirmative procedure) in accordance with section 105(4).

4. Purpose & intended effect of the legislation

- 4.1 Following the “yes” vote in the referendum held on 3 March 2011 the purpose of the order is to now commence the Assembly Act provisions in Part 4 of GOWA to enable the Assembly to use the new powers to pass Assembly Acts. The order has been laid shortly after the referendum result to enable it to be made before the dissolution of the Assembly on 1 April 2011.
- 4.2 The intention is that the order will come into force on 5 May 2011. Once the Assembly Act provisions come into force on 5 May section 106 provides that Part 3 of GOWA 2006 ceases to have effect and that the Assembly will no longer have power to pass Assembly Measures. Therefore provision has been made in the Order to make sure that Part 3 continues to have effect for the purpose of enacting Assembly Measures which will have been passed before the end of this Assembly, but have not been approved by Her Majesty in Council.
- 4.3 The order also makes provision for modifications to legislation which are appropriate in connection with the coming into force of the Assembly Act provisions. GOWA 2006 is amended to make sure that there will be an official print of every Assembly Act and that a certified copy of it is sent to the Queen’s Printer to be printed. Assembly Acts and Letters Patent are to be appropriately preserved by the National Library for Wales and to be made available for public inspection at reasonable times. Further modifications are also to be made to amend, where necessary, enactments which refer to Assembly Measures so that they refer to Acts of the Assembly.
- 4.4 Three amendments to legislation that currently refers to Assembly Measures but needs to refer to Assembly Acts have been identified as necessary, firstly section 7(8) and (9) of the Local Government Act 2000 has been amended in the draft order. Section 7 gives Welsh Ministers power to alter legislation requiring local authorities to prepare, produce or publish plans and strategies. The Welsh Ministers’ powers under this section are linked to the legislative powers of the National Assembly for Wales. The amendment provides for the Welsh Minister’s powers to be defined by reference to the Assembly’s legislative competence in reference to Assembly Acts, where it previously referred to Assembly Measures. Consequently the reference in section 7 (9) to section 94 (4) of GOWA 2006

becomes a reference to section 108 (4) – the corresponding provision in Part 4 of GOWA 2006. The effect of these provisions is that an order under section 7 cannot make provision otherwise than in relation to Wales.

- 4.5 Similarly section 123(6) of the Local Transport Act 2008 is to be amended. This section allows information obtained by UK Ministers, Government Departments, local authorities or other statutory bodies to be disclosed to Welsh Ministers in relation to a Welsh trunk road charging scheme and to allow the Secretary of State to charge a reasonable fee for supplying or obtaining information. The definition of a Welsh trunk road charging scheme is made in relation to a scheme made by or under an Assembly Measure. However, as Schedule 5 to GOWA 2006 will be replaced by Schedule 7 to the GOWA 2006 and as trunk road charging schemes are within the Assembly's legislative competence, the reference needs to be changed to trunk road charging schemes made by or under an Assembly Act. The amendment will allow Welsh Ministers to continue to seek information on trunk road charging schemes in relation to an Assembly Act.
- 4.6 Regulation 2(4) of the Controlled Drugs (Supervision of Management and Use) (Wales) Regulations 2008 has also been amended in the draft order. This amendment will ensure that if an Act prohibits the disclosure of information the regulations cannot override that prohibition and require that information to be disclosed. The Regulations only currently refer to Assembly Measures so that if an Assembly Measure prevents the disclosure of information that information cannot be disclosed under the regulations.
- 4.7 Section 67 of the Education and Skills Act 2008, is another provision which refers to Assembly Measures, but not to Assembly Acts. Section 67 makes provision for situations in which an Assembly Measure has made provision requiring 16 to 18 year olds to participate in education and training. It enables the Secretary of State to make an order that makes provision in relation to Wales corresponding to the employment-related provisions made by sections 19 to 36 of the 2008 Act. However, the Secretary of State already has powers under section 150 of the Government of Wales Act 2006 to make "such provision as the Secretary of State considers appropriate" in consequence of any provision made by or under an Act of the Assembly. Therefore it is not considered necessary to extend section 67 to Assembly Acts. The question of what provision could be made by an Assembly Act and what provision might more appropriately be made by the Secretary of State in consequence of an Assembly Act is one which should properly be determined by considering specific proposals, as and when they are brought forward.
- 4.8 The order provides for section 41(4)(a) of the Constitutional Reform Act (2005) to be amended. This section defines "devolved matters" which may be decided by the Supreme Court. "Devolved matters" includes referral to the Supreme Court of Assembly Measures and Legislative Competence Orders, as specified in sections 99 and 96 of GOWA 2006 respectively. The reference to section 96 will be redundant once the Assembly Act provisions

come into force on 5 May, since no Legislative Competence Orders will require referral to the Supreme Court. Reference to section 99 will remain in case there is a reference between now and the coming into force of the order.

5. Consultation

5.1 Consultation has taken place with the following:

- National Library for Wales
- The National Archives
- The Clerk of the National Assembly for Wales
- The Presiding Officer of the National Assembly for Wales

The Secretary of State for Wales has also been informed about the policy intentions in this draft order.

6. Regulatory Impact Assessment (RIA)

6.1 A Regulatory Impact Assessment has not been carried out as the commencement order has no impact on business or voluntary organisations. Commencement Orders bringing into force primary legislation are also an exception to the Welsh Ministers' policy of carrying out a Regulatory Impact Assessments as detailed in section 4.2 of the Welsh Ministers' Regulatory Impact Assessment Code for Subordinate Legislation.