

EXPLANATORY MEMORANDUM TO
THE GOVERNMENT OF WALES ACT 2006 (AMENDMENT) ORDER 2015
2015 No. XXXX

1. This Explanatory Memorandum has been prepared by the Wales Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument (“the Order”) would amend Schedule 7 to the Government of Wales Act 2006 (“the 2006 Act”) so as to confer legislative competence upon the National Assembly for Wales (“the Assembly”) to make modification of, or confer power by subordinate legislation to make modification of, section 79 (sustainable development) of the 2006 Act.

2.2 This Order itself does not make any other change, but would allow the Assembly to amend section 79 of the 2006 Act.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 Section 108 of the 2006 Act, together with Schedule 7, define the Assembly’s competence to pass Acts of the Assembly. The 2006 Act contains provisions specifying that an Act of the Assembly cannot make modifications of the 2006 Act [Schedule 7, Part 2, Paragraph 5, sub-paragraph (1)].

4.2 However, Part 2, paragraph 5, sub-paragraph (2) of Schedule 7 to the 2006 Act lists specific provisions of the 2006 Act to which sub-paragraph (1) does not apply, and so which can be modified by an Act of the Assembly (or such an Act can confer powers by subordinate legislation to modify).

4.3 Section 109 of the 2006 Act specifies that Her Majesty may by Order in Council amend Schedule 7 to the Act. Orders must be approved by a resolution of each House of Parliament and, except in the case of the first such Order, by a resolution of the Assembly.

4.4 This Order amends paragraph 5(2) of Part 2 of Schedule 7 to the 2006 Act to include section 79 (Sustainable development). This means that an Act of the Assembly will be able to modify section 79 of the 2006 Act.

- 4.5 The intention is to amend section 79 (sustainable development) of the 2006 Act through provision in the Well-being of Future Generations Bill (the “WFG Bill”), which was introduced into the Assembly by the Welsh Government on 7 July 2014 and which is currently undergoing scrutiny by the Assembly. Following the making of this Order, an amendment to this Bill will be tabled to include a provision amending section 79 of the 2006 Act, **so that the duty in the 2006 Act for promoting sustainable development and reporting on it are consistent with the duties in the Well-being of Future Generations (Wales) Bill.**
- 4.6 The Bill, subject to the will of the Assembly and to Royal Assent, should become law in April 2015.

5. Territorial extent and application

This instrument amends the 2006 Act and has the same territorial extent as that Act. Although it extends to the whole of the United Kingdom, its practical application is limited to Wales.

6. European Convention on Human Rights

The Rt. Honourable Stephen Crabb MP, Secretary of State for Wales, has made the following statement:

“In my view the provisions of the Government of Wales Act 2006 (Amendment) Order 2015 are compatible with the Convention rights.”

7. Policy background

- 7.1 Duties placed on Welsh Ministers relating to sustainable development are part of the current Welsh devolution settlement. The Welsh Government is in the process of legislating through the Well-being of Future Generations Bill to add depth and detail to sustainable practice across the public sector in Wales and enshrine the commitment to sustainable development by requiring specified public sector organisations to make progress to contribute to the well-being of a sustainable Wales.
- 7.2 The current duty placed on the Welsh Ministers by section 79 of the 2006 Act is to publish a sustainable development scheme setting out how they will promote sustainable development; report on how the scheme has been implemented each financial year; and report on the scheme's effectiveness.
- 7.3 Reviews of the effectiveness of this provision suggest that the existing duty needs strengthening and stakeholders agree with this proposition.
- 7.4 The independent reviews of the implementation of the duty have criticised the statutory scheme for *“being seen as one of a number of competing priorities,*

rather than the means by which the [Welsh] Government manages its competing priorities"¹.

- 7.5 This has also been recognised by the current Commissioner for Sustainable Futures for Wales in his independent commentary on the Welsh Government's Sustainable Development Annual Report 2012/13, where he highlighted *"systemic weakness in the current governance structures for sustainable development and the associated reporting of progress"*.
- 7.6 The WFG Bill seeks to address these weaknesses by ensuring that the Welsh Ministers (together with specified public bodies) set well-being objectives that are aligned with the well-being goals provided for within the WFG Bill, and that these goals are being achieved in a sustainable way. This means applying the sustainable development principle set out in the WFG Bill by employing five approaches to governance of collaboration (working together); long term thinking (future proofing); prevention (avoiding problems from arising in the first place); integration (looking at all the goals together); and citizen centred policymaking (engaging with people).
- 7.7 The WFG Bill strengthens existing governance arrangements to ensure the needs of the present are met without compromising the ability of future generations to meet their own needs (the sustainable development principle). The Bill sets well-being goals for the pursuit of the "common aim" of improving the economic, social and environmental well-being of Wales. Specified public bodies will contribute to the well-being goals through the setting and meeting of well-being objectives in accordance with the sustainable development principle; establishes the office of the Future Generations Commissioner for Wales; and establishes a Public Services Board for each local authority area in Wales, each required to prepare and publish assessments of local well-being and local well-being plans.

8. Consultation outcome

- 8.1 There has been no public consultation on this draft Order. A number of public consultations have already taken place on the primary legislation which the Welsh Government has introduced which relates to the topic to which this Order applies as described below, including the impact on the existing duty.
- 8.2 An engagement event held in December 2011 to investigate what legislative measures stakeholders considered appropriate highlighted support for the proposal to legislate in respect of sustainable development.

¹ Effectiveness Review of the Sustainable Development Scheme, 31 January 2012.
<http://wales.gov.uk/topics/sustainabledevelopment/publications/effectivenessreview2012/?lang=en>

- 8.3 A consultation on new legislation in respect of sustainable development in Wales ran from 9 May to 17 July 2012. Stakeholders wanted a duty placed on the Welsh Ministers which went further than the existing provisions requiring a 'scheme to promote' sustainable development.
- 8.4 A white paper was published in December 2012 with specific proposals on a new sustainable development law in Wales. Consultation on this ran from 3 December 2012 to 4 March 2013 and generated 3927 responses (including 3749 campaign responses), which directly informed the development of the WFG Bill.

9. Guidance

No guidance has been, or will be issued in relation to this Order. This Explanatory Memorandum explains the purpose and policy context of the Order.

10. Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies. A full impact assessment was carried out on the WFG Bill at the time of its introduction to the National Assembly for Wales and was revised following Stage 2 scrutiny.

11. Regulating small business

This Order does not apply to small business.

12. Monitoring and review

This Order makes changes permitting the modification by the Assembly of the duty on the Welsh Ministers in respect of sustainable development in the 2006 Act. The impact of the legislation which brings such modification forward will be reviewed by the Welsh Government. There are no plans for a separate monitoring and review of the effects of this Order.

13. Contact

- 13.1 Queries about the content of the instrument or this memorandum should be addressed to Alison Rees, Wales Office, (Tel: 029 2092 4208, email: alison.rees@walesoffice.gsi.gov.uk).
- 13.2 Susan Olley, Wales Office, can answer legal queries about the instrument (Tel: 029 2092 4215, email: susan.olley@walesoffice.gsi.gov.uk).