

EXPLANATORY MEMORANDUM TO
THE GOVERNMENT OF WALES ACT 2006 (TRANSITIONAL
PROVISIONS) (ASSEMBLY GENERAL SUBORDINATE LEGISLATION)
ORDER 2007

2007 No. 1171

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 to ensure the validity of general subordinate legislation of the National Assembly for Wales constituted by the Government of Wales Act 1998 (“the 1998 Act”) made under its executive procedure notwithstanding that members of that Assembly (“the existing Assembly”) may not have 40 working days to table a motion to revoke such legislation or if they do table such a motion the existing Assembly fails to consider it.

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

None

4. **Legislative Background**

- 4.1 Under the 1998 Act, the existing Assembly is a single corporate body. However, it is to be abolished by the Government of Wales Act 2006 (“the 2006 Act”) when it will be replaced by a separate legislature (“the new Assembly”) and executive (“the Welsh Assembly Government”).
- 4.2 Assembly general subordinate legislation (AGSL) of the existing Assembly is defined in section 58(6) of the 1998 Act and means subordinate legislation of the existing Assembly required to be made in a statutory instrument, that is not subject to any Parliamentary procedure and is not local in nature
- 4.3 Section 66 of the 1998 Act specifies procedures that must be followed by the existing Assembly before it can make AGSL. These include a draft of it being laid before and approved by a resolution of the existing Assembly after considering a report on the instrument by its Legislation Committee (the name of the subordinate legislation scrutiny committee established under section 58 of the 1998 Act).

- 4.4. Section 67 of the 1998 Act permits the existing Assembly in its standing orders to allow its executive committee (see section 56 of the 1998 Act - that committee is now known as the Assembly Cabinet) to determine that AGSL can be made without complying with these procedural requirements. However, in such a case, section 67(3) of the 1998 Act provides that a member of the existing Assembly may, within 40 working days, move a motion that that AGSL be revoked. Working day for these purposes is defined in section 67(7).
- 4.5 The standing orders of the existing Assembly contain, in standing order 24, provision allowing the Assembly Cabinet to disapply these procedural requirements. Making AGSL under this standing order is commonly referred to as using the executive procedure.
- 4.6 The existing Assembly is to be abolished by the 2006 Act (see in particular Schedule 11 paragraph 22(1) as to when that will be). Its members will, by virtue of section 2(5)(b) of the 1998 Act, cease to be members of it at the end of the day preceding the poll at the ordinary election to be held in May 2007 under section 3 of the 1998 Act, when members of the new Assembly will be elected. That poll is to be held on the 3rd May and so members of the existing Assembly will cease to be members at the end of the 2nd May 2007.
- 4.7 Schedule 11 paragraph 25(2) to the 2006 Act disapplies section 67 of the 1998 Act during the initial period. The initial period is defined in section 161(5) of the 2006 Act, but in essence means the period between the ordinary election on 3rd May 2007 and the time when the First Minister of the new Assembly is appointed and functions transfer from the existing Assembly to the Welsh Ministers etc.
- 4.8 The Order provides that the validity of AGSL made without a draft of it having been laid before and approved by resolution of the existing Assembly is unaffected by the fact that members of the existing Assembly have less than 40 working days to move a motion to revoke such AGSL or, if they do move such a motion, by the failure of the existing Assembly to consider it. It also provides that the validity of such AGSL is unaffected by any failure to refer the AGSL after it is made to the Legislation Committee for consideration where the AGSL was made without a report from that Committee. The Clerk of the new Assembly is required to lay before that Assembly the AGSL to which the Order applies as soon as is reasonably practicable after the end of the initial period.

5. Territorial Extent and Application

The instrument extends to the United Kingdom, but its application is primarily in respect of the existing Assembly and its members

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The 2006 Act received Royal Assent on 25 July 2006. The purpose of the 2006 Act is to make provision about the government of Wales.
- 7.2 The 2006 Act effects the formal separation between the executive and legislative arms of the existing Assembly; it establishes the Welsh Assembly Government (made up of the First Minister, Welsh Ministers and their deputies and the Counsel General) separate from, but accountable to, the new Assembly. Most of the statutory functions of the existing Assembly will become functions of the Welsh Ministers.
- 7.3 The abolition of the existing Assembly and the creation of the new Assembly and the Welsh Assembly Government will take place following the election in May 2007.

Consultation

- 7.4 This order makes provision to deal with the transition from the existing Assembly to the new arrangements under the 2006 Act, and does not contain new policy on which public consultation is required. Therefore, there has been no public consultation. 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

Cedric Longville at the Wales Office, Tel: 020 7270 0552 or e-mail: cedric.longville@walesoffice.gsi.gov.uk can answer legal queries regarding this instrument.