

**EXPLANATORY MEMORANDUM TO  
THE GOVERNMENT OF WALES ACT 2006 (LOCAL GOVERNMENT  
(CONTRACTS) ACT 1997) (MODIFICATIONS) ORDER 2007**

**2007 No. 1182**

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 applies the Local Government (Contracts) Act 1997 (“the 1997 Act”) with appropriate modifications to contracts entered into by the Welsh Ministers, the First Minister for Wales (“the First Minister”), the Counsel General to the Welsh Assembly Government (“the Counsel General”) and the National Assembly for Wales Commission (“the Assembly Commission”). It is appropriate given the changes in the structure of the devolution settlement in Wales under the Government of Wales Act 2006 (“GOWA 2006”).

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

None

4. **Legislative Background**

- 4.1 At present, under the Government of Wales Act 1998 (“GOWA 1998”), the National Assembly for Wales (“the current Assembly”) is a single corporate body.
- 4.2 Under GOWA 2006, there will be a separate legislature (the new Assembly) and executive (the Welsh Assembly Government), together with the National Assembly for Wales Commission (“the Assembly Commission”).
- 4.3 In respect of the Welsh Assembly Government, functions, including the power to enter into contracts, will be vested in the Welsh Ministers, the First Minister or the Counsel General.
- 4.4 The new Assembly will not be a corporate body and therefore will not have the legal capacity to enter into contracts. The Assembly Commission, which will be a corporate body, will have the functions of providing property, staff and services to the new Assembly, and will be able to enter into contracts for the purposes of, or in connection with, those functions.
- 4.5 The 1997 Act was passed in response to problems which had arisen where local authorities had entered into contracts without a power to

do so, and the contracts had subsequently been declared void and unenforceable as a result. That Act clarifies the powers of a local authority to enter into contracts in certain circumstances, and provides that, if a certification procedure is followed in relation to a contract, then the local authority's power to enter into that contract cannot be challenged in private law. It can still be challenged in public law on an application for judicial review but if a Court were to rule on a judicial review that a local authority did not have the power to enter into the certified contract, the Act allows the Court to declare that the contract should be taken to have effect as if the local authority did have the power to enter into it.

- 4.6 Section 39 of GOWA 1998 empowered the Secretary of State to make an Order applying the 1997 Act to contracts entered into by the current Assembly. The National Assembly for Wales (Local Government (Contracts) Act 1997) (Modifications) Order 1999 (S.I. 1999/1545) was made under that power. A new Order is necessary, under section 68 of, and paragraph 4(7) of Schedule 2 to, GOWA 2006, because of the four new contracting entities that will be brought into existence by that Act.
- 4.7 Section 68 of GOWA 2006, like section 39 of GOWA 1998, gives the Secretary of State a power to make an Order applying the 1997 Act to contracts entered into by the Welsh Ministers, the First Minister or the Counsel General, subject to appropriate modifications. Paragraph 4(7) of Schedule 2 to GOWA 2006 gives the Secretary of State an identical power in relation to contracts entered into by the Assembly Commission. The Secretary of State has made this Order in exercise of those powers.
- 4.8 The modifications of the 1997 Act in relation to contracts entered into by the Welsh Ministers, the First Minister and the Counsel General are set out in Article 2 and Schedule 1 to the Order. That Schedule provides that references in the 1997 Act to a local authority are to be read as a reference to the Welsh Ministers, the First Minister or the Counsel General, as appropriate according to whichever of them is entering into the contract in question. It also modifies the certification procedure and other references in the 1997 Act to reflect the legislative and audit framework within which the Welsh Ministers, the First Minister and the Counsel General will operate under GOWA 2006. In particular, a copy of the certificate relating to a certified contract must be given not only to the other party to the contract, but also to the principal accounting officer for the Welsh Ministers and the Auditor General for Wales.
- 4.9 The modifications of the 1997 Act in relation to contracts entered into by the Assembly Commission are set out in Article 3 and Schedule 2 to the Order. That Schedule provides that references in the 1997 Act to a local authority are to be read as a reference to the Assembly Commission. It also modifies the certification procedure and other

references in the 1997 Act to reflect the legislative and audit framework within which the Assembly Commission will operate under GOWA 2006. In particular, a copy of the certificate relating to a certified contract must be given not only to the other party to the contract, but also to the principal accounting officer for the Assembly Commission and the Auditor General for Wales.

## **5. Territorial Extent and Application**

The instrument extends to the United Kingdom. It applies to contracts entered into by the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission.

## **6. European Convention on Human Rights**

The Secretary of State for Wales has made the following statement regarding Human Rights:

In my view the provisions of the Government of Wales Act 2006 (Local Government (Contracts) Act 1997) (Modifications) Order 2007 are compatible with the Convention rights.

## **7. Policy background**

7.1 GOWA 2006 received Royal Assent on 25 July 2006. The purpose of GOWA 2006 is to make provision about the government of Wales.

7.2 The Act effects the formal separation between the executive and legislative arms of the current Assembly; it establishes the Welsh Assembly Government (made up of the First Minister, Welsh Ministers and their deputies and the Counsel General) as an entity separate from, but accountable to, the new Assembly. Most of the statutory functions of the current Assembly will become functions of the Welsh Ministers.

7.3 The dissolution of the current Assembly and the creation of the new Assembly and the Welsh Assembly Government will take place following the Assembly election in May 2007.

### *Consultation*

7.4 This Order makes provision to deal with the transition from the current Assembly to the new arrangements under GOWA 2006, 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**

**Susan Olley** at the Wales Office, Tel: 0209 20898568 or email: [Susan.olley@walesoffice.gsi.gov.uk](mailto:Susan.olley@walesoffice.gsi.gov.uk) can answer any queries regarding the instrument.