

Explanatory Memorandum to the Abergavenny Improvement Act 1854 (Repeal) Order 2012

This Explanatory Memorandum has been prepared by the Department for Local Government and Public Services 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 Abergavenny Improvement Act 1854 (Repeal) Order 2012

CARL SARGEANT AM
28 February 2012

1. Description

This order repeals section 28 of the Abergavenny Improvement Act 1854 (including to the extent that section 26 of the Act has effect in relation to section 28). Those sections together appear to require Monmouthshire County Council to hold a livestock market in the town. The order removes any such requirement.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

None.

3. Legislative background

Section 58 of the Local Government (Wales) Act 1994 deals with the application of local Acts (such as the Abergavenny Improvement Act 1854) to the unitary local authorities in Wales which the 1994 Act created. Section 58(2)(d) contains a power to repeal local Acts (or specified provisions in them) by order where it appears that they are “spent, obsolete or unnecessary, or...have been substantially superseded [by other legislation dealing with the same subject-matter]”. As drafted that power was exercisable by the Secretary of State; the National Assembly for Wales (Transfer of Functions) Order 1999 and the Government of Wales Act 2006 provide that it is now a power of the Welsh Ministers.

Section 63 of the 1994 Act provides that an order under section 58 is to be subject to the negative procedure.

4. Purpose & intended effect of the legislation

The Abergavenny Improvement Acts of 1854 to 1871 (the Acts) conferred numerous functions and duties on the then Abergavenny Commissioners – a board of local landowners which was established in the late 18th century to be responsible for the development of the town. Those functions and duties were transferred to successive institutions of elected local government and now lie with Monmouthshire County Council (the Council).

Among the provisions of the Acts is one in section 28 of the 1854 Act. Taken with section 26 of the same Act (which incorporated the Markets and Fairs Clauses Act 1847 – a standard set of provisions about livestock markets) section 28 appeared to the Council to require the Abergavenny Commissioners (and now the Council) to hold a livestock market in the town on days specified by them.

Monmouthshire County Council approached the Welsh Government to seek the repeal of these provisions on the grounds that they are an unjustified and obsolete constraint on its ability to make decisions about the development of Abergavenny and about the provision of livestock markets in the County. All

local authorities (including Monmouthshire) have modern discretionary powers governing livestock markets in the Food Act 1984.

The Welsh Ministers have powers in section 58 of the Local Government (Wales) Act to repeal local Acts such as these by order where it appears to them that such acts are “spent, obsolete or unnecessary, or to have been substantially superseded”.

Following consultation, the Minister for Local Government and Communities determined that section 26 (in so far as it related to section 28) and section 28 of the 1854 Act were indeed obsolete and unnecessary, and have been superseded by the provisions of the Food Act 1984. This Order repeals those sections. Other provisions in the Abergavenny Improvement Acts are not affected.

This Order only makes provision affecting Monmouthshire County Council. Other local authorities and other areas of Wales are not affected.

As a result, the Council will be free of the obligations which the repealed sections of the Act impose. It will be in the same position as any other local authority in that it will be able to operate livestock markets anywhere in the County under the Food Act 1984.

Monmouthshire County Council has plans both to develop the site of the livestock market in Abergavenny and to open a new market near Raglan. However, those are matters for the Council. The merits or otherwise of these plans have no bearing on the decision to repeal the provisions in the 1854 Act. The repeal does not require the Council to do anything about the livestock market or otherwise; it merely frees it from the obligations that sections 26 and 28 of the 1854 Act impose.

If this order were not made, those obligations would remain. While the exact meaning of the 1854 Act is not completely clear, it is likely that the Council would remain obliged to hold a livestock market in Abergavenny on days which the Council specified. That could be (but need not be) the current market on the current site; but this is nonetheless an unusual and unjustified constraint. So far as is known, no other local authority in Wales or possibly beyond is similarly restricted in its ability to hold livestock markets or to take wider planning and development decisions.

5. Consultation

The Welsh Government consulted on the proposed repeal between 13 September and 30 November 2011. Formal consultation letters, which stated that the Minister was minded to repeal and outlining the reasons why, were sent to: Monmouthshire County Council; Abergavenny Town Council; the Farmers Union of Wales; the National Farmers Union; and Abergavenny Market Auctioneers Limited. Many responses were also received from

members of the public, and the Minister made clear in a statement of 19 October that such responses were welcome. However, the Minister also stated that responses which commented on matters within the Council's control (and in particular the Council's proposals for developing the market site and constructing a new market) were not relevant to the issue of repeal, and would not be taken into account.

There were approximately 250 responses. The majority of letters opposed the repealing of the Abergavenny Improvement Acts. Nevertheless, most focused on objections to Monmouthshire County Council's proposals for the market site, occasionally offering alternate solutions. As noted, local planning matters are a matter for the Council, and comments on them were not taken into account in assessing the case for repeal.

A small number of letters supported the repeal, some with conditions. Monmouthshire County Council strongly supported repeal. The users of the market as represented by the National Farmers Union Cymru, the Farmers Union of Wales and the firm of auctioneers support repeal on condition that there were a smooth transition should the existing market be closed and a new market opened; and that the repeal should be effected accordingly.

Consideration was given to timing the repeal to give effect to the proposals from some market users, ie that it should come into force only when the new market was open for business. However, this option was rejected on the grounds that (a) the opening of the new market is again a matter for the Council; and (b) any order must come into force on a specified date – it cannot be triggered by external events such as the opening of a market.

No changes to the proposed legislation were thus made as a result of the consultation.

6. Regulatory Impact Assessment (RIA)

No regulatory impact assessment has been prepared for this Order. This is because the Order merely repeals obsolete legislation. It does not create any quantifiable costs or benefits for any person or organisation.

Costs or benefits may accrue to Monmouthshire County Council and/or those it serves if it takes any decisions which this repeal enables. However, that is a matter for the Council and depends entirely on the decisions that it might take and how it might implement them.

The Order has no impact on –

(a) the statutory duties of the Welsh Ministers concerning equality of opportunity (section 77 of the Government of Wales Act 2006), the Welsh language (section 78) and sustainable development (section 79); and

(b) the local government, voluntary sector and business schemes made under sections 73, 74 and 75 of the Government of Wales Act 2006 respectively.

**Local Government Finance and Performance Division
Department for Local Government and Public Services
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