

EXPLANATORY MEMORANDUM

The National Assembly for Wales (Transfer of Functions) (No.2) Order 2004

The National Assembly for Wales (Transfer of Functions) (No.2) Order 2004 will confer on the Assembly a wide range of functions, the majority of which relate to Animal Health and Welfare. It also contains other, non-related functions. A broad summary of each of the policy areas contained in the TFO is contained in the following parts.

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1 Animal Health and Welfare

Summary

- 1.1 The Assembly's current functions for animal health matters under the existing arrangements give limited flexibility for administrative or legislative action.
- 1.2 The objective of the transfer is to give the Assembly full statutory authority and policy responsibility for animal health and welfare matters in Wales.
- 1.3 The transfer of residual animal health and welfare powers from the Department for the Environment, Food and Rural Affairs (Defra) to the National Assembly for Wales would lead to clearer accountability. It would end the current confusing split between the Assembly and Defra regarding responsibility for disease control by fully integrating formal legal accountability with policy responsibility.
- 1.4 Alongside the new Animal Health and Welfare Strategy, the proposed transfer will improve the strategic management of animal health and welfare matters and the operational control of disease outbreaks in Wales.

Background

- 1.5 The case for the transfer of these powers was brought into sharp focus by the foot and mouth outbreak in 2001. During this period the Assembly found it difficult to reconcile the contradiction implicit in having political accountability for matters for which legal accountability had not been devolved.
- 1.6 Consequently, the Cabinet agreed that officials should work up a detailed case to transfer relevant residual animal health and welfare powers from Defra to the Assembly.
- 1.7 The Government's response to the FMD Inquiries confirmed that they were in discussion with the Assembly on the case for devolving further powers to it to deal with any future disease outbreak in Wales.
- 1.8 Many functions relating to animal health and welfare were transferred to the Assembly under The National Assembly for Wales (Transfer of Functions) Order 1999 and The National Assembly for Wales (Transfer of Functions) Order 2000. The Assembly has powers to make and implement policy and secondary legislation for three animal diseases (TB, brucellosis and warble fly) and powers to make Orders and apply EU legislation under Section 2(2) of the European Communities Act 1972. In addition, the Assembly has joint powers with Defra to make and implement policy and secondary legislation under the Animal Health Act 1981.

1.9 This allocation of responsibilities is amongst the most complex arising from the Welsh devolution settlement. The inconsistency of having some powers in this area within the Assembly's ambit but not others has given rise to difficulties. This proposed transfer of functions would simplify and consolidate responsibilities for animal health and welfare functions.

Summary of Main proposals

The proposed powers to be transferred are as follows: -

1.10 Functions in Primary Legislation

(Including all functions in secondary legislation made under each Act listed.)

Animal Health Act 1981 (as amended and extended by the Animal Health Act 2002 plus the further Schedule relating to Scrapie) -

All functions of "the Minister" and the part of the functions of "the Ministers" exercisable by the Secretary of State, except the functions contained in Schedule 1.

Slaughterhouses Act 1974

All functions exercisable by the Secretary of State in Part I

Pig Industry Levy Act 1983

All functions exercisable by the Secretary of State.

Bees Act 1980

All functions exercisable by the Secretary of State

1.11 Functions in Secondary Legislation

Products of Animal Origin (Import and Export) Regulations 1996

All functions exercisable by the Secretary of State.

Welfare of Farmed Animals (Slaughter and Killing) Regulations 1995

All functions exercisable by the Secretary of State

TSE (Wales) Regulations 2002

All functions exercisable by the Secretary of State.

1.12 If transferred, the legislation listed above would give the Assembly powers in respect of:

- Powers to approve Local Authority byelaws relating to knackery yards.
- Provisions for general powers of Ministers to make Orders.
- Provisions for powers relating to animal disease, welfare and export.
- Providing additional powers to tackle FMD and for these powers to be extendable to other diseases.
- Providing additional powers to deal with TSEs in sheep.
- Provisions for the disease of pigs (Aujeszky's Disease).
- Provisions for the prevention, control and eradication of TSEs.

- Provisions for the protection of animals at the time of slaughter and killing.
- Provisions for animal health and public health requirements governing trade in and imports of certain products of animal origin.

Financial Implications

1.13 Any work associated with the preparation of the secondary legislation will be accommodated within existing administration costs budgets. The Supplementary Budget includes a budget expenditure line (Transfer of Animal Health Powers) to meet the cost of the transfer of residual animal health and welfare powers; a total of £1.2m has been provided for programme and administrative expenditure for 2004-05 and each of the next 2 financial years.

2. Section 14(1) of the Local Land Charges Act 1975

Summary

- 2.1 The transfer of Section 14(1) of the Local Land Charges Act 1975 will allow the Minister for Finance, Local Government and Public Services to set local land charge fees and personal search fees for local authorities in Wales.

Background

- 2.2 This function is likely to be devolved to local authorities in England (subject to the passage of a Private Members Bill), but the Minister for Finance, Local Government and Public Services is of the view that the local land charge fee should be set nationally in Wales. Before setting local land charge fees the Minister must consult local authorities and all interested bodies.
- 2.3. The power to set personal search fees is dependent on the National Assembly undertaking a review of these particular fees in Wales.
- 2.4 The Minister for Finance, Local Government and Public Services asked the Secretary of State for Wales to consult the Department of Constitutional Affairs on the proposed transfer of Section 14 of the Local Land Charges Act 1975. The Parliamentary Under Secretary of State at the Department of Constitutional Affairs, David Lammy, MP, has agreed to this transfer of function.
- 2.5 The Local Government and Public Services Committee will be notified of the Minister's intention through her Ministerial Report to Committee on 7 July.

Summary of Main proposals

- 2.6 The intended effect of the transfer of the power to set local land charge fees is to ensure, in so far as legislation will allow, that differential charging by local authorities will not occur.
- 2.7 The power to set personal search fees will not be used until such time as a review of such fees is undertaken in Wales. As with local land charge fees, the Minister for Finance, Local Government and Public Services is keen to ensure differential fees are not applied to Wales.

Financial Implications

- 2.8 There are no financial implications for the Assembly as a result of the transfer of Section 14 of the Local Land Charges Act 1975. For local authorities in Wales the fee will be set nationally, and will be set at a level to recover the costs of providing the service.

- 2.9 For Personal Search Fees, a review of these fees will be undertaken and the financial implications of this review will not be known until it has been completed and the recommendations assessed. In principle the fee will be set nationally on the basis of full cost recovery. If local authorities suffer any financial detriment as a result of the acceptance of particular recommendations, this will be categorised as a new burden and will be considered as part of the general local government financial settlement.
- 2.10 Until such time as the review of Personal Search Fees has been completed, and its recommendations acted upon, these fees will continue at the current level set by the Department of Constitutional Affairs under SI 2003 No.2502 – The Local Land Charges (Amendment) Rules 2003.

3 Section 230 Inheritance Tax Act

Summary

- 3.1 The proposed transfer of Section 230 of the Inheritance Tax Act 1984 will allow the Minister for Culture, Welsh Language and Sport to decide, where there is a Welsh interest, if items offered under the terms of the Acceptance in Lieu of Inheritance Act scheme should be accepted.

Background

- 3.2 The Acceptance in Lieu scheme is administered by The Museums, Libraries and Archives Council (MLA) (formerly Resource), the Government's advisers on museum and gallery matters on an UK wide basis. It allows for offers of pre-eminent items to be made in satisfaction of tax. A MLA panel makes recommendations on whether or not items should be accepted, how much tax will be realised and to which institution items will be allocated, in order to ensure the greatest benefit to the nation. Decisions on the acceptance of items, and on where they will be allocated, are dependent on Secretary of State approval.
- 3.3 Section 230 of the Inheritance Tax Act 1984 prescribes that the agreement of the Secretary of State is needed to accept items. Section 9 of the National Heritage Act 1980 contains the related function, which empowers the Secretary of State to direct where items should be displayed once they have been accepted. Section 9 was transferred to the National Assembly in relation to Wales in the 1999 Transfer of Functions Order.
- 3.4 Prior to devolution, the functions under section 230 and section 9 were carried out by the Secretary of State for Wales. It had been understood by the Assembly Government, the Department of Culture, Media and Sport (DCMS) and the MLA that this function had been transferred to the Assembly Government, however, it has since transpired that this was not the case.
- 3.5 Three offers have been accepted by the Assembly Government since devolution. OCG have advised that the functions of a Minister of the Crown can be exercised by the Assembly under an agency arrangement by virtue of section 41 of the Government of Wales Act 1998. Such arrangements do not need to be written: in this case, as all the parties involved have commonly understood that these powers had been devolved to the Assembly, it would be reasonable to assume that a section 41 agreement has been in place.

Summary of Main Proposals

- 3.6 The intended effect of the transfer of Section 230 of the Inheritance Tax Act 1984 is to ensure that where items are offered under the scheme, either with a condition or wish attached that they be allocated to Welsh

institutions, or where the items are located in Wales, the Assembly Minister for Culture, Welsh Language and Sport will be able to decide if they should be accepted. This function was inadvertently omitted from the 1999 Transfer of Functions Order; transfer now would ensure the Minister is able to accept items with regards to the scheme in Wales.

3.7 The draft Order ensures this function is devolved to Wales in a comparative way to which it was devolved to Scotland. It also reflects the complexities of the UK wide administration of the scheme by the MLA, where it is possible for more than one administration to have an interest in any particular case. For instance, offers could be made from estates outside Wales but with a wish that items be allocated within Wales, meaning that there may be cases where both the Welsh Assembly Government and DCMS have an interest. To aid the MLA in the administration of the scheme, the definition of 'another interest' has been included and it is proposed that this function should be exercisable concurrently. This will mean that either the Assembly or the Secretary of State can accept items where there is a Welsh interest, depending on the particular circumstances of a case.

3.8 DCMS, the Wales Office and the Minister for Culture, Welsh Language and Sport have agreed this proposed transfer.

Financial Implications

3.9 There are no financial implications for the Assembly or any other body as a result of the transfer of Section 230 of the Inheritance Tax Act 1984.

4 Section 99-103 Road Traffic Regulation Act 1984

Summary

4.1 The proposed transfer of the ministerial functions contained in sections 99 to 103 of the Road Traffic Regulation Act 1984 to the Assembly, in relation to Wales (subject to certain exceptions), will enable the Assembly to make regulations governing the powers of the police and local authorities in Wales to remove and dispose of abandoned vehicles.

Background

4.2 The Removal and Disposal of Vehicles Regulations 1986 (as amended) regulate the removal and disposal of vehicles which are illegally, obstructively or dangerously parked or which are abandoned or broken down. Those Regulations have been made under sections 3 and 4 of the Refuse Disposal (Amenity) Act 1978, which relate to local authority functions, and sections 99 to 101 of the Road Traffic Regulation Act 1984, which relate to police, and to a lesser extent, local authority functions. Whereas the relevant powers under the 1978 Act have been transferred to the Assembly in relation to Wales, the corresponding powers in the 1984 Act remain vested in the Secretary of State (DEFRA). Consequently, the Assembly has been unable to exercise its powers under the 1978 Act to make certain amendments to the 1986 Regulations.

Summary of Main Proposals

4.3 The transfer of the ministerial functions contained in sections 99 to 103 of the Road Traffic Regulation Act 1984 will enable the Assembly to make regulations in relation to Wales (subject to the exceptions set out below) relating to the removal and destruction of vehicles which are illegally, obstructively or dangerously parked, or which are abandoned or broken down.

4.4 Section 99 of the Act confers a power to make regulations to empower authorities to remove vehicles which are illegally, obstructively or dangerously parked, or which have been abandoned or have broken down (s.99(1)). Regulations, under section 99, may provide, inter alia, that vehicles may be removed from one road to another, and may repeal or suspend byelaws dealing with the same subject-matter (s.99(2)). Such regulations may also prescribe the manner in which, and the period within which, a person may object to the removal of a vehicle from land which he occupies (s.99(3)), and the notice period which must be given where an authority proposes to remove an abandoned vehicle for destruction (s.99(4)).

- 4.5 Section 100 of the Act cross-refers to regulations made under "section 99 of this Act" but does not, of itself, confer any Ministerial functions save in respect of non-Metropolitan districts and counties in England (s.100(2)).
- 4.6 Section 101 confers a power to prescribe, by regulations, the steps that must be taken to find the owner of the abandoned vehicle, the manner in which notice must be served upon him, and the period, which must be set out in that notice, within which the owner must remove the vehicle from the authority's custody (s.101(3)(c)). The section confers a power to prescribe the sums which an owner must pay in respect of the removal and storage of such a vehicle, and the period within which the authority must permit him to remove his vehicle once such sums have been paid (s.101(4)). It also confers a power to prescribe the sums in respect of removal, storage and disposal which the authority must deduct from the proceeds of sale of an abandoned vehicle before making payment to its owner (s.101(5)). Finally, the section confers a power to prescribe the information which must be given relating to the disposal of an abandoned vehicle, and the persons to whom such information must be given (s.101(7)).
- 4.7 Section 102 confers a power to prescribe, by regulations, the charges and scales of charges for the removal and storage of vehicles, and the manner in which charges are to be determined for the disposal of vehicles (s.102(2)).
- 4.8 Section 103 confers a power to make regulations applying (with such modifications as are prescribed) the provisions of sections 99 to 102 to vehicles parked unlawfully in a loading area.
- 4.9 There is a special (non-devolved) regime in place, under the Severn Bridges Act 1992, in relation to the removal of vehicles, which become immobile on the Severn Bridges or in their toll plaza areas. Accordingly, it is proposed that the transfer of functions under the Road Traffic Regulation Act 1984 should not apply in relation to the following parts of Wales:
- (a) that part of the M4 Motorway in Wales which comprises "the New Toll Plaza area" and "the New Bridge", as defined in section 39(1) of the Severn Bridges Act 1992 (c.3); and
- (b) that part of the road constructed by the Minister of Transport along the line described in Schedule 1 to the North of Almondsbury-South of Haysgate Trunk Road Order 1947 and referred to in that Order as "the new road" which lies to the east of the most easterly point before reaching the River Wye at which eastbound traffic of Classes I and II (as specified in Schedule 4 to the Highways Act 1980 (c.66)) can leave that road by another special road.

Financial Implications

- 4.10 Any costs associated with the making of regulations consequent upon the transfer of the Ministerial powers contained in sections 99-103 of the Road Traffic Regulation Act 1984 will be accommodated from within existing administration cost budgets. There will be no direct financial implications for any other body as a result of the transfer of these functions.

5 Section 158 Water Industry Act 1991

Summary

5.1 The proposed transfer will enable the Assembly to make regulations reducing threshold limits which apply in respect of water industry inset appointments made in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

Background

5.2 An inset appointment is the replacement of an existing water and sewerage undertaker by another as the supplier of water and sewerage services for one or more customers in a geographical area. Section 7(5) of the Water Industry Act 1991 prescribes a threshold condition relating to the quantity of water supplied, or likely to be supplied, to the premises in any twelve month period.

5.3 The Assembly currently has the power to make regulations, under section 7(6) of the Water Industry Act 1991, to reduce the current threshold limit of 250MI/year for the making of water industry inset appointments in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales (at the present time Dwr Cymru and Dee Valley Water). Where such regulations are made, section 158(10) of the Act requires a corresponding reduction to be made to the threshold limit in section 158(9) of the Act, which sets the threshold above which inset appointees' supply pipes are deemed to be water mains. At present, the Assembly is unable to make the corresponding reduction because the power to make regulations under section 158(10) has been transferred to the Assembly in relation to Wales, rather than in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales. Consequently, the Assembly has also been unable to exercise its power to make regulations under section 7(6) of the Act.

Summary of Main proposals

5.4 The proposed transfer will enable the Assembly to make regulations under section 7(6) and 158(10) of the Act to reduce the two threshold limits which apply in respect of to water industry inset appointments made in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales. The Assembly proposes to exercise these powers to make regulations reducing the threshold limits from 250 MI/year to 100 MI/year.

Financial Implications

5.5 Any costs associated with the preparation of the Water Industry Inset Appointments Regulations, consequent to the making of the Transfer of Functions Order, will be accommodated from within existing administration cost budgets.

6. Timing and Status of Draft Order

- 6.1 To date, the agreement of the Secretary of State for Wales and the relevant UK Government Departments for the transfer has been achieved and the matter is currently being considered by UK Cabinet Committee on Devolution Policy (PD Committee). Although clearance by this committee has not yet been received, it is expected prior to the plenary debate on 13 July.
- 6.2 The Parliamentary process will commence after the summer recess, probably at the end of September, and should be completed by the end of year.
- 6.3 If agreed by UK Parliament, the powers being transferred to the National Assembly for Wales will come into effect on 31 December 2004, other than the entry for the Water Industry Act 1991, which will come into force on the day after the TFO is made.