

Environment, Planning and Countryside Committee

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Chairs of Subject Committees and Equality of Opportunity Committee :

August 2006

Notification to Subject Committees of Transfer of Functions Order

I would like to bring to your attention to the above Order, which we anticipate will be brought to Plenary on 17th October 2006.

In late October the Order will be sent to the Wales Office in order for it to undergo the various processes of gaining Parliamentary approval prior to being sent to the Privy Council for approval in February 2007.

Under section 22(4)(b) of the Government of Wales Act 1998 the following transfer proposals must be approved by the Assembly in plenary as one of the provisions varies/revokes a previous Order:

- Sections 47(2)(g), 53(2)(c), 55(4) and 66A(6) of the Water Industry Act 1991
- Section 156 of the Environmental Protection Act 1990
- Sections 1 and 3 of the Census Act 1920

The Water Industry Act 1991

In October the Assembly Government, through the Wales Office, will seek agreement from Parliament to vary the basis under which the functions under sections 47(2)(g), 53(2)(c), 55(4) and 66A(6) of the Water Industry Act 1991 were transferred to the National Assembly for Wales, so that they align with the Assembly's inter-related functions under section 74 of that Act. These technical amendments are aimed at correcting an inconsistency and will ensure that these sections are transferred 'in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales' rather than the current basis of 'in relation to Wales'.

Ian Pearson, the Minister of State for Climate Change and the Environment, Carwyn Jones, the Minister for Environment, Planning and Countryside, and the Secretary of State for Wales have agreed to the

transfer. A letter has been sent from the Secretary of State for Wales to the Constitutional Affairs Committee seeking agreement to the transfer (as well as the two described below), which is expected in late August.

Section 156 of the Environmental Protection Act 1990

In October the Assembly Government, through the Wales Office, will seek approval from Parliament for the transfer of powers under section 156 of the Environmental Protection Act 1990, in relation to waste on land. Section 156 relates to the power to give effect to EU and other international obligations. The Assembly already has certain powers, which it has used generally to legislate in the same way as the Secretary of State. However, the Secretary of State has recently relied partly on section 156 of the Environmental Protection Act – the main advantage of which is the higher limit for penalties. The transfer of section 156 would be a sensible tidying up measure, avoiding current practical difficulties in maintaining a common waste management regulatory framework across the Wales-England border.

The Secretary of State for Environment, Food and Rural Affairs, Rt Hon David Milliband MP, Carwyn Jones, the Minister for Environment, Planning and Countryside and the Secretary of State for Wales are agreeable to the transfer.

Sections 1 and 3 of the Census Act 1920

Parliamentary approval will also be sought for the transfer of functions in relation to the Census of Population, which will:

- Direct a Minister of the Crown to consult the National Assembly for Wales before recommending the making of an Order in Council under section 1 of the Census Act 1920, where the Census Order includes Wales
- Transfer to the National Assembly for Wales the function of making Census Regulations under section 3 of the Census Act 1920 in so far as that function is exercisable in relation to Wales.

This proposed transfer would place a right in law for the National Assembly for Wales to be consulted on the making of the Draft Census Order and the power to make Regulations for administering the Census in Wales. In the event, it will be the Welsh Ministers under the changes brought about by the Government of Wales Act 2006.

The ultimate decisions on the content for the 2011 Census for England and Wales will be for Parliament to make through approval of the Census Order. The Census Order sets out the particulars to be collected in the Census and is a function of the Privy Council, and so cannot be transferred to the National Assembly for Wales.

The Financial Secretary to the Treasury has confirmed that he is content to transfer certain powers in relation to the Census Act 1920 in so far as they effect Wales and for us to take steps for the National Assembly for Wales to secure this by way of a Transfer of Functions Order.

The Financial Secretary to the Treasury stated that discussion between officials have established the working principle that the Office for National Statistics (ONS) will fund a Census operation in Wales

consistent with the model in England, and consistent with its long standing commitments through its Welsh Language scheme. The Assembly will fund differences requested by the Assembly, which incur additional expense. This agreement has been endorsed by the relevant Welsh Assembly and Treasury Ministers.