

CONSENT MEMORANDUM

The Local Better Regulation Office (Dissolution and Transfer of Functions, Etc) Order 2011

Consent Motion

That the National Assembly for Wales agrees that the Secretary of State should make the Local Better Regulation Office (Dissolution and Transfer of Functions, Etc) Order 2011 in accordance with the draft laid in Table Office on 10 January 2012.

Background

1. The above motion was tabled by Carl Sargeant, Minister for Local Government and Communities, under guidance contained in Devolution Guidance Note 9 (DGN9) which builds on the Memorandum of Understanding between the UK Government and the Devolved Administrations, which states that the UK Government "...would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature." DGN9 extends this by stating "...these consent requirements also apply where UK Ministers have the power to amend primary legislation by Order."
2. However, the National Assembly's Standing Orders do not include an automatic requirement, despite those requirements set out above, to consider changes made by Order (subordinate legislation.) This does not preclude consideration by the National Assembly, but it is not a formal requirement.
3. The Local Better Regulation Office (Dissolution and Transfer of Functions, Etc) Order 2011 was laid before Parliament on 6 December 2011, and a copy of that Order and its Explanatory Note has been laid with this Memorandum.
4. As part of its Review of Public Bodies, the UK Government made the decision to dissolve the LBRO and transfer its functions into government. The power to dissolve the LBRO and to transfer its functions sits with the Secretary of State under section 18 of the Regulatory Enforcement and Sanctions Act 2008. The Welsh Government had membership of the Review Group, and was consulted throughout the process of developing the Order to effect the dissolution and the appropriate transfer of functions, and was content with the process and the outcome.

Summary of the Order and its Policy Objectives

5. The LBRO will be dissolved by an order (the Order) made by the Secretary of State under section 18 of the Regulatory Enforcement and Sanctions Act 2008 (the 2008 Act.) The UK Government's policy intention is for the majority of the LBRO's current functions to be transferred to the Secretary of State, with LBRO functions exercisable in relation to Wales transferred to the Welsh Ministers.

6. The Order will give effect to the transfer by making amendments to the 2008 Act. Set out below is a description of the LBRO's existing functions under the 2008 Act that impact directly on the Welsh Ministers, together with a description of the position after the transfer of functions occurs:

- **Section 6** - provides a power for the LBRO give guidance to Local Authorities in England and Wales as to how to exercise their regulatory functions. This power will be transferred to the Secretary of State and the Welsh Ministers, as appropriate.
 - The Order will transfer to the Welsh Ministers the function of giving guidance to Welsh local authorities as to how to exercise those of their regulatory functions which relate to a Welsh ministerial matter (i.e. matters in Wales in respect of which the Welsh Ministers exercise functions). Welsh local authorities in receipt of that guidance will have to have regard to it when exercising the functions to which the guidance relates.
 - Before giving guidance, the Welsh Ministers will be subject to a requirement to consult with: persons whose activities are regulated by the exercise of the regulatory function; local authorities the Welsh Ministers deem appropriate to consult (or persons representative of local authorities); and such other persons the Welsh Ministers consider appropriate. Guidance given under section 6 will have to be published.
 - The LBRO's function of giving guidance to English local authorities and to Welsh local authorities in relation to non-Welsh ministerial matters (i.e. matters in Wales in respect of which the Welsh Ministers do not exercise functions) will transfer to the Secretary of State. The Secretary of State will be subject to the same duty to consult before giving any guidance as that which will apply to the Welsh Ministers.
- **Section 10** – provides a power for the LBRO to give advice or make proposals to the Welsh Ministers in relation to the exercise by Welsh local authorities of their regulatory functions, as they relate to Welsh ministerial matters. The Order will amend the 2008 Act to ensure the transfer of this function of giving advice to the Secretary of State. Current provision which allows the Welsh Ministers to require the LBRO to give advice or make

proposals will be repealed and will not be exercisable in relation to the Secretary of State.

- **Section 11** – imposes a duty upon the LBRO to prepare and publish lists specifying those matters to which local authorities in England and Wales should give priority when allocating resources to their regulatory functions. Currently, the LBRO cannot publish a list in relation to Welsh local authorities without consulting the Secretary of State and obtaining the Welsh Ministers' consent.

This duty to prepare lists will be retained. The Order will amend the 2008 Act to ensure the transfer of the function to the Secretary of State in respect of English local authorities and to the Welsh Ministers in respect of Welsh Local Authorities. This will result in the Welsh Ministers being subject to a duty to specify enforcement priorities in respect of local authorities' regulatory functions notwithstanding the fact that some of these functions do not relate to matters in Wales in respect of which the Welsh Ministers exercise functions. Accordingly, the Order amends the 2008 Act so that the Secretary of State's consultation functions survives the transfer. This means that the Welsh Ministers will have to consult the Secretary of State before publishing a list under section 11 of the 2008 Act.

- **Section 12** – requires the LBRO to enter into Memoranda of Understanding with defined National Regulators (such as the Environment Agency, The Food Standards Agency and others) as to how they will work together in the exercise of their respective functions. The Order will amend the 2008 Act to ensure the transfer of the function of entering into Memoranda of Understanding to the Secretary of State. The 2008 Act will also be amended to ensure that in revising an existing memorandum or entering into a new one, the Secretary of State will have to consult the Welsh Ministers where the memorandum relates to a Welsh ministerial matter.
- **Section 16** – provides a power for the Welsh Ministers to direct or give guidance to the LBRO as to the exercise in relation to Wales of any of its functions relating to a Welsh ministerial matter. The Order will amend the 2008 Act to retain the ability of Welsh Ministers to give guidance to the Secretary of State in respect of the Secretary of State's functions (as transferred under the Order) under the 2008 Act. The current power of direction will be repealed.
- **Part 2 of the 2008 Act** covers the Primary Authority elements of the legislation, in respect of which Welsh Ministers have few functions. The LBRO's functions under Part 2 are being transferred to the Secretary of State. Existing functions of the

Welsh Ministers (provision requiring the consent of the Welsh Ministers or consultation with them prior to the exercise of powers) have been retained.

7. Paragraph 11 of Schedule 1 to the 2008 Act currently gives the Welsh Ministers the power to provide grants to the LBRO of such amounts as they think fit. That power includes the power to attach conditions to any grants. The Order will amend Schedule 1 to the 2008 Act so that paragraphs 11 (3) and (4) of Schedule 1 are retained. These amendments will ensure that the Welsh Ministers continue to have an express power to fund the Better Regulation Delivery Organisation (the name of the new LBRO that will operate within BIS) in relation to Wales specific activities. Any grants provided will be able to have appropriate conditions attached.

8. In addition to the protection of Welsh Ministers' current functions under the 2008 Act the Order includes provision that requires the Secretary of State and the Welsh Ministers to enter into a Memorandum of Understanding with each other setting out how they will work together in the exercise of their respective functions as a result of the Order.

Advantages of Using This Order

9. The Welsh Government supports the UK Government's use of the Order-making power to effect changes in relation to Wales as the most efficient and effective means of achieving both Governments' policy objective for better regulation.

Financial Implications

10. There are no financial implications as a result of this Order - there will be no impact on any of the Budget Expenditure Lines within the Local Government and Communities Main Expenditure Group; the LBRO funding of £200,000 is already in the Main Expenditure Group. Any associated administration costs can be met from within the Local Government and Communities Delegated Running Costs budget.

Carl Sargeant
Welsh Minister for Local Government and Communities