

Paratowyd y ddogfen hon gan gyfreithwyr Cynulliad Cenedlaethol Cymru er mwyn rhoi gwybodaeth a chyngor i Aelodau'r Cynulliad a'u cynorthwyyr ynghylch materion dan ystyriaeth gan y Cynulliad a'i bwyllgorau ac nid at unrhyw ddiben arall. Gwnaed pob ymdrech i sicrhau bod y wybodaeth a'r cyngor a gynhwysir ynddi yn gywir, ond ni dderbynnir cyfrifoldeb am unrhyw ddibyniaeth a roddir arnynt gan drydydd partion.

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## **Constitutional and Legislative Affairs Committee**

### **The Local Better Regulation Office (Dissolution and Transfer of Functions, Etc.) Order 2012**

#### **Legal Advice Note**

##### Background

1. On the 10<sup>th</sup> January 2012, the Minister for Local Government and Communities gave notice of a motion in the following terms – “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.”

The Memorandum was considered by the Business Committee on the 10<sup>th</sup> January and referred to the Constitutional and Legislative Affairs Committee for scrutiny prior to it being debated in Plenary, with a reporting deadline of 25 January 2012. This Note is intended to inform that consideration.

##### The Order

2. As part of its review of public bodies, the UK Government decided to dissolve the Local Better Regulation Office (“the Office”), and to transfer its functions to the Secretary of State and to Welsh Ministers. The Order was laid before Parliament on 6<sup>th</sup> December 2011, and will be subject to an affirmative resolution of both Houses of Parliament.

3. The Order will be made under an unusual power. The Office was established by the Regulatory Enforcement and Sanctions Act 2008, which, also, at section 18, contained a power to dissolve the Office by Order, and to transfer its property, rights and liabilities, as well as its functions, to another person.

4. The proposed order will transfer the staff, property, rights and liabilities to the Secretary of State. The functions are also transferred to the Secretary of State except for those relating to “Welsh ministerial matters”, which is defined by section 74 of the 2008 Act as matters “in Wales (within the meaning of the Government of Wales Act 2006) in respect of which Welsh

Ministers exercise functions. Those latter functions will be transferred to Welsh Ministers in the manner explained in paragraph 6 of the Consent Memorandum tabled by the Minister for Local Government and Communities. The policy therefore appears to be to follow the boundaries of the current devolution settlement in re-allocating the functions of the Office. There are also provisions relating to consultation and co-operation between the Secretary of State and Welsh Ministers, including a requirement for a memorandum of understanding on working together (article 4(3)).

### The Consent Memorandum

5. This is not a Legislative Consent Memorandum within the meaning of Standing Order 30, as it does not relate to provisions contained in a Bill before the UK Parliament. Nevertheless, it is similar in that it contains provisions amending primary legislation applicable to Wales in relation to a matter within the legislative competence of the National Assembly i.e. local government.

6. As is explained in paragraph 1 of the Minister's Consent Memorandum, it arises from guidance contained in Devolution Guidance Note 9, which extends the application of the legislative consent principle to amendments to primary legislation made by Order by UK Ministers. Although this is not a subject upon which evidence was received during the Committee's recent inquiry into the transfer of functions to Welsh Ministers, it is clearly a highly relevant example, which the Committee may wish to refer to in its report.

7. Whilst consent has not previously been sought in relation to an order such as this, it had been anticipated that the Committee would consider a specific category of orders made at Westminster. The category in question is draft orders under Part 1 of the Legislative and Regulatory Reform Act 2006 [Standing Order 21.7(iii)]. The reasoning was that orders under that Act could amend primary legislation in relation to Wales. It has therefore been considered appropriate for the Committee to consider this Order in the same way, in order to inform the Assembly's consideration of the motion.

8. This Order may also be useful 'pilot' for other orders that follow. The Public Bodies Act, for example contains a whole range of powers that involve the dissolution of public bodies and transfer of their functions and assets etc.

### **Conclusion**

**9. The Committee is recommended to consider whether it is content with the current order and also whether there are any lessons learnt from this example that should be taken into account in its forthcoming report.**