

EXPLANATORY MEMORANDUM
THE GOVERNMENT OF WALES ACT 2006 (AMENDMENT) ORDER 2019
2019 No. [XXXX]

Introduction

This explanatory memorandum has been prepared by the Welsh Government. It should be read in conjunction with the explanatory memorandum prepared by the Office of the Secretary of State for Wales.

Summary of this Order

The Order will add to the exemptions at paragraphs 9(6) and 10(2) of Schedule 7B of the Government of Wales Act 2006 (GOWA) “electoral registration officers (within the meaning given in section 8 of the Representation of the People Act 1983.” It also provides for how these amendments affect the operation of article 45 of the Welsh Ministers (Transfer of Functions) Order 2018 (“the TFO”).

Legislative context

Paragraph 8 of Schedule 7B to GOWA provides that a provision in an Assembly Act cannot confer or impose any function on a reserved authority; cannot modify the constitution of a reserved authority; and cannot confer, impose, modify or remove functions specifically exercisable in relation to a reserved authority; without Minister of the Crown consent.

In addition, paragraph 10 provides that a provision of an Act of the Assembly cannot remove or modify any function of a public authority (other than a devolved Welsh authority), unless the appropriate Minister consents. It is considered that EROs appointed under section 8 of the Representation of the People Act 1983 are a reserved authority for the purposes of GOWA as they have functions relating to both devolved and non-devolved elections, and they are not included in paragraphs 9 or 10, which lists the reserved authorities to which specified consent requirements do not apply.

This means that whilst the Assembly now has competence to legislate in relation to Assembly elections and local government elections, it would not be able to legislate for certain changes to electoral registration processes in Wales for devolved elections where such changes relate to the functions of EROs, without Minister of the Crown consent.

In addition, the TFO transfers to the Welsh Ministers functions relating to electoral legislation. However, it does not do so by listing each function individually. Instead, it does so by reference to devolved competence.

Paragraph 12 of Schedule 7B provides that in any enactment, a reference to the legislative competence of the Assembly does not include provision that could be made in an Act of the Assembly only with the consent of a Minister of the Crown.

The combined effect of Schedule 7B and the way in which the TFO transfers functions relating to electoral legislation means that key electoral functions relating to EROs were not transferred and cannot be exercised by Welsh Ministers.

The Office of the Secretary of State for Wales has therefore agreed to produce an Order under s.109 of GOWA. The Order will add to the exemptions at paragraphs 9(6) and 10(2) of Schedule 7B “electoral registration officers (within the meaning given in section 8 of the Representation of the People Act 1983)”.

Policy context

The main purpose of the amendment to Schedule 7B is to enable the Assembly to legislate for changes to electoral registration processes in Wales for devolved elections, without the need for consent. In addition, the Welsh Government is currently engaged in a simultaneous and very complex programme of canvass reform along with the UK and Scottish Governments, but under the current arrangements Welsh Ministers are only able to make a fraction of the provisions required to amend the canvass process and bring it up-to-date in time for the 2020 canvass. The remaining provisions would need to be made as part of the UK legislative proposals which would see the necessary statutory changes sitting within two separate SIs.

Consultation

There has been no consultation on this Order, but the Welsh Government and the Office of the Secretary of State for Wales have worked together to develop it.

Financial Implications

There are no financial implications associated with this Order.

Jeremy Miles AM

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