

**EXPLANATORY MEMORANDUM TO**  
**THE NATIONAL ASSEMBLY FOR WALES (LEGISLATIVE**  
**COMPETENCE) (CONVERSION OF FRAMEWORK POWERS) ORDER**  
**2007**

**2007 No. 910**

1. This explanatory memorandum has been prepared by the Wales Office and is laid before Parliament by Command of Her Majesty.

2. **Description**

This instrument converts the wide powers of the National Assembly for Wales constituted by the Government of Wales Act 1998 (GOWA 1998), to make subordinate legislation (known as ‘framework powers’) contained in the NHS Redress Act 2006 and the Education and Inspections Act 2006 into powers for the Assembly constituted by the Government of Wales Act 2006 (GOWA 2006) to pass Assembly Measures in the same policy areas. This Order in Council is necessary to reflect the new devolution settlement contained in the GOWA 2006

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None.

4. **Legislative Background**

- 4.1 GOWA 2006 provides for separation of the National Assembly for Wales (the legislature) from the Welsh Assembly Government (the executive). Post separation, which will occur following the Assembly elections in May, the Assembly will have new powers to pass Assembly Measures and the Welsh Ministers will have executive functions in their own right. GOWA 2006 provides for functions of the Assembly constituted by GOWA 1998 (the current Assembly), including powers to make subordinate legislation, to transfer to the Welsh Ministers.

- 4.2 There are a small number of cases where it is considered that the current Assembly’s powers to make subordinate legislation are too wide to become powers for the Welsh Ministers to make subordinate legislation – these are the so-called “framework powers” which were promoted in the “Better Governance for Wales ” White Paper (see paragraph 3.12) which preceded GOWA 2006. During the passage of the Government of Wales Bill (which became GOWA 2006) through Parliament, the UK Government made it clear that these framework powers would be converted into Measure making powers, and vest in the new Assembly rather than passing to the Welsh Ministers.

- 4.3 Both the Education and Inspections Act 2006 and the NHS Redress Act 2006 were introduced in Parliament following the publication of the White Paper but before GOWA 2006 received Royal Assent. These two Acts contain framework powers. No regulations under these powers have been, or are intended to be, made by the current Assembly. GOWA 2006 contains a provision (in Schedule 11, paragraph 31(2)) which allows an Order in Council to be made to provide that the relevant powers will become powers for the new Assembly to pass Measures rather than powers for the Welsh Ministers to make subordinate legislation, as would otherwise be the case. This instrument is an Order in Council that it is to be made under the provisions in Schedule 11 paragraph 31(2) and (4).
- 4.4 This is the only Order in Council of its kind that will be made. The power allowing this Order to be made is a transitional provision, and it will not be needed when GOWA 2006 has been fully implemented, following the May 2007 elections. Now that GOWA 2006 has been enacted, there is no need for UK Bills to contain framework powers as they can, instead, provide for matters to be inserted directly into Part 1 of Schedule 5 to GOWA 2006 so that the new Assembly will have the power to pass Measures in relation to those matters.
- 4.5 In accordance with paragraph 31(6) of Schedule 11 to GOWA 2006 the draft Order was debated and approved by the Assembly in plenary on 7<sup>th</sup> March 2007.

## 5. **Extent**

The instrument technically extends to the whole of the UK but in practice its application is limited to Wales as it confers legislative competence on the new Assembly.

## 6. **European Convention on Human Rights**

The Secretary of State for Wales has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 are compatible with the Convention rights.

## 7. **Policy background**

- 7.1 The Order in Council will amend Schedule 5 to the GOWA 2006 in order to enable the new Assembly to pass Assembly Measures about any of the policy areas covered by the framework powers in section 17 of the NHS Redress Act 2006 and sections 178 & 179 of the Education and Inspections Act 2006. This will be achieved by specifying these policy areas as matters under the 'health and health services' and 'education and training' fields in Part 1 of Schedule 5 to GOWA 2006, by amending Part

3 of that Schedule and repealing the framework powers.

- 7.2 Section 17 of the NHS Redress Act enables the current Assembly to make regulations providing a mechanism for the out-of-court settlement of certain clinical negligence claims. Article 3(3) of the draft Order in Council converts the power in section 17 of the NHS Redress Act into a matter to be inserted into the “health and health services” field in Part 1 of Schedule 5 to GOWA 2006. Section 17 of that Act also contains restrictions on the exercise of the framework power.
- 7.3 Section 178 of the Education and Inspection Act enables the current Assembly to make regulations applying to Wales in respect of: organisation of maintained schools; admission of pupils to maintained schools; the curriculum in maintained schools; attendance, discipline and behaviour, including putting in place educational provision for excluded pupils; entitlement to education and training, and services to encourage, support or assist young people with regards to education and training; and food and drink provided for children in schools and day care. Section 179 of the Education and Inspections Act sets out restrictions on the exercise of the powers contained in section 178.
- 7.4 Article 3(2) of the draft Order in Council converts the powers in section 178 into matters to be inserted in Part 1 of Schedule 5 to GOWA 2006. However, a number of the restrictions listed in section 179 (and section 17(4) of the NHS Redress Act) are not replicated because of the differences between the Assembly’s future legislative competence to pass Assembly Measures, and the current Assembly’s executive competence to make subordinate legislation. In particular, it is not necessary to list some of the restrictions because either (1) they relate to matters in respect of which the Assembly will not have any general legislative competence (e.g. the restriction in section 179(1)(a) on making any provision imposing or increasing taxation), or because (2) the scheme of Part 3 of GOWA 2006 (in which the provisions about Assembly Measures sit) and of Schedule 5 to GOWA 2006 already provide appropriate restrictions (approved by Parliament) on the power to pass Measures.
- 7.5 So, for example, the restriction in section 179(1)(a) on making any provision imposing or increasing taxation does not need to be carried through to the draft Order in Council, because the Assembly will not have general legislative competence in relation to taxation. Further, the restriction in section 179(1)(d) to (f) on the use of framework powers to create new criminal offences does not need to be carried through to the draft Order in Council, because Part 2 of Schedule 5 to GOWA 2006 already sets out the restrictions that Parliament considered appropriate on the new Assembly’s powers to create new criminal offences by Assembly Measure.
- 7.6 In article 3(2), proposed matter 5.10 relating to school transport etc. is subject to certain express exceptions (i.e. ‘reserved’ matters) that could otherwise be possibly construed as being within the scope of the matter.

For example, registration of local bus services is a subject over which the current Assembly does not exercise any devolved powers and the exception is necessary to make it clear that this subject is intended to be outside the devolved legislative competence of the new Assembly.

7.7 Section 14(10) of the NHS Redress Act 2006 amends the Data Protection Act 1998 in relation to complaints arising in respect of the NHS Redress Scheme in England. Therefore it was considered appropriate that the Assembly should be able by Measure to amend the that provision of the 1998 Act in relation to complaints connected with the provision of NHS redress in relation to Wales. Article 4 of the proposed Order enables the Assembly to amend section 31(6) of the Data Protection Act 1998 for this purpose, by providing that the general restriction on amending the 1998 Act contained in Part 2 of Schedule 5 to GOWA 2006 does not apply if the amendment is in relation to complaints connected with the provision of such redress.

7.8 There was no public consultation on the draft Order as it merely gives effect to the policy underlying GOWA 2006 and only converts the framework powers that Parliament had already considered appropriate to confer on the current Assembly in the NHS Redress and Education and Inspection Acts which were both enacted in 2006. That Act gives effect to proposals contained in the 'Better Governance for Wales' White Paper, published in June 2005, which was the subject of a full public consultation.

## 8. **Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

## 9. **Contact**

Cedric Longville at the Wales Office, Tel: 020 7270 0552 or e-mail: [cedric.longville@walesoffice.gsi.gov.uk](mailto:cedric.longville@walesoffice.gsi.gov.uk) can answer legal queries regarding this instrument.

Other contacts are as follows: Phil Elkin, Legal Services at the Welsh Assembly Government, Tel: 029 2080 1059 or e-mail: [phillip.elkin@wales.gsi.gov.uk](mailto:phillip.elkin@wales.gsi.gov.uk)