

Economic Development & Transport Committee

EDT2 03-05(p7)

Date: 9 February 2005

Time: 9.00 am to 12:30 pm

Venue: National Assembly for Wales, Cardiff Bay

Title : ASPB Merger Progress Report and Legislative Process

Aspb Mergers: Legislative Powers And Processes

Background

1. The First Minister announced the intention to incorporate the major executive quangos directly into the Assembly Government on 14 July. This note informs the Committee of the legislative process for abolishing the WDA and the WTB.

The Government of Wales Act

Powers

2. Section 28 and Schedule 4 of the Government of Wales Act 1998 confer powers on the Assembly to reform Welsh public bodies (see annex 1 and annex 2). Under these provisions, the Assembly may, by Order, make provision for the transfer of functions of specified public bodies, either to itself or to other Welsh public bodies. Section 28 (1) allows for the transfer statutory functions of public bodies listed in Part I and II of schedule 4 (see annex 2). The transfer of all of the functions of the WDA and WTB to the Assembly is within the scope of these provisions. An Order under section 28 may also provide for the abolition of functions where a function would be made obsolete on transfer to the Assembly; either because the function requires or permits something to be done in relation to the Assembly, or because the Assembly has an existing function to the same effect.
3. Where each of the statutory functions of a body is either transferred or abolished by an Order under section 28, the Assembly may by Order make provision for the abolition of the relevant body (section 28(3) of the Act).
4. Section 28 contains a number of supplemental powers which are designed to support and give effect to the transfer of functions and/or abolition of the body. An Order under section 28 make provision for the transfer of staff of the body and of any property rights and liabilities to which the body is entitled or subject. The section 28 Order may provide that it is to have effect notwithstanding any provision (of whatever nature) which would prevent or restrict the transfer

of property rights or liabilities otherwise than by the Order. The Order may also make provision about property situated outside the United Kingdom or rights and liabilities arising otherwise than under the law of England and Wales.

5. Section 28(7) of the 1998 Act provides that an Order under section 28 may contain any appropriate consequential, incidental, supplemental or transitional provisions or savings (including provisions in the form of amendments or repeals of enactments). This is a so called "Henry VIII" power under which the Assembly is empowered to make amendments to relevant primary legislation.
6. In Summary section 28 of the 1998 Act contain clear powers to transfer the functions of WDA, WTB and ELWa to the Assembly and to abolish the three bodies on transfer.

Procedure

7. The subordinate legislation required to give effect to the merger will thus take the form of Orders under section 28 of the Government of Wales Act 1998. Assembly Standing Order 24 will apply to the Orders, which provides for submission to Business Committee, possible consideration by the Economic Development and Transport Committee, consideration by Legislation Committee and approval of the Orders by the Assembly in plenary. It is intended that scrutiny by Economic Development and Transport Committee will occur as part of the consultative arrangements which will precede the final version of the Orders which will be submitted to Business Committee as part of the formal procedures under Standing Order 24. No timetable has yet been adopted for the consideration of the Orders, which will be notified to the Committee in due course, but in very broad terms the Orders will proceed in the following stages.

Following the public consultation, the draft Order (amended as necessary) will be submitted to Economic Development and Transport Committee for scrutiny in advance of the formal legislative process. The final Order (amended as necessary) will be submitted to Business Committee to commence the formal process under Standing Order 24, ultimately leading to a decision to make the Order by Assembly in Plenary. Separate Orders will be made for the WDA and WTB.

Action for the Committee

8. The Committee is invited to note the legislative process and progress with taking forward the mergers.

Contact Point

9. EDT Business Unit.

Government of Wales Act 1998: Section 28

28. - 1. The Assembly may by order make, in relation to any one or more of the statutory functions of a body specified in Part I or II of Schedule 4, provision for the transfer of the function or functions-

(a) to a body specified in Part I or III of that Schedule,

(b) to a body specified in Part II or IV of that Schedule if that body consents to the transfer to it of the function or functions,

(c) to a county council, county borough council or community council in Wales (or to more than one such council), or

(d) to the Assembly.

2. Where the Assembly considers that, if a statutory function of a body specified in Part I or II of Schedule 4 were transferred to a body within any of paragraphs (a) to (d) of subsection (1) by an order under that subsection, that body-

(a) would not be able to exercise the function because the function requires or permits something to be done in relation to that body, or

(b) could by exercising another of its functions do what the function would require or permit that body to do,

the Assembly may by order make provision for the abolition of the function.

3. Where each of the statutory functions of a body specified in Part I or II of Schedule 4 is transferred or abolished by an order under subsection (1) or (2), the Assembly may by order make provision-

(a) for the abolition of the body if it is a body specified in Part I of that Schedule, or

(b) for the abolition of the duty to recognise the body if it is a body specified in Part II of that Schedule.

4. An order under subsection (1), (2) or (3)(a) making provision in relation to a body specified in Part I of Schedule 4 may include provision for the transfer of staff of the body and of any property, rights and liabilities to which the body is entitled or subject and may in particular-

(a) provide for the transfer of any property, rights or liabilities to have effect subject to exceptions or reservations specified in or determined under the order,

(b) provide for the creation of interests in, or rights over, property transferred or retained or for the creation of new rights and liabilities between the body and the transferee,

(c) provide for the order to have effect in spite of any provision (of whatever nature) which would prevent or restrict the transfer of the property, rights or liabilities otherwise than by the order, or

(d) make provision about property situated outside the United Kingdom or rights and liabilities arising otherwise than under the law of England and Wales.

5. Where by an order under subsection (1) or (2)-

(a) any function of a body specified in Part I of Schedule 4 is transferred or abolished, or

(b) any function is transferred to a body specified in Part I or III of that Schedule,

the Assembly may by order make provision altering the membership of the body.

6. An order under subsection (3)(a) making provision for the abolition of a body may include provision for the abolition of any duty in compliance with which it was established or constituted.

7. An order under this section may contain any appropriate consequential, incidental, supplementary or transitional provisions or savings (including provisions in the form of amendments or repeals of enactments).

8. In this section "statutory functions" means functions conferred or imposed by an enactment (including an enactment which is contained in an Act passed after this Act or is made after the passing of this Act).

Annex 2

Government of Wales Act - Schedule 4

Public Bodies Subject To Reform By Assembly

Part I

Bodies which may lose or gain functions

1. An agricultural dwelling-house advisory committee for an area wholly in, or consisting of, Wales.
2. An agricultural wages committee for an area wholly in, or consisting of, Wales.
3. The Ancient Monuments Board for Wales

3A The Care Council for Wales.

4. The committee established under section 11 of the Environment Act 1995 to advise about the carrying out in Wales of the Environment Agency's functions.
5. The National Council for Education and Training for Wales.
6. The sub-committee for Wales of the advisory committee for England, Wales and Northern Ireland constituted under section 32 of the Hill Farming Act 1946 to advise about the exercise of powers under that Act.
7. The Historic Buildings Council for Wales
8. The Library Advisory Council for Wales (known as the Library and Information Services Council (Wales)).
9. The Qualifications, Curriculum and Assessment Authority for Wales.
10. The Wales Tourist Board.
11. The Welsh Development Agency.
12. The Welsh Industrial Development Advisory Board.
13. The Welsh Language Board.

Part II

Bodies Which May Lose Functions Or Gain Functions With Consent

14. The committees referred to in section 19(1) of, or paragraph 1(1)(a) or (b) of Schedule 6 to, the National Health Service Act 1977 (advisory committees for Wales).

Part III

Bodies Which May Only Gain Functions

15. The Countryside Council for Wales.
16. The Higher Education Funding Council for Wales.

Part IV

Bodies Which May Only Gain Functions And Only With Consent

17. The Arts Council of Wales.
18. The National Library of Wales.
19. The National Museum of Wales.
20. The Royal Commission on Ancient and Historical Monuments of Wales.
21. The Sports Council for Wales.