

## ECONOMIC DEVELOPMENT & TRANSPORT COMMITTEE

Date: 8 June 2005  
Time: 9.00 - 12:30  
Venue: National Assembly, Cardiff Bay  
Title: ASPB Mergers: Update from Officials on the Legislative Process

### ASPB Mergers: Update from Officials on the Legislative Process

#### Purpose

To provide an update to the committee on the subordinate legislation to enable the merger of the Welsh Development Agency and the Wales Tourist Board with the National Assembly.

#### Summary

The public consultation on the draft orders started on 24 May and will end on 15 July.

#### Background

The First Minister announced the intention to merge the Welsh Development Agency, the Wales Tourist Board and the National Council for Education and Training for Wales (ELWa) into the Assembly Government on 14 July 2004. A further announcement in November last year set out proposals for other ASPB areas of responsibility.

In January 2005 a consultation report was launched which sought ideas and views on how the proposed structures could meet the needs of stakeholders and customers. It was also announced that the Qualifications, Curriculum and Assessment Authority for Wales (ACCAC) would also merge with the Assembly Government administration at the same time as the National Council (ELWa).

The Report on the responses to the consultation by the Welsh Assembly Government on the mergers of the WDA, WTB and ELWa was published on 24 May and will be debated at Plenary on 8 June 2005.

#### Powers to transfer ASPB functions and abolition

Section 28 of the Government of Wales Act 1998 gives the National Assembly for Wales ("the National

Assembly") powers with respect to the structure of certain public bodies in Wales listed in Schedule 4 of that Act.

It provides that the National Assembly may transfer the functions of some of those bodies to another such body, to a Welsh local authority or to itself; and that it may abolish such bodies where all their functions have been transferred.

Orders have been drafted to provide for the transfer of functions, property, rights and liabilities (including staff) from the WDA and the WTB to the National Assembly and for the abolition of the WDA and WTB. They also provide for consequential amendments to primary and secondary legislation. Copies of the draft Orders can be found at Annex 1 with copies of the amendments to the Acts at Annex 2 ( The Development of Tourism Act 1969, Tourism (Overseas Promotion) (Wales) Act 1992 and Welsh Development Agency Act 1975).

### Consultation Process

A public consultation on the draft Orders (and those for the ELWa and ACCAC) commenced on 24 May 2005 and will last for seven weeks, ending on 15 July 2005. The draft Orders are likely to be subject to further revisions as a result of the consultation process.

Following the summer recess the draft Orders (amended as necessary) will be subject to formal scrutiny by the Economic Development and Transport Committee before being submitted to Business Committee. It will then be considered by the Legislation Committee before proceeding to Plenary for consideration.

### The Orders

The general principle adopted in the drafting is to transfer functions effecting minimal change to the way those functions are carried out (indeed this has to be the case as that is a requirement of the enabling power, section 28 of GOWA). The exceptions are largely where the WDA and WTB are required to interact with the Assembly or where the Assembly has an existing general regime into which the relevant provisions will be subsumed. In these cases functions have been amended or deleted. Certain changes which are appropriate and genuinely consequential, incidental, supplementary or transitional to the transfer of functions have also been made. In particular, references to the functions of "the Secretary of State" have been amended to functions of "the Assembly" on the face of the 1975 Act where appropriate so as to reflect the effect of the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672).

A number of the changes required are generic and apply to all the ASPBs which are being brought in to the Assembly eg provisions relating to Annual Accounts. The more significant WDA and WTB-specific issues are considered below.

### *Issues Relating to the WDA Order*

Borrowing - The Assembly already has powers in certain limited circumstances to borrow from the Secretary of State (through HM Treasury and the National Loans Fund (NLF)). This power allows the Secretary of State to lend money to the Assembly to cover a temporary excess of expenditure or to provide it with a working balance. Paragraph 4 of Schedule 3 to the WDA Act goes further allowing the Agency to borrow from the NLF for the purposes of the exercise of its functions. This power is subject to Treasury consent.

Although the Agency has the power to borrow from the NLF, in practice it does not (the power was only included in the WDA Act as a consequence of the Agency's merger with the Development Board for Rural Wales (DBRW)). The WDA has residual outstanding liabilities following borrowing by the DBRW and these will transfer to the Assembly at the point of merger.

The current UK public expenditure rules mean that any NLF borrowings would score against the Assembly's block (total) budget. In effect the Assembly would lose Central Government grant equivalent to the value of any NLF loan taken out. In addition, the Assembly would be liable to interest on the loan. There is therefore no benefit to be obtained from seeking to use this power as this things stand. Although there is a theoretical possibility that these rules may change, doing so would require a change to the most basic of the public spending and borrowing principles. Moreover, at present HM Treasury does not allow Government Departments and Devolved Administrations access to the NLF.

Taking these issues into account the draft WDA Transfer of Functions Order therefore removes the power to borrow from the NLF for the purpose of the exercise of former WDA functions.

### *Issues Relating to the WTB Order*

Schedule 1 of the draft WTB Order makes provision for the relevant section of the Development of Tourism Act 1969 to be amended so as to allow for the National Assembly for Wales to appoint a person to the Board of VisitBritain (VB) (formerly the British Tourist Authority). This replaces the current provision which make the chairman of the Wales Tourist Board an ex-officio member of the VB Board.

### Regulatory Appraisal

A common draft Regulatory Appraisal of the likely costs and benefits of complying with the draft Order has been prepared to accompany the draft Orders as part of the consultation (a copy is at Annex 3). It also covers the draft Orders for the transfer of functions and abolition of ELWA and ACCAC. Individual Regulatory Appraisals and Explanatory Memoranda will be drafted to accompany the draft Orders when they are scrutinised by the Committee after the summer recess.

Action for the Committee

The Committee is invited to comment on the draft orders to abolish the WDA and WTB.