WELSH STATUTORY INSTRUMENTS

2005 No. 3226 (W.238)

ECONOMIC DEVELOPMENT, WALES

The Welsh Development Agency (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005

Made - - - - 22 November 2005

Coming into force the day after the Order is made.

The National Assembly for Wales, in exercise of the powers conferred upon it by section 28 of and Schedule 4 to the Government of Wales Act 1998(**1**), makes the following Order:

Title, commencement and interpretation

1.—(1) The title of this Order is the Welsh Development Agency (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005 and it comes into force on the day after it is made.

(2) In this Order—

the "1975 Act" ("*Deddf 1975*") means the Welsh Development Agency Act 1975(**2**);

the "Agency" (*yr* "*Awdurdod*") means the Welsh Development Agency;

"alien" ("*aliwn*") has the meaning given to it in section 51(4) of the British Nationality Act 1981(**3**);

the "Assembly" (*y* "*Cynulliad*") means the National Assembly for Wales;

"relevant employee" ("*cyflogai perthnasol*") means any person who, immediately before the transfer date, was employed by the Agency under a contract of employment; and

"transfer date" ("*dyddiad trosglwyddo*") means 1 April 2006.

Transfer of functions, property, rights and liabilities of the Agency to the Assembly

2.—(1) On the transfer date the functions of the Agency are transferred to the Assembly in accordance with the provisions of Schedules 1 and 2 which amend the enactments relating to the Agency for the purpose of—

(a) transferring its functions to the Assembly, and

(**1**) 1998 c. 38.
(**2**) 1975 c. 70
(**3**) 1981 c. 61.

(b) making provision consequential on or incidental or supplementary to the transfer.

(2) On the transfer date there are transferred to and vested in the Assembly by virtue of this paragraph all property, rights and liabilities to which the Agency was entitled or subject immediately before that date.

(3) The rights and liabilities referred to in paragraph (2) above include those arising under any contract of employment made between a relevant employee and the Agency.

(4) The Transfer of Undertakings (Protection of Employment) Regulations 1981(**4**) apply to the transfer of the functions of the Agency to the Assembly whether or not apart from this provision, the discharge of these functions would be treated as an undertaking in the nature of a commercial venture for the purposes of those Regulations.

(5) Notwithstanding anything in any other part of this Order or in the Transfer of Undertakings (Protection of Employment) Regulations 1981, where the effect of this article is that a person who is an alien becomes a member of the Assembly's staff, section 34(2) of the Government of Wales Act 1998 does not apply to the contract of employment of that person before the transfer date.

(6) A certificate issued by the Assembly that any property has been transferred by paragraph (2) is to be conclusive evidence of the transfer.

(7) Paragraph (2) has effect in relation to the property, rights or liabilities to which it applies in spite of any provision (of whatever nature) which would prevent or restrict the transfer of the property, rights or liabilities otherwise than by that paragraph.

Transitional provisions

3.—(1) Nothing in article 2 or Schedules 1 or 2 affects the validity of anything done by or in relation to the Agency before its functions are transferred.

(2) There may be continued by or in relation to the Assembly anything (including legal proceedings) which—

(a) relates to any of the functions of the Agency or to any property, rights or liabilities transferred by article 2(2), and

(b) is in the process of being done by or in relation to the Agency when the said functions are transferred.

(3) Anything which—

(a) was done by the Agency for the purpose of or in connection with any of its functions or by the Agency for the purpose of or in connection with any property, rights or liabilities transferred by article 2(2), and

(b) is in effect immediately before its functions are transferred,

is to have effect as if done by the Assembly, and for the avoidance of doubt any compulsory purchase orders made by the Agency in relation to land in Wales under section 2(2) of the Acquisition of Land Act 1981(**5**) and not confirmed prior to the transfer date will be deemed to be compulsory purchase orders made in draft by the Assembly under the procedure set out in Schedule 1 to that Act.

(4) The Assembly is substituted for the Agency in any instruments, contracts or legal proceedings which relate to—

(a) any of the functions of the Agency, and

(b) any property, rights or liabilities transferred by article 2(2),

and which are either made or commenced before its functions are transferred.

(**4**) S.I. 1981/1794 as amended by the Trade Union Reform and Employment Rights Act 1993 (c. 19) by the Dock Work Act 1989 (c. 13) and by Statutory Instruments 1987/442, 1995/2587, 1998/1658, 1999/1925, 1999/2402 and 1999/2587.
(**5**) 1981 c. 67.

(5) The Assembly may—

(a) continue to hold property held by the Agency, and

(b) continue to carry on activities in which the Agency was engaged,

in reliance upon section 21(2) of the Industry Act 1980(**6**).

(6) On the transfer date the obligations of the Agency, the Assembly and the Auditor General for Wales referred to below contained in paragraph 8 of Schedule 3 (Financial and administrative provisions relating to Agency) to the 1975 Act will have effect in respect of the financial year 2005 to 2006 only but are otherwise abolished—

(a) the Agency's obligation under sub-paragraph (1) to prepare a statement of account, save that the obligation is transferred to the Assembly;

(b) the Assembly's obligation under sub-paragraph (3) to transmit the statement of account to the Auditor General for Wales; and

(c) the Auditor General for Wales' obligation under sub-paragraph (4) to examine and certify the statement of account and lay before the Assembly copies of the statement of account together with a report thereon.

Industrial buildings allowances

4.—(1) The transfer of property from the Agency to the Assembly under this Order does not give rise to any allowances or charges under the Capital Allowances Act 2001.

(2) In relation to the property included in the transfer, for the purposes of calculating industrial buildings allowances under that Act anything done to or by the Agency before the transfer is to be treated after the transfer as having been done to or by the Assembly.

Abolition

5. Upon the transfer of its functions, property, rights and liabilities to the Assembly on the transfer date in accordance with article 2, the Agency is to cease to exist.

Winding down

6. The Agency must give to the Assembly all the information and do all other things which appear to the Assembly appropriate for the purpose of facilitating the transfer of its functions to the Assembly and its abolition in accordance with this Order.

Amendments to, repeals of and revocations of existing enactments

7.—(1) On the transfer date—

(a) the provisions of the 1975 Act specified in Schedule 1 to this Order are amended in accordance with that schedule;

(b) the enactments specified in Part 1 of Schedule 2 to this Order are amended in accordance with that schedule; and

(c) the enactments specified in Part 2 of Schedule 2 to this Order are repealed or revoked, as the case may be.

(2) The amendments to, repeals of and revocations of enactments extend to the same extent as the enactment which is amended, repealed or revoked.

(**6**) 1980 c. 33.

Saving provisions

8.—(1) Any planning permission deemed to have been granted by virtue of section 7 (Dissolution of the Welsh Industrial Estates Corporation) of the 1975 Act remains in force notwithstanding the repeal of that section.

(2) Paragraph 7 of Schedule 2 (Members of staff of the Welsh Industrial Estates Corporation) to the 1975 Act shall remain in force in respect of any members of staff of the Agency who were transferred to the employment of the Agency from the employment of the Welsh Industrial Estates Corporation.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(**7**)

D. Elis-Thomas
22 November 2005 The Presiding Officer of the National Assembly

(**7**) 1998 c. 38.

SCHEDULE 1 Article 7(1)

The Welsh Development Agency Act 1975

1. The Welsh Development Agency Act 1975 has effect subject to the following amendments.

2. Unless otherwise provided for in the following provisions, in each place where it occurs (including in headings to sections and schedules)—

(a) for "Agency" substitute "Assembly"; and

(b) for "Agency's" substitute "Assembly's".

3. In section 1 (The Welsh Development Agency)—

(1) for subsection (1), substitute—

"(1) The functions specified in the following provisions of this Act are conferred upon the National Assembly for Wales (in this Act referred to as the "Assembly").";

(2) in subsections (2), (3)(j), (4), (6) (in the first place it occurs) and (7)(l), for "their" substitute "its";

(3) in subsections (2) and (4) after "functions" insert "under this Act";

(4) in subsection (3) immediately before "shall be" insert "under this Act";

(5) in subsection (7) after "have power" insert "in connection with its functions under this Act";

(6) at the end of subsection (7)(m) insert "under this Act";

(7) omit subsections (8) to (13) and (15);

(8) for subsection (14) substitute—

"(14) The Assembly shall, after consultation with such local authorities, National Park authorities and other bodies as appear to the Assembly to have an interest, from time to time prepare and publish programmes for the performance of such of its functions under this Act as it considers appropriate."; and

(9) for the heading to section 1 substitute "Welsh development".

4. Omit section 2 (Constitution and status).

5. In section 4 (Ancillary powers)—

(1) after "power", insert "in connection with its functions under this Act";

(2) in paragraph (a), for "their services as they think" substitute "its services as it thinks";

(3) in paragraph (b), for "them" substitute "it" and for "of their" substitute "such"; and

(4) in paragraph (c), for "their" substitute "such".

6. In subsection (1) of section 5 (Assistance to Agency from public authorities and other persons), for "their" substitute "its".

7. For section 6 (Power to form committees) substitute—

"**6.**—(1) The Assembly may establish such committees for giving advice to the Assembly about the discharge of any of its functions under this Act as it considers appropriate.

(2) The members of any such committee are to be appointed by the Assembly and may be either members of the Assembly or persons who are not members.".

8. Omit section 7 (Dissolution of Welsh Industrial Estates Corporation).

9. Omit section 8 (Transfer to Agency of land held under the Local Employment Act 1972).