

SL(5)500 – The National Park Authorities (Wales) (Amendment) Order 2020

Background and Purpose

This Order makes amendments to Parts I and II of Schedule 2 to the National Park Authorities (Wales) Order 1995/2803 ("the 1995 Order") to reduce the membership of Brecon Beacons National Park Authority ("BBNPA") from 24 to 18. The Order comes into force on 1 April 2020.

Procedure

Negative.

Technical Scrutiny

No technical points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

Three points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

1. The second paragraph of the Explanatory Note refers to "Article 3", but this should refer to "Article 2". The error also exists in the Welsh version, which should therefore read "Mae erthygl 2".

2. We note that the Welsh Ministers have power to give written notice of the termination of the appointment of a local authority member of a National Park authority under paragraph 6(1) of Schedule 7 to the Environment Act 1995. This power can be exercised where an order varies the number of local authority members of an authority, as is the case with this Order.

The power to remove members appointed by the Welsh Ministers is contained in paragraph 6(2) of Schedule 7 to the Environment Act 1995. That power must be exercised by giving the member three months' written notice of the termination or by such other manner as may be provided for in the terms of that member's appointment.

We note that this Order comes into force on 1 April 2020. The powers of the Welsh Ministers enable them to remove any local authority members so as to reduce membership of the BBNPA to the levels implemented by the changes under this Order. However, it is not clear that it is possible to reduce the number of members of the BBNPA appointed by the Welsh Ministers to the levels required following the coming into force of the changes under this Order. This matter is not dealt with in the Explanatory Memorandum.

Does the coming into force date take into account any necessary notice periods that are required to terminate appointments in order to reduce the number of members of the BBNPA appointed by the Welsh Ministers?

3. It is unclear why a regulatory impact assessment has not been produced for this Order. Section 76(2)(a) of the Government of Wales Act 2006 defines a regulatory impact assessment as "an assessment



as to the likely costs and benefits of complying with relevant Welsh subordinate legislation". It is noted that the Explanatory Memorandum identifies benefits arising from the changes made by this Order.

The Explanatory Memorandum states that a regulatory impact assessment is not required because "this instrument does not confer any new burdens on businesses, charities or voluntary bodies" and that "there is no significant impact on the public sector". Further, it appears that the justification for not preparing a regulatory impact assessment is on the grounds that this Order "relates to the maintenance of existing legislation" and has no impact on the statutory duties or statutory partners.

Section 76(1) of the Government of Wales Act 2006 requires the Welsh Ministers to make a code of practice setting out their policy on the carry out of regulatory impact assessments in connection with relevant Welsh subordinate legislation. Paragraph 4.2 of the code made by the Welsh Ministers pursuant to section 76(1) of the Government of Wales Act 2006 states that "Welsh Ministers' policy will be to carry out an RIA ... subject to the following exceptions".

Although the Explanatory Note states that the Welsh Ministers considered the Code of Practice on the carrying out of regulatory impact assessments, it is not clear which exceptions under the Code are relied upon in relation to this Order.

Which exception under the Code applies to the decision not to produce a regulatory impact assessment?

Implications arising from exiting the European Union

No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

We acknowledge the incorrect reference to article 3 in both English and Welsh texts, and will rectify this through a correction slip.

Due to recent resignations, the number of current Ministerial appointments to the BBNPA at the point of coming into force will be 6. The instrument therefore accurately reflects the current composition and notice periods for termination will not be an issue.

We have considered this matter further and consider that the exceptions in the Code do not apply in this case. We therefore propose that a Regulatory Impact Assessment be carried out.

Legal Advisers

Legislation, Justice and Constitution Committee

14 February 2020



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National Assembly for Wales
Legislation, Justice and Constitution Committee