EXPLANATORY MEMORANDUM TO

THE NATIONAL ASSEMBLY FOR WALES COMMISSION (CROWN STATUS) ORDER 2016

2016 No. 159

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Wales Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument ("the Order") provides that references to the Crown in Article 3ZA(b) of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023) (the "Exceptions Order") are to include the National Assembly for Wales Commission ("the Commission").

2.2 This will enable the Commission to carry out its own security vetting in the interests of national security.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The Commission was established as a body corporate by section 27 of the Government of Wales Act 2006 ("GoWA").

4.2 The Commission supports the National Assembly for Wales ("the Assembly") in carrying out its work, ensuring that it is provided with the property, staff and services required for its purposes.

4.3 The Commission consists of the Presiding Officer, and four other Assembly Members nominated by the political parties represented in the Assembly. Paragraph 3(1) of Schedule 2 to GoWA enables the Commission to appoint staff.

4.4 Although paragraph 3(3) of Schedule 2 provides that employment as a member of the staff of the Commission is not employment under the Crown, paragraph 12 of Schedule 2 enables Her Majesty may by Order in Council to provide for the Commission to be treated to any extent as a Crown body for the purposes of any enactment.

4.5 To enable the Commission to carry out its own security vetting of its staff, this Order provides that references to the Crown in Article 3ZA(b) of the Exceptions Order are to be treated as including the Commission. This will allow the Commission to ask

prospective employees about spent convictions for the purpose of safeguarding national security.

4.6 The Order will have effect from 10th March 2016.

5. Territorial extent and application

5.1 The Order extends to England and Wales.

5.2 This Order applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 This Order is made in consequence of an internal Commission review of existing security vetting arrangements.

7.2 Under the National Assembly for Wales (Crown Status) Order 2007 (S.I. 2007/1118) and the National Assembly for Wales (Crown Status) (No 2) Order 2007 (S.I. 2007/1353), the Commission is already treated as a Crown body for certain purposes of the following legislation:

(a) Employers' Liability (Compulsory Insurance) Act 1969;
(b) Health and Safety at Work etc Act 1974;
(c) Ancient Monuments and Archaeological Areas Act 1979;
(d) Building Act 1984;
(e) Town and Country Planning Act 1990;
(f) Planning (Listed Buildings and Conservation Areas) Act 1990;
(g) Welsh Language Act 1993;
(h) Value Added Tax Act 1994;
(i) Data Protection Act 1998;
(j) Licensing Act 2003;
(k) Communications Act 2003;
(l) Regulatory Reform (Fire Safety) Order 2005; and
(m) Health Act 2006.

7.3 Currently, the Foreign and Commonwealth Office ("FCO") has a contractual arrangement with the Commission to carry out the security vetting of prospective Commission employees. This process takes about three weeks to complete.

7.4 Although the FCO will continue to carry out this security vetting, the Commission wishes to carry out its own security vetting of contractors in order to expedite the existing process.

7.5 The Commission also wishes to give staff and contractors the opportunity to provide their security vetting information in Welsh as well as English. This bilingual service is not currently offered by the FCO, but will be offered by the Commission following the commencement of this Order.

8. Consultation outcome

8.1 No consultation has been undertaken in relation to the Order.

9. Guidance

9.1 No guidance will be issued on the terms of the Order. This memorandum explains the purpose and context of the Order.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector will be that, in undertaking its own security vetting, the Commission will have the flexibility to recruit staff and/or contractors at short notice and allow such persons to provide their security vetting information in Welsh or English. The Commission employs approximately 400 staff in Cardiff Bay and Colwyn Bay. The number of bilingual staff employed by the Commission is around 180 and in 2014, the number of security clearances carried out was around 760. The Order will allow these clearances to be undertaken by the Commission instead of by the FCO.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The Order does not apply to activities that are undertaken by small businesses.

12. Monitoring and review

12.1 It is not proposed that this Order will be formally reviewed.

13. Contact

13.1 Queries about the content of the Order or this memorandum should be addressed to Jeff Lloyd, Wales Office (Tel: 029 2092 4210, email: Jeff.Lloyd@walesoffice.gsi.gov.uk).

13.2 Owen Robinson, Wales Office Legal Advisers, can answer legal queries about the instrument (Tel: 0207 270 0400, email: Owen.Robinson@walesoffice.gsi.gov.uk).