EXPLANATORY MEMORANDUM TO

THE NORTH-WEST, SEVERN-TRENT AND WELSH REGIONAL FLOOD DEFENCE COMMITTEES (BOUNDARIES ALTERATION) ORDER 2005

2005 No. 3047

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1. This instrument will alter the boundary of the Welsh Regional Flood Defence Committee (Welsh RFDC) so as to align its area with the area of Wales, and to retain within its area three tidal waters that are below the low-water mark. The Order will also make corresponding alterations to the boundaries of the neighbouring Severn-Trent Regional Flood Defence Committee (Severn-Trent RFDC) and the North-West Regional Flood Defence Committee (North-West RFDC).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. This instrument is subject to annulment by a resolution of either House of Parliament pursuant to paragraph 4(4) of Schedule 4 to the Environment Act 1995.

4. Legislative Background

4.1. Regional Flood Defence Committees (RFDCs) are executive committees of the Environment Agency (EA) established under previous legislation now enshrined in the Environment Act 1995 (see section 14 of the Environment Act 1995). There are RFDCs covering the areas of each of the EA regions. The EA is required to arrange for all its flood defence functions, apart from some financial matters, to be exercised through these committees (section 106 Water Resources Act 1991).

4.2. The enabling powers for this Order are section 14 of, and paragraph 1, sub-paragraphs (1) and (3) of, Schedule 4 to, the Environment Act 1995. In this case, because the Order alters the boundaries of areas that are partly in England and partly in Wales, these powers are exercisable jointly by the National Assembly for Wales and the Secretary of State for Environment, Food and Rural Affairs.

4.3. Where an Order is to be made under Schedule 4, the procedures set out in paragraphs 2 to 5 of that Schedule must be followed. The steps taken under those provisions are set out below.

4.4. Paragraph 2(1) of Schedule 4 requires the "relevant Minister" to consult such persons or representative bodies as he considers appropriate; to prepare a draft Order; and to publish a notice in the London Gazette and in such other manner as he considers appropriate for bringing the draft order to the attention of persons likely to be affected by it if made. That notice must comply with the requirements of sub-paragraph (2). Paragraph 3 of Schedule 4 requires the relevant Minister to cause copies of the notice and of the draft order to be served on every person carrying out functions under any enactment who appears to him to be concerned. In relation to this Order, the

requirements of paragraph 2 of Schedule 4 have been complied with as set out in paragraphs 4.5 to 4.8 below

4.5. On 22nd September 2003, a consultation document (Flood Defence Arrangements in Wales - The Future) was issued seeking views on the following options:

a) a single regional flood defence committee for Wales directly funded by the Assembly; or

b) three regional flood defence committees funded by both a levy on local authorities in its area and by grant from the Assembly for capital works.

Views were also invited on the composition of the committee(s), suitable arrangements for the public to influence local flood defence work plans, the suitability of the boundaries of the three-committee option, and the adoption of the Wales/England border as the eastern boundary of the Welsh flood defence committees.

4.6. The consultation document was issued on the 22nd September to approximately 190 organisations and interested parties with a response date of the 5th December 2003. Details of the responses received in relation to the boundary change are included in the policy section below. A report summarising the responses is available on the Welsh Assembly Government website[1].

4.7. On the 12th November 2004 Defra Ministers sent out a further consultation letter to the local authorities and internal drainage boards in England who may be affected by the proposed boundary change.

4.8. The draft Order was prepared jointly by Defra and Welsh Assembly Government officials in May 2005 (Para 2(1)(b)) and a notice was published in the London Gazette, and other local and national newspapers. A joint letter was sent to persons likely to be affected by the Order and a copy of the notice and draft Order was served on every person carrying out functions under any enactment who appeared to be concerned (in accordance with Para 2(3) of Schedule 4). The period of notice was 28 days from the 12th May 2005.

4.9. Two objections were received during the 28 day period. One from Ceredigion County Council (one of the bodies upon which notice was served under paragraph 2(3) of Schedule 4). The other objection was received from 'The Flood Prevention Society', a local interest group based in Cheshire with concerns about flooding from the River Dee. Paragraph 3 of Schedule 4 requires the relevant Minister, before making the order, to consider any representations or objections duly made with respect to the draft order which are not withdrawn and, if he thinks fit, to cause a local inquiry to be held with respect to any such representations. The Order was duly made, although modified in light of representations received from the Environment Agency.

4.10. Paragraph 4 provides that where an order is made under Schedule 4, the relevant Minister shall serve notice of the making of the Order on every person on whom notice is required to have been served under paragraph 2(3) of Schedule 4 and who has duly made an objection to the making of the order that has not been withdrawn. The order shall not have effect before the end of a 28 day period from the date of the service of the notice.

4.11. Where any person on whom notice is served, under paragraph 4, objects to the order, and that objection is not withdrawn, the order is subject to special

[1] [http://www.countryside.wales.gov.uk/fe/master.asp?n1=797&n2=776&n3=837

parliamentary procedure. If the order is not subject to special parliamentary procedure, it is subject to annulment in pursuance of a resolution of either House of Parliament. Notice of the making of the order was served on Ceredigion County Council on 3 October 2005. The objection from Ceredigion County Council was not sustained, and accordingly, the order is subject to annulment in pursuance of a resolution of either House of Parliament pursuant to paragraph 4(4) of Schedule 4 to the Environment Act 1995.

5. Extent

5.1. This instrument extends 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. Following a review of the funding arrangements for flood defence a commitment was given by the Secretary of State in written statements to Parliament on 12 March 2003[1] and 1 July 2004[2] to establish a single tier of regional committees across England. Similar commitments were made during passage of the Water Act 2003, which introduced powers for Ministers and the National Assembly for Wales to revoke local flood defence committees and create new regional flood defence committees.

7.2. In March 2003, the Minister for Environment, Planning and Countryside at the National Assembly for Wales ("the Assembly Minister") welcomed the UK government's announcement on the conclusions of the review of flood and coastal defence funding mechanisms in England and Wales. The Assembly Minister also announced that a further consultation on options for change would be undertaken before deciding on the funding and administrative arrangements in Wales (Para 4.5 above refers).

7.3. Forty one responses were received (21% response rate) to the consultation in Wales, of which 56% were against the adoption of the England/Wales border as the Eastern boundary of the Committee, 10% were for the proposal and the remaining 34% either indicated no preference or made no comment on the proposal. The main concerns raised were either financial or related to the impact of the adoption of separate administrative and operational boundaries on catchment management. The Assembly Minister had discussions on these matters with the Environment Agency, which has both operational and administrative responsibilities for flood risk management.

7.4. In addition, because the change in boundary of the Welsh RFDC affects the Severn Trent and the North-West RFDCs in England, the agreement of the Secretary of State to act jointly in this matter was obtained prior to the announcement at Plenary. This agreement included a requirement to ensure that satisfactory cross-border arrangements are in place in relation to catchment management. These arrangements

[1] (http://www.publications.parliament.uk/pa/cm200203/cmhansrd/vo030312/wmstext/30312m01.htm#30312m01.html_dpthd3)

[2] (http://www.publications.parliament.uk/pa/cm200304/cmhansrd/cm040701/wmsext/40701m02.htm#40701m02.html_dpthd1)

are secured by the EA who will continue to operate and manage the rivers on a catchment basis.

7.5. The Assembly Minister considered all of the relevant information and announced his decision at the Assembly Plenary debate on the 29th June 2004. He also indicated that he had asked Officials to review the composition of the RFDC in Wales. In his announcement he explained: 'In streamlining existing arrangements, my aim is to simplify accountabilities, responsibilities and funding arrangements, enable strategic decisions to be taken in the best interests of Wales, and enable the Assembly to set the required policy framework and monitor the achievement of its targets. I concluded that the appropriate way forward for Wales is the establishment of a single committee covering the whole of Wales, fully funded by the Assembly'.

7.6. The Assembly Minister's announcement on the boundary change was subsequently referred to in the Secretary of State's written statement to parliament on 1st July 2004 referred to above.

7.7. The delivery of this Assembly policy required the following legislative actions to be undertaken:

a) The revocation of the local flood defence scheme in Wales;
b) The amendment of the boundary of the Regional Flood Defence Committees; and
c) An Order to alter the composition of the RFDC in Wales

7.8. The Welsh Local Flood Defence Scheme 1996 (Revocation) Order 2005 (S.I 2005/548) abolished the Local Flood Defence Scheme within the area of the Welsh RFDC, leaving only the Regional Flood Defence Committee in place. The amendment of the boundary of the Welsh RFDC is the subject of this Order and once made, the intention is that an Order to amend the composition of the RFDC in Wales can be made by the Assembly, acting under section 16A of the Environment Act 1995

7.9. As indicated above, Ceredigion County Council was the only body, on whom notice was served under paragraph 2(3) of Schedule 4, that objected to the draft order. The objection related to the loss of local democratic input, a matter that had been considered prior to the making of the Welsh Local Flood Defence Scheme 1996 (Revocation) Order 2005. Furthermore, the question of local authority input into flood defence management is the subject of a further Assembly consultation[1], in anticipation of an Order under section 16A of the Environment Act 1995 , that will alter the composition of the Welsh RFDC. In light of this, the Assembly Minister and the Secretary of State decided to proceed with the making of the Order, without holding a local enquiry.

7.10. This Order is therefore an important stage in the delivery of the Assembly Minister's policy in Wales.

8. Impact

8.1. A regulatory impact assessment has not been prepared for this instrument, as it has no impact on the costs of business, charities or voluntary bodies.

[1] http://www.countryside.wales.gov.uk/fe/preview.asp?n1=851

9. **Contact**

9.1. Sarah Steeds at the Department of Environment, Food and Rural Affairs Tel: 020 7238 6536 or e-mail: Sarah.H.Steeds@defra.gsi.gov.uk can answer any queries regarding the instrument.