EXPLANATORY MEMORANDUM TO THE

WELSH LOCAL FLOOD DEFENCE SCHEME 1996 (REVOCATION) ORDER 2005

2005 No. 548

1. This explanatory memorandum has been prepared by the Wales Office and is laid before Parliament by Command of Her Majesty.

2. Description

This instrument, which has been made by the National Assembly for Wales ("the Assembly"), revokes the Welsh Local Flood Defence Scheme 1996.

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

This instrument, although made by the Assembly, is subject to annulment by a resolution of either House of Parliament by virtue of the provisions of section 18A(4) of and paragraph 4 of Schedule 4 to the Environment Act 1995 ("the 1995 Act") as set out in paragraph 4 below. No notice of objection was served within the period of 28 days mentioned in paragraph 4.4 below and so the instrument is not subject to special parliamentary procedure.

4. Legislative Background

4.1 The Welsh Local Flood Defence Scheme 1996, which came into force on 1st May 1996, was made by the Environment Agency in the exercise of powers conferred on it by Section 17 of the 1995 Act and was approved by the Secretary of State for Wales on 19th April 1996 in accordance with section 17(8) of that Act.

4.2 Section 18A(1) of the 1995 Act provides that any local flood defence scheme may be revoked by the Secretary of State by order made by statutory instrument.

4.3 Section 18(A)(4) of the 1995 Act provides that paragraphs 2 to 6 of Schedule 4 to the Act, apart from paragraph 3(3), apply in relation to an order under the section as they apply to an order under that Schedule, with references to the relevant Minister being read as references to the Secretary of State.

4.4 Paragraph 4 of Schedule 4 to the 1995 Act provides that the relevant Minister shall serve notice of the making of an order under that Schedule on every person who has duly made an objection to the making of the order that has not been withdrawn, that the order shall not have effect before the end of a period of 28 days from the date of service of the last such notice and that if, before then, any person who has been served with such a notice serves notice objecting to the order and the objection is not withdrawn, the order

shall be subject to special parliamentary procedure. Paragraph 4 provides further that a statutory instrument containing an order under the Schedule which is not subject to special parliamentary procedure shall be subject to annulment in pursuance of a resolution of either House of Parliament.

4.5 The National Assembly for Wales (Transfer of Functions) Order 1999 (S. I. 1999/672) ("the 1999 Order") transferred to the Assembly, except as provided otherwise, all functions of a Minister of the Crown under the enactments specified in Schedule 1 to the Order so far as exercisable in relation to Wales.

4.6 The enactments specified in Schedule 1 to the 1999 Order include the 1995 Act.

4.7 Section 100(5) of the Water Act 2003, by which section 18A was inserted into the 1995 Act, provides that the entry relating to the 1995 Act in Schedule 1 to the 1999 Order is amended so that functions under section 18A are transferred to the Assembly in relation to the local flood defence scheme for a district which is in the area of a regional flood defence committee the whole or the greater part of which is in Wales.

4.8 The Welsh Local Flood Defence Scheme 1996 is the local flood defence scheme for 6 districts which are within the area of the Welsh Regional Flood Defence Committee the greater part of which is in Wales.

5. Extent

This instrument extends to England and Wales.

6. European Convention on Human Rights

Not applicable.

7. Policy Background

The Assembly's policy is for a flood defence service in Wales to be delivered through a single committee for Wales. The policy is to be implemented by the abolition of the six local committees established by the Welsh Local Flood Defence Scheme 1996 and the creation of a new flood defence committee for an area which is limited to Wales in place of the existing regional committee which covers an area greater than Wales. This instrument constitutes the first step in that process.

8. Impact

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.

9. Contact

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