An Act to make provision about the government of Wales.

[25th July 2006]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:–

PART 1

NATIONAL ASSEMBLY FOR WALES

The Assembly

1 The Assembly

(1) There is to be an Assembly for Wales to be known as the National Assembly for Wales or Cynulliad Cenedlaethol Cymru (referred to in this Act as “the Assembly”).

(2) The Assembly is to consist of–
   (a) one member for each Assembly constituency (referred to in this Act as “Assembly constituency members”), and
   (b) members for each Assembly electoral region (referred to in this Act as “Assembly regional members”).

(3) Members of the Assembly (referred to in this Act as “Assembly members”) are to be returned in accordance with the provision made by and under this Act for–
   (a) the holding of general elections of Assembly members (for the return of the entire Assembly), and
   (b) the filling of vacancies in Assembly seats.

(4) The validity of any Assembly proceedings is not affected by any vacancy in its membership.

(5) In this Act “Assembly proceedings” means any proceedings of–
(a) the Assembly,
(b) committees of the Assembly, or
(c) sub-committees of such committees.

Commencement
Pt 1 s. 1(1)-(5)(c): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 1 s. 1(1)-(5)(c): United Kingdom

Law In Force

2 Assembly constituencies and electoral regions

(1) The Assembly constituencies are the constituencies specified in the Parliamentary Constituencies and Assembly Electoral Regions (Wales) Order 2006 (S.I. 2006/1041) as amended by—
(a) the Parliamentary Constituencies and Assembly Electoral Regions (Wales) (Amendment) Order 2008 (S.I. 2008/1791), and
(b) any Order in Council under the Parliamentary Constituencies Act 1986 giving effect (with or without modifications) to a report falling within section 13(3) or (4) of the Parliamentary Voting System and Constituencies Act 2011.

(2) There are five Assembly electoral regions.

(3) The Assembly electoral regions are as specified in the Parliamentary Constituencies and Assembly Electoral Regions (Wales) Order 2006.

(4) There are four seats for each Assembly electoral region.

(5)-(6) [...]

Notes
1 Substituted by Parliamentary Voting System and Constituencies Act 2011 c. 1 Pt 2 s.13(1) (February 16, 2011)
2 Repealed by Parliamentary Voting System and Constituencies Act 2011 c. 1 Sch.12(2) para.1 (February 16, 2011)

Commencement
Pt 1 s. 2(1)-(6): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 1 s. 2(1)-(6): United Kingdom
General elections

3 Ordinary general elections

(1) The poll at an ordinary general election is to be held on the first Thursday in May in the fourth calendar year following that in which the previous ordinary general election was held, unless provision is made for the day of the poll by an order under section 4.

(2) If the poll is to be held on the first Thursday in May, the Assembly—
   (a) is dissolved by virtue of this section at the beginning of the minimum period which ends with that day, and
   (b) must meet within the period of seven days beginning immediately after the day of the poll.

(3) In subsection (2) “the minimum period” means the period determined in accordance with an order under section 13.

(4) In calculating any period of days for the purposes of subsection (2)(b), the following days are to be disregarded—
   (a) Saturday and Sunday,
   (b) any day which is a bank holiday in Wales under the Banking and Financial Dealings Act 1971 (c. 80), and
   (c) any day appointed for public thanksgiving or mourning.

Commencement
Pt 1 s. 3(1)-(4)(c): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 1 s. 3(1)-(4)(c): United Kingdom

4 Power to vary date of ordinary general election

(1) The Secretary of State may by order provide for the poll at an ordinary general election to be held on a day which is neither—
   (a) more than one month earlier, nor
   (b) more than one month later,
   than the first Thursday in May.

(2) An order under this section must make provision for the Assembly—
   (a) to be dissolved on a day specified in the order, and
   (b) to meet within the period of seven days beginning immediately after the day of the poll.
(3) In calculating any period of days for the purposes of provision made by virtue of subsection (2)(b), the following days are to be disregarded—
  (a) Saturday and Sunday,
  (b) Good Friday,
  (c) any day which is a bank holiday in Wales under the Banking and Financial Dealings Act 1971 (c. 80), and
  (d) any day appointed for public thanksgiving or mourning.

(4) An order under this section may make provision for—
  (a) any provision of, or made under, the Representation of the People Acts, or
  (b) any other enactment relating to the election of Assembly members,
to have effect with such modifications or exceptions as the Secretary of State considers appropriate in connection with the alteration of the day of the poll.

(5) No order is to be made under this section unless the Secretary of State has consulted the Welsh Ministers about it.

(6) A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

Commencement

Pt 1 s. 4(1)-(6): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Pt 1 s. 4(1)-(6): United Kingdom

 checkpoints

Law In Force

5 Extraordinary general elections

(1) The Secretary of State must propose a day for the holding of a poll at an extraordinary general election if subsection (2) or (3) applies.

(2) This subsection applies if—
  (a) the Assembly resolves that it should be dissolved, and
  (b) the resolution of the Assembly is passed on a vote in which the number of Assembly members voting in favour of it is not less than two-thirds of the total number of Assembly seats.

(3) This subsection applies if any period during which the Assembly is required under section 47 to nominate an Assembly member for appointment as the First Minister ends without such a nomination being made.

(4) If the Secretary of State proposes a day under subsection (1), Her Majesty may by Order in Council—
  (a) dissolve the Assembly and require an extraordinary general election to be held,
  (b) require the poll at the election to be held on the day proposed, and
(c) require the Assembly to meet within the period of seven days beginning immediately after the day of the poll.

(5) If a poll is held under this section within the period of six months ending with the day on which the poll at the next ordinary general election would be held (disregarding section 4), that ordinary general election is not to be held.

(6) But subsection (5) does not affect the year in which the subsequent ordinary general election is to be held.

(7) In calculating any period of days for the purposes of subsection (4)(c), the following days are to be disregarded—

(a) Saturday and Sunday,
(b) Christmas Eve, Christmas Day and Good Friday,
(c) any day which is a bank holiday in Wales under the Banking and Financial Dealings Act 1971 (c. 80), and
(d) any day appointed for public thanksgiving or mourning.

Commencement
Pt 1 s. 5(1)-(7)(d): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 1 s. 5(1)-(7)(d): United Kingdom

Law In Force

6  Voting at general elections

(1) Each person entitled to vote at a general election in an Assembly constituency has two votes.

(2) One (referred to in this Act as a “constituency vote”) is a vote which may be given for a candidate to be the Assembly constituency member for the Assembly constituency.

(3) The other (referred to in this Act as an “electoral region vote”) is a vote which may be given for—

(a) a registered political party which has submitted a list of candidates to be Assembly regional members for the Assembly electoral region in which the Assembly constituency is included, or
(b) an individual who is a candidate to be an Assembly regional member for that Assembly electoral region.

(4) The Assembly constituency member for the Assembly constituency is to be returned under the simple majority system.

(5) The Assembly regional members for the Assembly electoral region are to be returned under the additional member system of proportional representation provided for in this Part.
(6) In this Act “registered political party” means a party registered under Part 2 of the Political Parties, Elections and Referendums Act 2000 (c. 41).

Commencement
Pt 1 s. 6(1)-(6): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 1 s. 6(1)-(6): United Kingdom

7 Candidates at general elections

(1) At a general election a person may not be a candidate to be the Assembly constituency member for more than one Assembly constituency.

(2) Any registered political party may submit a list of candidates for return as Assembly regional members for a particular Assembly electoral region at a general election.

(3) The list must be submitted to the regional returning officer.

(4) The list must not include more than twelve persons (but may include only one).

(5) The list must not include a person—
   (a) who is included on any other list submitted for the Assembly electoral region or any list submitted for another Assembly electoral region,
   (b) who is an individual candidate to be an Assembly regional member for the Assembly electoral region or another Assembly electoral region, or
   (c) who is a candidate to be the Assembly constituency member for an Assembly constituency.

(6) A person may not be an individual candidate to be an Assembly regional member for the Assembly electoral region if that person is—
   (a) included on a list submitted by a registered political party for the Assembly electoral region or another Assembly electoral region,
   (b) an individual candidate to be an Assembly regional member for another Assembly electoral region, or
   (c) a candidate to be the Assembly constituency member for an Assembly constituency.

(7) In this Act “regional returning officer”, in relation to an Assembly electoral region, means the person designated as the regional returning officer for the Assembly electoral region in accordance with an order under section 13.

Commencement
Pt 1 s. 7(1)-(7): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the
8 Calculation of electoral region figures

(1) This section and section 9 are about the return of Assembly regional members for an electoral region at a general election.

(2) The person who is to be returned as the Assembly constituency member for each Assembly constituency in the Assembly electoral region is to be determined before it is determined who are to be returned as the Assembly regional members for the Assembly electoral region.

(3) For each registered political party by which a list of candidates has been submitted for the Assembly electoral region—
   (a) there is to be added together the number of electoral region votes given for the party in the Assembly constituencies included in the Assembly electoral region, and
   (b) the number arrived at under paragraph (a) is then to be divided by the aggregate of one and the number of candidates of the party returned as Assembly constituency members for any of those Assembly constituencies.

(4) For each individual candidate to be an Assembly regional member for the Assembly electoral region there is to be added together the number of electoral region votes given for the candidate in the Assembly constituencies included in the Assembly electoral region.

(5) The number arrived at—
   (a) in the case of a registered political party, under subsection (3)(b), or
   (b) in the case of an individual candidate, under subsection (4),

is referred to in this Act as the electoral region figure for that party or individual candidate.

9 Allocation of seats to electoral region members

(1) The first seat for the Assembly electoral region is to be allocated to the party or individual candidate with the highest electoral region figure.
(2) The second and subsequent seats for the Assembly electoral region are to be allocated to the party or individual candidate with the highest electoral region figure after any recalculation required by subsection (3) has been carried out.

(3) This subsection requires a recalculation under paragraph (b) of section 8(3) in relation to a party—
   (a) for the first application of subsection (2), if the application of subsection (1) resulted in the allocation of an Assembly seat to the party, or
   (b) for any subsequent application of subsection (2), if the previous application of that subsection did so,
and a recalculation is to be carried out after adding one to the aggregate mentioned in that paragraph.

(4) An individual candidate already returned as an Assembly regional member is to be disregarded.

(5) Seats for the Assembly electoral region which are allocated to a party are to be filled by the persons on the party's list in the order in which they appear on the list.

(6) Once a party's list has been exhausted by the return of persons included on it as Assembly regional members by the previous application of subsection (1) or (2), the party is to be disregarded.

(7) If (on the application of subsection (1) or any application of subsection (2)) the highest electoral region figure is the electoral region figure of two or more parties or individual candidates, the subsection applies to each of them.

(8) However, if subsection (7) would mean that more than the full number of seats for the Assembly electoral region were allocated, subsection (1) or (2) does not apply until—
   (a) a recalculation has been carried out under section 8(3)(b) after adding one to the number of votes given for each party with that electoral region figure, and
   (b) one has been added to the number of votes given for each individual candidate with that electoral region figure.

(9) If, after that, the highest electoral region figure is still the electoral region figure of two or more parties or individual candidates, the regional returning officer must decide between them by lots.

Commencement
Pt 1 s. 9(1)-(9): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 1 s. 9(1)-(9): United Kingdom

Vacancies

10 Constituency vacancies
(1) This section applies if the seat of an Assembly constituency member returned for an Assembly constituency is vacant.
(2) Subject to subsection (7), an election must be held in the Assembly constituency to fill the vacancy.

(3) At the election, each person entitled to vote only has a constituency vote; and the Assembly constituency member for the Assembly constituency is to be returned under the simple majority system.

(4) The date of the poll at the election must be fixed by the Presiding Officer.

(5) The date must fall within the period of three months beginning with the occurrence of the vacancy.

(6) But if the vacancy does not come to the Presiding Officer's notice within the period of one month beginning with its occurrence, the date must fall within the period of three months beginning when it does come to the Presiding Officer's notice.

(7) The election must not be held if it appears to the Presiding Officer that the latest date which may be fixed for the poll would fall within the period of three months ending with the day on which the poll at the next ordinary general election would be held (disregarding section 4).

(8) The standing orders must make provision for determining the date on which a vacancy occurs for the purposes of this section.

(9) A person may not be a candidate in an election to fill a vacancy if the person is—
   (a) an Assembly member, or
   (b) a candidate in another such election.

Commencement
Pt 1 s. 10(1)-(9)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 1 s. 10(1)-(9)(b): United Kingdom

11 Electoral region vacancies
(1) This section applies if the seat of an Assembly regional member returned for an Assembly electoral region is vacant.

(2) If the Assembly regional member was returned (under section 9 or this section) from the list of a registered political party, the regional returning officer must notify to the Presiding Officer the name of the person who is to fill the vacancy.

(3) A person’s name may only be so notified if the person—
   (a) is included on the list submitted by the registered political party for the last general election,
   (b) is willing to serve as an Assembly regional member for the Assembly electoral region, and
(c) is not a person to whom subsection (4) applies.

(4) This subsection applies to a person if—
   (a) the person is not a member of the registered political party, and
   (b) the registered political party gives notice to the regional returning officer that the person's name is not to be notified to the Presiding Officer as the name of the person who is to fill the vacancy.

(5) But if there is more than one person who satisfies the conditions in subsection (3), the regional returning officer may only notify the name of whichever of them was the higher, or the highest, on that list.

(6) A person whose name is notified under subsection (2) is to be treated as having been declared to be returned as an Assembly regional member for the Assembly electoral region on the day on which notification of the person's name is received by the Presiding Officer.

(7) The seat remains vacant until the next general election—
   (a) if the Assembly regional member was returned as an individual candidate, or
   (b) if that Assembly regional member was returned from the list of a registered political party but there is no-one who satisfies the conditions in subsection (3).

(8) For the purposes of this section, a person included on the list submitted by a registered political party for the last general election who—
   (a) was returned as an Assembly regional member under section 9 at that election (even if the return was void),
   (b) has subsequently been a candidate in an election held under section 10 (whether or not returned), or
   (c) has subsequently been returned under this section (even if the return was void),
   is treated on and after the return of the person, or of the successful candidate at the election, as not having been included on the list.

Commencement
Pt 1 s. 11(1)-(8)(c): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 Pt 6 s. 161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 1 s. 11(1)-(8)(c): United Kingdom

Franchise and conduct of elections

12 Entitlement to vote
(1) The persons entitled to vote at an election of Assembly members (or of an Assembly member) in an Assembly constituency are those who on the day of the poll—
(a) would be entitled to vote as electors at a local government election in an electoral area wholly or partly included in the Assembly constituency, and
(b) are registered in the register of local government electors at an address within the Assembly constituency.

(2) But a person is not entitled as an elector—
(a) to cast more than one constituency vote, or more than one electoral region vote, in the same Assembly constituency at any general election,
(b) to vote in more than one Assembly constituency at any general election, or
(c) to cast more than one vote in any election held under section 10.

Commencement
Pt 1 s. 12(1)-(2)(c): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 1 s. 12(1)-(2)(c): United Kingdom

13 Power to make provision about elections etc.

(1) The Secretary of State may by order make provision as to—
(a) the conduct of elections for the return of Assembly members,
(b) the questioning of an election for the return of Assembly members and the consequences of irregularities, and
(c) the return of an Assembly member otherwise than at an election.

(2) The provision which may be made under subsection (1)(a) includes, in particular, provision—
(a) about the registration of electors,
(b) for disregarding alterations in a register of electors,
(c) about the limitation of the election expenses of candidates (and the creation of criminal offences in connection with the limitation of such expenses),
(d) for the combination of polls at elections for the return of Assembly members and other elections, and
(e) for modifying the operation of sections 6 and 8(2) in a case where the poll at an election for the return of the Assembly constituency member for an Assembly constituency is abandoned (or notice of it is countermanded).

(3) The provision that may be made under subsection (1)(c) includes, in particular, provision making modifications to section 11(3) to (5).

(4) An order under this section may—
(a) apply or incorporate, with or without modifications or exceptions, any provision of or made under the election enactments,
(b) modify any form contained in, or in regulations or rules made under, the Representation of the People Acts so far as may be necessary to enable it to be used both for the original purpose and in relation to elections for the return of Assembly members, and
(c) so far as may be necessary in consequence of any provision made by this Act or an order under this section, make modifications of any provision made by or under any enactment relating to the registration of parliamentary electors or local government electors.

(5) In subsection (4)(a) “the election enactments” means—
(a) the Representation of the People Acts,
(b) the Political Parties, Elections and Referendums Act 2000 (c. 41),
(c) the European Parliamentary Elections Act 2002 (c. 24), and
(d) any other enactments relating to parliamentary elections, European Parliamentary elections or local government elections.

(6) No return of an Assembly member at an election may be questioned except by an election petition under the provisions of Part 3 of the Representation of the People Act 1983 (c. 2) as applied by or incorporated in an order under this section.

(7) No order is to be made under this section unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.
15 Resignation of members
An Assembly member may at any time resign by giving notice in writing to the Presiding Officer.

Commencement
Pt 1 s. 15: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 1 s. 15: United Kingdom

Disqualification

16 Disqualification from being Assembly member
(1) A person is disqualified from being an Assembly member if that person—
(a) is disqualified from being a member of the House of Commons under paragraphs (a) to (e) of section 1(1) of the House of Commons Disqualification Act 1975 (c. 24) (judges, civil servants, members of the armed forces, members of police forces and members of foreign legislatures),
(b) holds any of the offices for the time being designated by Order in Council as offices disqualifying persons from being Assembly members,
(c) holds the office of Auditor General,
(d) holds the office of Public Services Ombudsman for Wales, or
(e) is employed as a member of the staff of the Assembly.

(2) Subject to section 17(1) and (2), a person is also disqualified from being an Assembly member if that person is disqualified otherwise than under the House of Commons Disqualification Act 1975 (c. 24) (either generally or in relation to a particular constituency) from being a member of the House of Commons or from sitting and voting in it.

(3) For the purposes of subsection (2) the references to the Republic of Ireland in section 1 of the Representation of the People Act 1981 (c. 34) (disqualification of offenders detained in, or unlawfully at large from detention in, the British Islands or the Republic of Ireland) are to be treated as references to any member State (other than the United Kingdom).

(4) A person who holds office as lord-lieutenant, lieutenant or high sheriff of any area in Wales is disqualified from being an Assembly member for any Assembly constituency or Assembly electoral region wholly or partly included in that area.

(5) An Order in Council under paragraph (b) of subsection (1)—
(a) may designate particular offices or offices of any description, and
(b) may designate an office by reference to any characteristic of a person holding it, and in that paragraph and this subsection “office” includes any post or employment.
(6) No recommendation is to be made to Her Majesty in Council to make an Order in Council under subsection (1)(b) unless a draft of the statutory instrument containing the Order in Council has been laid before, and approved by a resolution of, the Assembly.

Commencement

Pt 1 s. 16(1)-(6): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Pt 1 s. 16(1)-(6): United Kingdom

17 Exceptions and relief from disqualification

(1) A person is not disqualified from being an Assembly member merely because that person is—
   (a) a peer (whether of the United Kingdom, Great Britain, England or Scotland), or
   (b) a Lord Spiritual.

(2) A citizen of the European Union who is resident in the United Kingdom is not disqualified from being an Assembly member merely because of section 3 of the Act of Settlement (1700 c.2) (disqualification of certain persons born outside United Kingdom).

(3) The Assembly may resolve that the disqualification of any person who was, or is alleged to have been, disqualified from being an Assembly member on a ground within section 16(1) or (4) is to be disregarded if it appears to the Assembly—
   (a) that the ground has been removed, and
   (b) that it is proper so to resolve.

(4) A resolution under subsection (3) does not—
   (a) affect any proceedings under Part 3 of the Representation of the People Act 1983 (c. 2) as applied by or incorporated in an order under section 13, or
   (b) enable the Assembly to disregard any disqualification which has been established in such proceedings or in proceedings under section 19.

Commencement

Pt 1 s. 17(1)-(4)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Pt 1 s. 17(1)-(4)(b): United Kingdom
18 Effect of disqualification

(1) If a person who is disqualified from being an Assembly member is returned as an Assembly member, the person's return is void and the person's seat is vacant.

(2) If a person who is disqualified from being an Assembly member for a particular Assembly constituency or Assembly electoral region is returned as an Assembly member for that Assembly constituency or Assembly electoral region, the person's return is void and the person's seat is vacant.

(3) If a person who is an Assembly member becomes disqualified—
   (a) from being an Assembly member, or
   (b) from being an Assembly member for the Assembly constituency or Assembly electoral region for which the person is sitting,
the person ceases to be an Assembly member (so that the person's seat is vacant).

(4) Subsections (1) to (3) have effect subject to any resolution of the Assembly under section 17(3).

(5) In addition, subsection (3) has effect subject to—
   (a) section 141 of the Mental Health Act 1983 (c. 20) (mental illness), and
   (b) section 427 of the Insolvency Act 1986 (c. 45) (bankruptcy etc.).

(6) If, in consequence of a provision mentioned in subsection (5), the seat of a person who is disqualified from being an Assembly member is not vacant, the person does not cease to be an Assembly member until the person's seat becomes vacant.

(7) But for any period for which the person is disqualified but the person's seat is not vacant—
   (a) the person must not participate in any Assembly proceedings, and
   (b) any of the person's other rights and privileges as an Assembly member may be withdrawn by the Assembly.

(8) The validity of any Assembly proceedings is not affected by the disqualification of any person—
   (a) from being an Assembly member, or
   (b) from being an Assembly member for the Assembly constituency or Assembly electoral region for which the person purports to sit.

Commencement
Pt 1 s. 18(1)-(8)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 1 s. 18(1)-(8)(b): United Kingdom
(a) an Assembly member, or
(b) an Assembly member for the Assembly constituency or Assembly electoral region for which the person purports to sit,
may apply to the High Court for a declaration to that effect.

(2) An application under subsection (1) in respect of any person may be made whether the grounds on which it is made are alleged to have subsisted at the time when the person was returned or to have arisen subsequently.

(3) No declaration may be made under this section in respect of any person—
   (a) on grounds which subsisted when the person was returned, if an election petition is pending or has been tried in which the person’s disqualification on those grounds is or was in issue, or
   (b) on any ground, if a resolution of the Assembly under section 17(3) requires that any disqualification incurred by the person on that ground is to be disregarded.

(4) On an application under this section—
   (a) the person in respect of whom the application is made is to be the respondent, and
   (b) the applicant must give such security for the costs of the proceedings as the court may direct.

(5) The amount of the security may not exceed £5,000 or such other sum as the Welsh Ministers may specify by order.

(6) The decision of the court on an application under this section is final.

(7) A statutory instrument containing an order under subsection (5) is subject to annulment in pursuance of a resolution of the Assembly.

Commencement
Pt 1 s. 19(1)-(7): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 1 s. 19(1)-(7): United Kingdom

Remuneration, oaths etc.

Law In Force

20 Remuneration of Assembly members
(1) [ Provision must be made ]¹ for the payment of salaries to Assembly members.
(2) [ Provision may be made ]² for the payment of allowances to Assembly members.
(3) [ Provision may be made ]³ for the payment of pensions, gratuities or allowances to, or in respect of, any person who—
   (a) has ceased to be an Assembly member, or
(b) has ceased to hold office as the Presiding Officer or Deputy Presiding Officer, or such other office in connection with the Assembly as the Assembly may determine, but continues to be an Assembly member.

(4) Such provision may, in particular, include provision for—
(a) contributions or payments towards provision for such pensions, gratuities or allowances, and
(b) the establishment and administration (whether by the Assembly Commission or otherwise) of one or more pension schemes.

(5) Sums required for the making of payments by virtue of provision under subsection (1) or (3) to or in respect of a person who holds or has held the office of Presiding Officer or Deputy Presiding Officer are to be charged on the Welsh Consolidated Fund.

[(6) Provision under this section is to be made by determination made by the Board.] ⁴

[(7) The Assembly Commission must give effect to any determination made by the Board under this section.]

(8) In this section (and in sections 22, 24, 53 and 54) “the Board” means the National Assembly for Wales Remuneration Board established by section 1 of the National Assembly for Wales (Remuneration) Measure 2010 (nawm 4 —).] ⁵

Notes

1 Words substituted by National Assembly for Wales (Remuneration) Measure 2010 c. 04 Sch.3 para.1 (September 24, 2010: substitution has effect on September 24, 2010 subject to transitional and saving provision specified in 2010 nawm 4 s.19)

2 Words substituted by National Assembly for Wales (Remuneration) Measure 2010 c. 04 Sch.3 para.2 (September 24, 2010: substitution has effect on September 24, 2010 subject to transitional and saving provision specified in 2010 nawm 4 s.19)

3 Words substituted by National Assembly for Wales (Remuneration) Measure 2010 c. 04 Sch.3 para.3 (September 24, 2010: substitution has effect on September 24, 2010 subject to transitional and saving provision specified in 2010 nawm 4 s.19)

4 Substituted by National Assembly for Wales (Remuneration) Measure 2010 c. 04 Sch.3 para.4 (September 24, 2010: substitution has effect on September 24, 2010 subject to transitional and saving provision specified in 2010 nawm 4 s.19)

5 Added by National Assembly for Wales (Remuneration) Measure 2010 c. 04 Sch.3 para.5 (September 24, 2010: insertion has effect on September 24, 2010 subject to transitional and saving provision specified in 2010 nawm 4 s.19)

Commencement

Pt 1 s. 20(1)-(6)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Pt 1 s. 20(1)-(8): United Kingdom
21 Limit on salaries of Assembly members

(1) The Assembly must make provision to ensure that the amount of the salary payable to an Assembly member in accordance with section 20 is reduced if a salary is payable to the Assembly member—

[ (za) under section 4 of the Parliamentary Standards Act 2009 (salaries of members of the House of Commons), ]

(a) pursuant to a resolution (or combination of resolutions) of [ the House of Lords ]
relating to the remuneration of members of that House, or
(b) under section 1 of the European Parliament (Pay and Pensions) Act 1979 (c. 50)
(remuneration of United Kingdom MEPs).

(2) The provision made must ensure that the amount of salary is reduced—

(a) to a particular proportion of what it otherwise would be or to a particular amount, or
(b) by the amount of any salary payable to the Assembly member as mentioned in subsection [ (1)(za), (a) ] or (b), by a particular proportion of that amount or by some other particular amount.

(3) Provision may be made under this section by—

(a) the standing orders, or
(b) resolutions of the Assembly,

and may include provision conferring functions on the Assembly Commission.

Notes

1 Added by Constitutional Reform and Governance Act 2010 c. 25 Sch.5(2) para.12(2)(a) (May 24, 2011)
2 Words substituted by Constitutional Reform and Governance Act 2010 c. 25 Sch.5(2) para.12(2)(b) (May 24, 2011)
3 Word substituted by Constitutional Reform and Governance Act 2010 c. 25 Sch.5(2) para.12(3) (May 24, 2011)

Commencement

Pt 1 s. 21(1)-(3)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Pt 1 s. 21(1)-(3)(b): United Kingdom

22 Remuneration: supplementary

(1) Different provision may be made under section 20 or 21 for different cases.

(2) [ The Assembly Commission ] must ensure that information concerning—

(a) the amounts paid to each Assembly member as salary and allowances, and
(b) the total amount paid to Assembly members as salaries and allowances,

is published for each financial year […].
(3) The Assembly Commission must lay before the Assembly every determination made by the Board under section 20(6) as soon as is reasonably practicable after it is made.  

(4) For the purposes of sections 20 and 21 a person who—
   (a) ceases to be an Assembly member when the Assembly is dissolved, but
   (b) is nominated as a candidate at the subsequent general election,
is to be treated as an Assembly member until the end of the day on which the poll at the election is held.

(5) Where a person—
   (a) ceases to be an Assembly member when the Assembly is dissolved, but
   (b) continues to hold office as Presiding Officer or as a member of the Assembly Commission by virtue of paragraph 1(1) or (2) of Schedule 2,
the fact that the person is no longer an Assembly member does not affect any entitlement under sections 20 and 21 in respect of the holding of office as Presiding Officer or as a member of the Assembly Commission (or both) until the end of the day on which the person ceases to hold it.

(6) Provision made under section 20(3) does not affect pensions or allowances in payment before the provision was made.

Notes

1 Words substituted by National Assembly for Wales (Remuneration) Measure 2010 c. 04 Sch.3 para.6 (September 24, 2010: substitution has effect on September 24, 2010 subject to transitional and saving provision specified in 2010 nawm 4 s.19)

2 Words repealed by National Assembly for Wales (Remuneration) Measure 2010 c. 04 Sch.3 para.6 (September 24, 2010: repeal has effect on September 24, 2010 subject to transitional and saving provision specified in 2010 nawm 4 s.19)

3 Substituted by National Assembly for Wales (Remuneration) Measure 2010 c. 04 Sch.3 para.7 (September 24, 2010: substitution has effect on September 24, 2010 subject to transitional and saving provision specified in 2010 nawm 4 s.19)

Commencement

Pt 1 s. 22(1)-(6): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Pt 1 s. 22(1)-(6): United Kingdom

Law In Force

23 Oath or affirmation of allegiance

(1) An Assembly member must take the oath of allegiance in the form set out in section 2 of the Promissory Oaths Act 1868 (c. 72) (or make the corresponding affirmation) as soon as is reasonably practicable after being returned as an Assembly member (whether for the first time or subsequently).

(2) The standing orders must specify the person before whom the oath is to be taken (or the affirmation made).
(3) Subsection (1) does not require an Assembly member to take the oath of allegiance (or make the corresponding affirmation) again if it has been taken (or made) by the Assembly member in compliance with section 55(2) since being returned (or last returned).

(4) Until an Assembly member has taken the oath (or made the affirmation) the Assembly member must not do anything as an Assembly member, other than—
   (a) take part in proceedings of the Assembly at which Assembly members take the oath or make the affirmation, or
   (b) take part in any earlier proceedings for the election of the Presiding Officer or Deputy Presiding Officer.

(5) If an Assembly member has not taken the oath (or made the affirmation) within—
   (a) the period of two months beginning with the day on which the Assembly member was declared to be returned, or
   (b) such longer period as the Assembly may have allowed before the end of that period of two months,
   at the end of that period of two months or longer period the Assembly member ceases to be an Assembly member (so that the Assembly member's seat is vacant).

(6) Until an Assembly member has taken the oath (or made the affirmation), no salary, allowance, gratuity or payment towards the provision of a pension, allowance or gratuity is to be paid under this Act to or in respect of the Assembly member.

(7) But subsection (6) does not affect any entitlement to payments in respect of the period before the Assembly member took the oath (or made the affirmation) once the Assembly member has done so.

Commencement

Pt 1 s. 23(1)-(7): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Pt 1 s. 23(1)-(7): United Kingdom

24 Assistance to groups of Assembly members

(1) The Assembly Commission must make to (or in respect of) political groups to which Assembly members belong such payments [as the Board from time to time determines] for the purpose of assisting Assembly members who belong to those political groups to perform their functions as Assembly members.

(2) A determination under subsection (1) may make provision—
   (a) for calculating the amount of any payment to (or in respect of) a political group,
   (b) for the conditions subject to which payments to (or in respect of) a political group are to be made, and
   (c) for claims for such payments to be made to the Assembly Commission.
(3) A determination under subsection (1) may make different provision for different political groups.

(4) […]²

(5) The standing orders must include provision for determining for the purposes of this Act whether any Assembly member belongs to a political group and, if so, to which; and (in particular)—

(a) may include provision for treating an Assembly member as not belonging to a political group unless a specified number of Assembly members belong to it, and

(b) must include provision requiring the Presiding Officer to decide any questions arising under the provision included by virtue of this subsection.

[(6) The Assembly Commission must lay before the Assembly every determination made by the Board under section 24(1) as soon as is reasonably practicable after it is made.]³

[(7) The Assembly Commission must ensure that information concerning the sums paid under this section is published for each financial year.]⁴

Notes

1 Words substituted by National Assembly for Wales (Remuneration) Measure 2010 c. 04 Sch.3 para.8 (September 24, 2010: substitution has effect on September 24, 2010 subject to transitional and saving provision specified in 2010 nawm 4 s.19)

2 Repealed by National Assembly for Wales (Remuneration) Measure 2010 c. 04 Sch.3 para.9 (September 24, 2010: repeal has effect subject on September 24, 2010 to transitional and saving provision specified in 2010 nawm 4 s.19)

3 Substituted by National Assembly for Wales (Remuneration) Measure 2010 c. 04 Sch.3 para.10 (September 24, 2010: substitution has effect on September 24, 2010 subject to transitional and saving provision specified in 2010 nawm 4 s.19)

4 Added by National Assembly for Wales (Remuneration) Measure 2010 c. 04 Sch.3 para.11 (September 24, 2010: insertion has effect subject on September 24, 2010 subject to transitional and saving provision specified in 2010 nawm 4 s.19)

Commencement

Pt 1 s. 24(1)-(6)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Pt 1 s. 24(1)-(7): United Kingdom

Presiding Officer and administration

Law In Force

25 Presiding Officer etc.

(1) The Assembly must, at its first meeting following a general election, elect from among the Assembly members—

(a) a presiding officer (referred to in this Act as “the Presiding Officer”), and

(b) a deputy presiding officer (referred to in this Act as “the Deputy Presiding Officer”).
The person elected under paragraph (a) of subsection (1) is to be known as the Presiding Officer or by such other title as the standing orders may provide; and the person elected under paragraph (b) of that subsection is to be known as the Deputy Presiding Officer or by such other title as the standing orders may provide.

The Presiding Officer holds office until the conclusion of the next election of a Presiding Officer under subsection (1).

The Deputy Presiding Officer holds office until the Assembly is dissolved.

But the Presiding Officer or Deputy Presiding Officer—
(a) may at any time resign,
(b) ceases to hold office on ceasing to be an Assembly member otherwise than by reason of a dissolution, and
(c) may be removed from office by the Assembly.

If the Presiding Officer or the Deputy Presiding Officer ceases to hold office under subsection (5) (or dies), the Assembly must elect a replacement from among the Assembly members.

Subject to subsection (9), the Presiding Officer and the Deputy Presiding Officer must not belong to—
(a) the same political group, or
(b) different political groups both of which are political groups with an executive role.

For the purposes of this Act a political group is a political group with an executive role if the First Minister or one or more of the Welsh Ministers appointed under section 48 belong to it.

The Assembly may resolve that subsection (7) is not to apply for so long as the resolution so provides; but if the motion for the resolution is passed on a vote it is of no effect unless at least two-thirds of the Assembly members voting support it.

The Presiding Officer's functions may be exercised by the Deputy Presiding Officer if—
(a) the office of Presiding Officer is vacant, or
(b) the Presiding Officer is for any reason unable to act.

The Presiding Officer may (subject to the standing orders) authorise the Deputy Presiding Officer to exercise functions of the Presiding Officer.

The standing orders may include provision for the Presiding Officer's functions to be exercisable by any person specified in, or determined in accordance with, the standing orders if—
(a) the office of Presiding Officer is vacant or the Presiding Officer is for any reason unable to act, and
(b) the office of Deputy Presiding Officer is vacant or the Deputy Presiding Officer is for any reason unable to act.

The standing orders may include provision as to the participation (including voting) in Assembly proceedings of the Presiding Officer and Deputy Presiding Officer and any person acting by virtue of subsection (12).

The validity of any act of a person as Presiding Officer or Deputy Presiding Officer, or of any person acting by virtue of subsection (12), is not affected by any defect in the person's appointment by the Assembly.

Subsections (10) to (12) are subject to paragraph 11 of Schedule 2.
26 Clerk of Assembly

(1) The Assembly Commission must appoint a person to be the Clerk of the Assembly (referred to in this Act as “the Clerk”).

(2) The person appointed under subsection (1) is to be known as the Clerk of the Assembly or by such other title as the standing orders may provide.

(3) The Clerk’s functions may be exercised by any other member of the staff of the Assembly (or person seconded to work at the Assembly) authorised by the Assembly Commission if—
   (a) the office of Clerk is vacant, or
   (b) the Clerk is for any reason unable to act.

(4) The Clerk may authorise any other member of the staff of the Assembly (or person seconded to work at the Assembly) to exercise functions on the Clerk’s behalf.

27 Assembly Commission

(1) There is to be a body corporate to be known as the National Assembly for Wales Commission or Comisiwn Cynulliad Cenedlaethol Cymru (referred to in this Act as “the Assembly Commission”).

(2) The members of the Assembly Commission are to be—
   (a) the Presiding Officer, and
   (b) four other Assembly members.

(3) The standing orders must make provision for the appointment of the four other Assembly members as members of the Assembly Commission.
(4) The provision included in the standing orders in compliance with subsection (3) must (so far as it is reasonably practicable to do so) secure that not more than one of the members of the Assembly Commission (other than the Presiding Officer) belongs to any one political group.

(5) The Assembly Commission must—
   (a) provide to the Assembly, or
   (b) ensure that the Assembly is provided with, the property, staff and services required for the Assembly's purposes.

(6) The Assembly may give special or general directions to the Assembly Commission for the purpose of, or in connection with, the exercise of the Assembly Commission's functions.

(7) Any property, rights or liabilities acquired or incurred in relation to matters to which the Assembly would otherwise be entitled or subject are to be treated for all purposes as property, rights or liabilities of the Assembly Commission.

(8) For further provision about the Assembly Commission see Schedule 2.

Commencement
Pt 1 s. 27(1)-(8): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 1 s. 27(1)-(8): United Kingdom

Committees

28 Committees and sub-committees

(1) The standing orders may provide—
   (a) for the appointment of committees of the Assembly, and
   (b) for such committees to have power to appoint sub-committees.

(2) The members of a committee of the Assembly, or of a sub-committee of such a committee, may not include anyone who is not an Assembly member.

(3) The standing orders must make provision about the membership, chairing and procedure of committees of the Assembly and sub-committees of such committees.

(4) The standing orders may include provision for excluding from the proceedings of a committee of the Assembly, or a sub-committee of such a committee, an Assembly member who is not a member of the committee or sub-committee.

(5) The validity of any proceedings of a committee of the Assembly, or of a subcommittee of such a committee, is not affected by—
   (a) any vacancy in its membership,
   (b) any defect in the appointment of its members or of the person who chairs it, or
(c) any failure to comply with provisions of the standing orders relating to procedure.

Commencement
Pt 1 s. 28(1)-(5)(c): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 1 s. 28(1)-(5)(c): United Kingdom

Law In Force

29 Composition of committees

(1) The provision included in the standing orders in compliance with section 28(3) must meet the requirements of this section.

(2) The provision must secure that the appointments to the places on each committee are (if possible) determined by a resolution of the Assembly—
   (a) which secures that its membership reflects (so far as is reasonably practicable) the balance of the political groups to which Assembly members belong, and
   (b) which (if the motion for it is passed on a vote) has no effect unless at least two-thirds of the Assembly members voting support it.

(3) The provision must secure that, if the membership of a committee is not so determined—
   (a) the person appointed to the first place on the committee is an Assembly member belonging to the largest political group, and
   (b) the persons eligible to be appointed to the second and subsequent places on the committee are ascertained in accordance with subsection (5).

(4) “The largest political group” means the political group to which the most Assembly members belong.

(5) An Assembly member is eligible to be appointed to the second or any subsequent place on the committee if—
   (a) the number produced by subsection (6) in relation to that place for the political group to which the Assembly member belongs, exceeds
   (b) that so produced for each of the other political groups.

(6) The number produced for a political group in relation to the second or any subsequent place on the committee is—
   (a) if one or more places are already allocated to the political group, the number of Assembly members belonging to the political group divided by the aggregate of one and the number of places already so allocated, or
   (b) otherwise, the number of Assembly members belonging to the political group.

(7) References to a place already allocated to a political group, in relation to the appointment to the second or any subsequent place on the committee, are to a place on the committee to which an Assembly member belonging to the political group is eligible to be appointed—
(a) (in relation to the second place) by virtue of subsection (3)(a), or
(b) (in relation to any subsequent place) by virtue of subsection (3)(a) or the previous
application of subsection (5) in relation to a place on the committee.

(8) The provision must modify the operation of the provision made in compliance with subsections
(3) to (7) for cases where–
(a) the number of Assembly members belonging to two or more political groups is the same
and exceeds the number of Assembly members belonging to any other political group, or
(b) the number produced by subsection (6) in relation to any place on a committee is the
same for two or more political groups and is greater than that so produced for any other
political group.

(9) The provision must modify the operation of the provision made in compliance with subsections
(2) to (8) with a view to securing that (so far as is reasonably practicable having regard to the total
number of places on committees)–
(a) every Assembly member who does not belong to a political group is entitled to be a
member of at least one committee, and
(b) the total number of places on committees allocated to Assembly members belonging
to each political group is at least as great as the number of Assembly members belonging
to the political group.

(10) The provision must secure that the Presiding Officer decides questions arising under the
provision made in compliance with this section.

Commencement
Pt 1 s. 29(1)-(10): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25,
2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister,
the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and
Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s.
161(5))

Extent
Pt 1 s. 29(1)-(10): United Kingdom

30 Audit Committee
(1) The committees of the Assembly must include one to be known as the Audit Committee or
Pwyllgor Archwilio or by such other name as the Assembly may determine; and, if the Assembly
makes such a determination, references to the committee in–
(a) any enactment (including any enactment comprised in or made under this Act) or
prerogative instrument, or
(b) any other instrument or document,
have effect accordingly.

(2) The Audit Committee is to have the number of members specified by the standing orders.

(3) None of the following may be a member of the Audit Committee–
(a) the First Minister or any person designated to exercise the functions of the First Minister,
(b) a Welsh Minister appointed under section 48,
(c) the Counsel General or any person designated to exercise the functions of the Counsel General, or
(d) a Deputy Welsh Minister.

(4) The Audit Committee must not be chaired by an Assembly member who is a member of a political group with an executive role.

Commencement
Pt 1 s. 30(1)-(4): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 1 s. 30(1)-(4): United Kingdom

Procedures etc.

31 Standing orders

(1) Assembly proceedings are to be regulated by standing orders (referred to in this Act as “the standing orders”).

(2) The standing orders must include provision for preserving order in Assembly proceedings, including provision for–
   (a) preventing conduct which would constitute a criminal offence or contempt of court, and
   (b) a sub judice rule.

(3) The standing orders may include provision for excluding an Assembly member from Assembly proceedings.

(4) The standing orders may include provision for withdrawing from an Assembly member any or all of the rights and privileges of membership of the Assembly.

(5) The standing orders–
   (a) must include provision requiring the proceedings of the Assembly to be held in public, and for proceedings of a committee of the Assembly or a sub-committee of such a committee to be held in public except in circumstances provided for in the standing orders, and
   (b) may include provision as to the conditions to be complied with by members of the public attending the proceedings (including provision for excluding any member of the public who does not comply with the conditions).

(6) The standing orders must include provision–
   (a) for reporting the proceedings of the Assembly, and for reporting proceedings of committees of the Assembly and sub-committees of such committees which are held in public, and
(b) for publishing the reports of proceedings as soon as reasonably practicable after the proceedings take place.

(7) The Assembly may by resolution remake or revise the standing orders; but if the motion for a resolution to remake or revise the standing orders is passed on a vote, it has no effect unless at least two-thirds of the Assembly members voting support it.

(8) The Clerk must from time to time publish the standing orders.

Commencement
Pt 1 s. 31(1)-(8): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 1 s. 31(1)-(8): United Kingdom

32 Participation by UK Ministers etc.

(1) The Secretary of State for Wales is entitled to participate in proceedings of the Assembly but not to vote.

(2) The standing orders must include provision for any documents which–
   (a) contain material relating to any proceedings of the Assembly which have taken place or are to take place, and
   (b) are made available to all Assembly members,
   to be made available to the Secretary of State for Wales no later than the time when they are made available to Assembly members.

(3) The standing orders may make provision for–
   (a) the participation of the Secretary of State for Wales in proceedings of any committee of the Assembly, or any sub-committee of any such committee, and
   (b) the participation in any Assembly proceedings of other Ministers of the Crown and of persons serving in the department of the Secretary of State for Wales or of any other Minister of the Crown.

(4) The provision made by virtue of subsection (3) may not include provision conferring any right to vote.

(5) The standing orders may include provision for the making available of documents or information in connection with participation in Assembly proceedings pursuant to, or to standing orders made under, this section.

Commencement
Pt 1 s. 32(1)-(5): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the
Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 1 s. 32(1)-(5): United Kingdom

Law In Force

33 Consultation about UK Government's legislative programme

(1) As soon as is reasonably practicable after the beginning of each session of Parliament, the Secretary of State for Wales must undertake with the Assembly such consultation about the UK Government's legislative programme for the session as appears to the Secretary of State to be appropriate.

(2) The consultation in relation to the UK Government's legislative programme for a session must include participating in proceedings of the Assembly relating to it on at least one occasion.

(3) For this purpose the UK Government's legislative programme for a session of Parliament consists of the bills which, at the beginning of the session, are intended to be introduced into either House of Parliament during the session by a Minister of the Crown.

(4) If, at any time after the beginning of a session of Parliament, it is decided that a bill should be introduced into either House of Parliament during the session by a Minister of the Crown and no consultation about the bill has been undertaken under subsection (1), the Secretary of State for Wales must undertake with the Assembly such consultation about the bill as appears to the Secretary of State to be appropriate.

(5) This section does not require the undertaking of consultation with the Assembly about a bill if it appears to the Secretary of State for Wales that there are considerations relating to the bill that make such consultation inappropriate.

Commencement
Pt 1 s. 33(1)-(5): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 1 s. 33(1)-(5): United Kingdom

Law In Force

34 Participation by Counsel General

(1) If not an Assembly member the Counsel General may participate in Assembly proceedings to the extent permitted by the standing orders, but may not vote.

(2) And the standing orders may in other respects provide that they are to apply to the Counsel General if not an Assembly member as to an Assembly member.
(3) The Counsel General may, in any Assembly proceedings, decline to answer any question or produce any document concerning the operation of the system of criminal prosecution in any particular case if considering that answering the question or producing the document—
   (a) might prejudice criminal proceedings in the case, or
   (b) would otherwise be contrary to the public interest.

Commencement
Pt 1 s. 34(1)-(3)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 1 s. 34(1)-(3)(b): United Kingdom

Law In Force
35 Equality of treatment

(1) The Assembly must, in the conduct of Assembly proceedings, give effect, so far as is both appropriate in the circumstances and reasonably practicable, to the principle that the English and Welsh languages should be treated on a basis of equality.

(2) The Assembly must make appropriate arrangements with a view to securing that Assembly proceedings are conducted with due regard to the principle that there should be equality of opportunity for all people.

Commencement
Pt 1 s. 35(1)-(2): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 1 s. 35(1)-(2): United Kingdom

Law In Force
36 Integrity

(1) The standing orders must include provision—
   (a) for a register of interests of Assembly members, and
   (b) for the register to be published and made available for public inspection.

(2) The standing orders must require Assembly members to register in the register of interests registrable interests, as defined for the purposes of this subsection.

(3) The standing orders must require any Assembly member who has—
   (a) a financial interest, as defined for the purposes of this subsection, or
(b) any other interest, or an interest of any other kind, as so defined, in any matter to declare that interest before taking part in Assembly proceedings relating to that matter.

(4) The standing orders may include provision for preventing or restricting the participation in any Assembly proceedings of an Assembly member who has an interest within subsection (2) or (3) in any matter to which the proceedings relate.

(5) The standing orders must include provision prohibiting an Assembly member from—
(a) advocating or initiating any cause or matter on behalf of any person, by any means specified in the standing orders, in consideration of any payment or benefit in kind of a description so specified, or
(b) urging, in consideration of any such payment or benefit in kind, any other Assembly member to advocate or initiate any cause or matter on behalf of any person by any such means.

(6) The standing orders must include provision about (or for the making of a code or protocol about) the different roles and responsibilities of Assembly constituency members and Assembly regional members; and—
(a) Assembly constituency members must not describe themselves in a manner which suggests that they are Assembly regional members, and
(b) Assembly regional members must not describe themselves in a manner which suggests that they are Assembly constituency members.

(7) An Assembly member who—
(a) takes part in Assembly proceedings without having complied with, or in contravention of, any provision included in the standing orders in pursuance of subsections (2) to (4), or
(b) contravenes any provision included in the standing orders in pursuance of subsection (5),
commits an offence.

(8) A person guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(9) A prosecution for an offence under subsection (7) cannot be instituted except by or with the consent of the Director of Public Prosecutions.

(10) The validity of any Assembly proceedings is not affected by any contravention or failure to comply with any provision included in the standing orders in pursuance of this section.

(11) In this section—
(a) references to an Assembly member (apart from those in subsection (6)) include the Counsel General, if not an Assembly member, and
(b) “financial interest” includes a benefit in kind.

Commencement
Pt 1 s. 36(1)-(11)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and
37  Power to call

(1) Subject as follows, the Assembly may require any person—
   (a) to attend Assembly proceedings for the purpose of giving evidence, or
   (b) to produce for the purposes of the Assembly (or a committee of the Assembly or a sub-committee of such a committee) documents in the possession, or under the control, of the person, concerning any matter relevant to the exercise by the Welsh Ministers of any of their functions.

(2) The Assembly may not impose a requirement under subsection (1) on a person who is not involved in the exercise of functions, or the carrying on of activities, in relation to Wales [or the Welsh zone].

(3) The Assembly may not impose a requirement under subsection (1) on a person who—
   (a) is or has been a Minister of the Crown, or
   (b) serves or has served in the department of a Minister of the Crown, in relation to the exercise of any functions of a Minister of the Crown.

(4) The Assembly—
   (a) may not impose a requirement under subsection (1) on a person who is a full-time judge of any court, and
   (b) may not impose such a requirement on a person who is not within paragraph (a) but who is or has been a member of any court or tribunal in connection with the exercise of functions as such a member.

(5) Where a requirement under subsection (1) is imposed on a person who is or has been a member of the staff of the Welsh Assembly Government (or a person seconded to work for the Welsh Assembly Government) in relation to the exercise of any functions of the Welsh Ministers, the First Minister or the Counsel General, any of them may issue a direction under subsection (6).

(6) A direction under this subsection is a direction—
   (a) that the person on whom the requirement was imposed need not comply with it, and
   (b) that the requirement is instead to be complied with by another person specified in the direction.

(7) The powers conferred by subsection (1)—
   (a) may be exercised by and for the purposes of the Audit Committee, and
   (b) may be exercised by and for the purposes of any other committee of the Assembly, or any sub-committee of any committee of the Assembly, if the committee or sub-committee
is expressly authorised to do so by the Assembly (whether by the standing orders or otherwise).

(8) A person is not obliged under this section to answer any question or produce any document which the person would be entitled to refuse to answer or produce in or for the purposes of proceedings in a court in England and Wales.

(9) A person acting as prosecutor in criminal proceedings is not obliged under this section to answer any question or produce any document concerning the operation of the system of criminal prosecution in any particular case if the appropriate officer—

(a) considers that answering the question or producing the document might prejudice criminal proceedings in the case or would otherwise be contrary to the public interest, and
(b) has authorised the person to decline to answer the question or produce the document on that ground.

(10) In subsection (9) “the appropriate officer” means—

(a) if the proceedings were instituted by or on behalf of the Welsh Ministers, the First Minister or the Counsel General, the Counsel General, and
(b) otherwise, the Attorney General.

Notes
1 Words inserted by Marine and Coastal Access Act 2009 c. 23 Sch.4(2) para.6(2) (November 12, 2009 for any power to make an Order in Council under 2006 c.32; January 12, 2010 otherwise)

Commencement
Pt 1 s. 37(1)-(10)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 1 s. 37(1)-(10)(b): United Kingdom

38 Notice

(1) A requirement under section 37 is to be imposed on a person by the Clerk giving the person notice in writing specifying—

(a) whether the requirement is imposed for the purposes of the Assembly or a specified committee or sub-committee, and
(b) the matters mentioned in either paragraph (a) or paragraph (b) of subsection (2).

(2) Those matters are—

(a) the time and place at which the person is to attend and the particular subject concerning which the person is required to give evidence;
(b) the documents, or types of documents, which the person is to produce, the date by which and person to whom they are to be produced and the particular subject concerning which they are required.
(3) Notice under subsection (1) is to be given—
   (a) in the case of an individual, by sending it in accordance with subsection (4) addressed to the person at the person's usual or last known address or, where the person has given an address for service of the notice, at that address, or
   (b) in any other case, by so sending it addressed to the person at the person's registered or principal office.

(4) A notice is sent in accordance with this subsection if it is sent—
   (a) by a registered post service (within the meaning of the Postal Services Act 2000 (c. 26)), or
   (b) by a postal service which provides for its delivery by post to be recorded.

(5) If a direction is issued under subsection (6) of section 37 in relation to a requirement imposed under subsection (1) of that section, the person or persons by whom it is issued must give notice in writing that the direction has been issued—
   (a) if the requirement was imposed for the purposes of the Assembly, to the Presiding Officer, and
   (b) otherwise, to the person who chairs the committee or sub-committee for the purposes of which it was imposed.

Commencement
Pt 1 s. 38(1)-(5)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 1 s. 38(1)-(5)(b): United Kingdom

Law In Force
39 Offences

(1) A person to whom a notice under section 38(1) has been given commits an offence if the person—
   (a) refuses or fails without reasonable excuse to attend proceedings as required by the notice,
   (b) refuses or fails without reasonable excuse, when attending proceedings as required by the notice, to answer any question concerning the subjects specified in the notice,
   (c) refuses or fails without reasonable excuse to produce any document required to be produced by the notice, or
   (d) intentionally alters, suppresses, conceals or destroys any such document.

(2) Subsection (1) is subject to sections 34(3) and 37(5), (6), (8) and (9).

(3) If a person charged with an offence under subsection (1)(a), (b) or (c) adduces evidence of a reasonable excuse for the refusal or failure, it is for the prosecution to prove that the person did not have such an excuse.

(4) A person guilty of an offence under subsection (1) is liable on summary conviction—
   (a) to a fine not exceeding level 5 on the standard scale,
(b) to imprisonment for a term not exceeding 51 weeks, or
(c) to both.

(5) Where an offence under subsection (1) which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
   (a) a director, manager, secretary or other similar officer of the body corporate, or
   (b) any person who was purporting to act in any such capacity,
that person, as well as the body corporate, is guilty of that offence and liable to be proceeded against accordingly.

(6) In subsection (5) “director”, in the case of a body corporate whose affairs are managed by its members, means a member of the body corporate.

Commencement
Pt 1 s. 39(1)-(6): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 1 s. 39(1)-(6): England, Wales

40 General

(1) The Presiding Officer or such other person as may be authorised by the standing orders may—
   (a) require any person giving evidence in Assembly proceedings to take an oath (or make an affirmation), and
   (b) administer the oath (or affirmation) to the person.

(2) A person commits an offence if the person—
   (a) is required to attend Assembly proceedings for the purpose of giving evidence by a notice under section 38(1), and
   (b) refuses to take an oath (or make an affirmation) when required to do so for the purposes of the Assembly proceedings.

(3) A person guilty of an offence under subsection (2) is liable on summary conviction—
   (a) to a fine not exceeding level 5 on the standard scale,
   (b) to imprisonment for a term not exceeding 51 weeks, or
   (c) to both.

(4) The standing orders may provide for the payment of allowances and expenses to persons—
   (a) attending Assembly proceedings for the purpose of giving evidence, or
   (b) producing for the purposes of the Assembly (or a committee of the Assembly or a sub-committee of such a committee) documents which they have been required or requested to produce,
whether or not in pursuance of a notice under section 38(1).
(5) The provision made by virtue of subsection (4) may confer functions on the Assembly Commission.

(6) For the purposes of sections 37 to 39 and this section—
   (a) a person is to be taken to comply with a requirement to produce a document if the person produces a copy of the document or an extract of the relevant part of the document,
   (b) “document” means anything in which information is recorded in any form, and
   (c) references to producing a document are to producing the information recorded in it in a visible and legible form.

Commencement
Pt 1 s. 40(1)-(6)(c): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 1 s. 40(1)-(1)(b), (4)-(6)(c): United Kingdom
Pt 1 s. 40(2)-(3)(c): England, Wales

Legal issues

Law In Force

41 Proceedings by or against Assembly etc.

(1) Proceedings by or against the Assembly are to be instituted by or against the Assembly Commission on behalf of the Assembly.

(2) Proceedings by or against—
   (a) the Presiding Officer or Deputy Presiding Officer, or
   (b) a member of the staff of the Assembly,
are (unless instituted against or by the Assembly Commission) to be instituted by or against the Assembly Commission on behalf of the Presiding Officer, Deputy Presiding Officer or member of staff.

(3) In any proceedings against the Assembly the court must not grant a mandatory, prohibiting or quashing order or an injunction, make an order for specific performance or stay the proceedings but may instead make a declaration.

(4) In any proceedings against—
   (a) any Assembly member,
   (b) the Presiding Officer or Deputy Presiding Officer,
   (c) any member of the staff of the Assembly, or
   (d) the Assembly Commission,
the court must not grant a mandatory, prohibiting or quashing order or an injunction, make an order for specific performance or stay the proceedings if the effect of doing so would be to give any relief against the Assembly which could not have been given in proceedings against the Assembly.
(5) References in this section to an order include an order which is not final.

Commencement

Pt 1 s. 41(1)-(5): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Pt 1 s. 41(1)-(5): United Kingdom

Law In Force

42 Defamation

(1) For the purposes of the law of defamation—
   (a) any statement made in Assembly proceedings, and
   (b) the publication under the authority of the Assembly of any statement,
   is absolutely privileged.

(2) The Welsh Ministers may by regulations make provision for and in connection with establishing in any legal proceedings that any statement or publication is absolutely privileged by virtue of subsection (1).

(3) No regulations are to be made under subsection (2) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.

(4) In this section “statement” has the same meaning as in the Defamation Act 1996 (c. 31).

Commencement

Pt 1 s. 42(1)-(4): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Pt 1 s. 42(1)-(4): United Kingdom

Law In Force

43 Contempt of court

(1) The strict liability rule does not apply in relation to any publication—
   (a) made in, for the purposes of, or for purposes incidental to, Assembly proceedings, or
   (b) to the extent that it consists of a report of Assembly proceedings which either is made by or under the authority of the Assembly or is fair and accurate and made in good faith.

(2) In subsection (1)—
   “the strict liability rule”, and
   “publication”,

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have the same meaning as in the Contempt of Court Act 1981 (c. 49).

Commencement
Pt 1 s. 43(1)-(2): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 1 s. 43(1)-(2): United Kingdom

Repealed

PART 2
WELSH ASSEMBLY GOVERNMENT

Government

45 Welsh Assembly Government
(1) There is to be a Welsh Assembly Government, or Llywodraeth Cynulliad Cymru, whose members are—
   (a) the First Minister or Prif Weinidog (see sections 46 and 47),
   (b) the Welsh Ministers, or Gweinidogion Cymru, appointed under section 48,
   (c) the Counsel General to the Welsh Assembly Government or Cwnsler Cyf fredinol i Lywodraeth Cynulliad Cymru (see section 49) (referred to in this Act as “the Counsel General”), and
   (d) the Deputy Welsh Ministers or Dirprwy Weinidogion Cymru (see section 50).
(2) In this Act and in any other enactment or instrument the First Minister and the Welsh Ministers appointed under section 48 are referred to collectively as the Welsh Ministers.

Commencement
Pt 2 s. 45(1)-(2): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the
Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 2 s. 45(1)-(2): United Kingdom

Ministers, staff etc.

Law In Force

46 The First Minister

(1) The First Minister is to be appointed by Her Majesty after nomination in accordance with section 47.
(2) The First Minister holds office at Her Majesty's pleasure.
(3) The First Minister may at any time tender resignation to Her Majesty and ceases to hold office as First Minister when it is accepted.
(4) A person ceases to hold office as the First Minister if another person is appointed to that office.
(5) The functions of the First Minister are exercisable by a person designated by the Presiding Officer if—
   (a) the office of the First Minister is vacant,
   (b) the First Minister is for any reason unable to act, or
   (c) the First Minister has ceased to be an Assembly member.
(6) A person may not be designated to exercise the functions of the First Minister unless the person is—
   (a) an Assembly member, or
   (b) if the Assembly has been dissolved, a person who ceased to be an Assembly member by reason of the dissolution.
(7) A person may be designated to exercise the functions of the First Minister only on the recommendation of the Welsh Ministers (unless there is no-one holding office as a Welsh Minister appointed under section 48).
(8) If a person is designated to exercise the functions of the First Minister, the designation continues to have effect even if the Assembly is dissolved.

Commencement
Pt 2 s. 46(1)-(8): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 2 s. 46(1)-(8): United Kingdom
47 Choice of First Minister

(1) If one of the following events occurs, the Assembly must, before the end of the relevant period, nominate an Assembly member for appointment as First Minister.

(2) The events are—
   (a) the holding of a poll at a general election,
   (b) the Assembly resolving that the Welsh Ministers no longer enjoy the confidence of the Assembly,
   (c) the First Minister tendering resignation to Her Majesty,
   (d) the First Minister dying or becoming permanently unable to act and to tender resignation, and
   (e) the First Minister ceasing to be an Assembly member otherwise than by reason of a dissolution.

(3) The relevant period is the period of 28 days beginning with the day on which the event occurs; but—
   (a) if another of those events occurs within that period, the relevant period is (subject to paragraph (b)) extended to end with the period of 28 days beginning with the day on which that other event occurs, and
   (b) the relevant period ends if the Assembly passes a resolution under section 5(2)(a) or when Her Majesty appoints a person as the First Minister.

(4) The Presiding Officer must recommend to Her Majesty the appointment of the person nominated by the Assembly under subsection (1).

Commencement

Pt 2 s. 47(1)-(4): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Pt 2 s. 47(1)-(4): United Kingdom

48 Welsh Ministers

(1) The First Minister may, with the approval of Her Majesty, appoint Welsh Ministers from among the Assembly members.

(2) A Welsh Minister appointed under this section holds office at Her Majesty's pleasure.

(3) A Welsh Minister appointed under this section may be removed from office by the First Minister.

(4) A Welsh Minister appointed under this section may at any time resign.

(5) A Welsh Minister appointed under this section must resign if the Assembly resolves that the Welsh Ministers no longer enjoy the confidence of the Assembly.

(6) A Welsh Minister appointed under this section who resigns ceases to hold office immediately.
(7) A Welsh Minister appointed under this section ceases to hold office on ceasing to be an Assembly member otherwise than by reason of a dissolution.

Commencement
Pt 2 s. 48(1)-(7): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 2 s. 48(1)-(7): United Kingdom

Law In Force

49 Counsel General

(1) The Counsel General is to be appointed by Her Majesty on the recommendation of the First Minister.

(2) The Counsel General may be removed from office by Her Majesty on the recommendation of the First Minister.

(3) No recommendation for the appointment or removal of a person as the Counsel General may be made by the First Minister without the agreement of the Assembly.

(4) The Counsel General may at any time tender resignation to Her Majesty and ceases to hold office as Counsel General when it is accepted.

(5) The Counsel General ceases to hold office if an Assembly member is nominated under section 47(1) for appointment as First Minister.

(6) The functions of the Counsel General are exercisable by a person designated by the First Minister if—

   a) the office of the Counsel General is vacant, or

   b) the Counsel General is for any reason unable to act.

(7) But subsection (6) ceases to have effect at the end of the period of six months beginning with the day on which a person is designated under it and does not have effect again until after the office of the Counsel General has been filled, or the Counsel General has again become able to act.

(8) The designation of a person under subsection (6) ceases to have effect if an Assembly member is nominated under section 47(1) for appointment as First Minister.

(9) A person holding office as the First Minister, a Welsh Minister appointed under section 48 or a Deputy Welsh Minister may not be appointed as the Counsel General or designated under subsection (6); and the Counsel General or a person so designated may not be appointed to any of those offices.

Commencement
Pt 2 s. 49(1)-(9): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the
50 Deputy Welsh Ministers

(1) The First Minister may, with the approval of Her Majesty, appoint Deputy Welsh Ministers from among the Assembly members to assist the First Minister, a Welsh Minister appointed under section 48 or the Counsel General in the exercise of functions.

(2) A Deputy Welsh Minister holds office at Her Majesty's pleasure.

(3) A Deputy Welsh Minister may be removed from office by the First Minister.

(4) A Deputy Welsh Minister may at any time resign.

(5) A Deputy Welsh Minister must resign if the Assembly resolves that the Welsh Ministers no longer enjoy the confidence of the Assembly.

(6) A Deputy Welsh Minister who resigns ceases to hold office immediately.

(7) A Deputy Welsh Minister ceases to hold office on ceasing to be an Assembly member otherwise than by reason of a dissolution.

51 Limit on number of Ministers

(1) No more than twelve persons are to hold a relevant Welsh Ministerial office at any time.

(2) A relevant Welsh Ministerial office means the office of Welsh Minister appointed under section 48 or the office of Deputy Welsh Minister.
52 Staff

(1) The Welsh Ministers may appoint persons to be members of the staff of the Welsh Assembly Government.

(2) Service as a member of the staff of the Welsh Assembly Government is service in the [civil service of the State]¹.

(3) See Part 1 of the Constitutional Reform and Governance Act 2010 (in particular, sections 3 and 4) for provision affecting—
   (a) subsection (1), and
   (b) any other enactment about the appointment of persons as members of the staff of the Welsh Assembly Government.

(4) See also section 1 of the Civil Service (Management Functions) Act 1992 under which functions conferred on the Minister for the Civil Service by section 3 of the Constitutional Reform and Governance Act 2010 may be delegated to the Welsh Ministers etc. ]³

(5) The Welsh Ministers are to pay the salaries and expenses of the members of the staff of the Welsh Assembly Government.

(6) Section 1(2) and (3) of the Superannuation Act 1972 (c. 11) (delegation of functions relating to civil service superannuation schemes by Minister for the Civil Service to another Minister etc. and consultation by that Minister or another Minister) have effect as if the references to a Minister of the Crown other than the Minister for the Civil Service included the Welsh Ministers.

(7) The Welsh Ministers must make payments to the Minister for the Civil Service, at such times as the Minister for the Civil Service may determine, of such amounts as may be so determined in respect of—
   (a) the provision of pensions, allowances or gratuities by virtue of section 1 of the Superannuation Act 1972 to or in respect of persons who are or have been members of the staff of the Welsh Assembly Government, and
   (b) the expenses incurred in administering those pensions, allowances and gratuities.

(8) The Welsh Ministers may make payments towards the provision of pensions, allowances or gratuities to or in respect of any person who is or has been a member of the staff of the Welsh Assembly Government.

(9) Without prejudice to any rule of law with respect to the carrying out of functions by members of the [civil service of the State]¹ under authority, the Welsh Ministers, the First Minister or the Counsel General may authorise the staff of the Welsh Assembly Government to carry out any function on their behalf.

(10) […]⁴
53 Remuneration

(1) [Provision must be made]¹ for the payment of salaries to persons to whom this section applies.

(2) [Provision may be made]² for the payment of allowances to persons to whom this section applies.

(3) [Provision may be made]³ for the payment of pensions, gratuities or allowances to, or in respect of, any person who has ceased to be a person to whom this section applies.

(4) Such provision may, in particular, include provision for—
   (a) contributions or payments towards provision for such pensions, gratuities or allowances, and
   (b) the establishment and administration (whether by the Assembly Commission or otherwise) of one or more pension schemes.

(5) This section applies to—
   (a) the First Minister,
   (b) every Welsh Minister appointed under section 48,
   (c) the Counsel General, and
   (d) every Deputy Welsh Minister.

(6) Sums required for the making of payments by virtue of provision under this section are payable out of the Welsh Consolidated Fund.

[(7) Provision under this section is to be made by determination made by the Board.]⁴

[(8) The Assembly Commission must give effect to any determination made by the Board under this section.]⁵
54 Remuneration: supplementary

(1) Different provision may be made under section 53 for different cases.

(2) [The Assembly Commission]¹ must ensure that information concerning—
   (a) the amounts paid to each person to whom section 53 applies as salary and allowances, and
   (b) the total amount paid to such persons as salaries and allowances,
   is published for each financial year […]².

[ (3) The Assembly Commission must lay before the Assembly every determination made by the Board under section 53(7) as soon as is reasonably practicable after it is made. ]³

(4) Provision made under section 53(3) does not affect pensions or allowances in payment before the provision was made.

Notes

¹ Words substituted by National Assembly for Wales (Remuneration) Measure 2010 c. 04 Sch.3 para.17 (September 24, 2010: substitution has effect on September 24, 2010 subject to transitional and saving provision specified in 2010 nawm 4 s.19)
2 Words repealed by National Assembly for Wales (Remuneration) Measure 2010 c. 04 Sch.3 para.17 (September 24, 2010: repeal has effect on September 24, 2010 subject to transitional and saving provision specified in 2010 nawm 4 s.19)
3 Substituted by National Assembly for Wales (Remuneration) Measure 2010 c. 04 Sch.3 para.18 (September 24, 2010: substitution has effect on September 24, 2010 subject to transitional and saving provision specified in 2010 nawm 4 s.19)

Commencement
Pt 2 s. 54(1)-(4): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 2 s. 54(1)-(4): United Kingdom

Law In Force

55 Oath or affirmation

(1) On appointment as the First Minister, a Welsh Minister appointed under section 48 or the Counsel General a person must take the official oath in the form set out in section 3 of the Promissory Oaths Act 1868 (c. 72) (or make the corresponding affirmation).

(2) On appointment as the First Minister, a Welsh Minister appointed under section 48, the Counsel General or a Deputy Welsh Minister a person must take the oath of allegiance in the form set out in section 2 of the Promissory Oaths Act 1868 (or make the corresponding affirmation).

(3) But subsection (2) does not require a person who is an Assembly member to take the oath of allegiance (or make the corresponding affirmation) again if it has been taken (or made) in compliance with the person's duty on the person's return (or, if returned more than once, most recent return) as an Assembly member.

(4) An oath required by this section is to be taken (or the corresponding affirmation made)—
   (a) before one of the Presiding Judges for the Wales and Chester Circuit (or for any appropriate area which is specified in a direction under section 72(4) of the Courts and Legal Services Act 1990 (c. 41)), or
   (b) (if no such Presiding Judge is available) before another judge nominated by the Senior Presiding Judge for England and Wales.

(5) Until a person who is required to take an oath (or make an affirmation) by this section in respect of any office has done so, no salary, allowance, gratuity or payment towards the provision of a pension, allowance or gratuity is to be paid under this Act to or in respect of the person as a holder of that office.

(6) But subsection (5) does not affect any entitlement to payments in respect of the period before the person took the oath (or made the affirmation) once the person has done so.

Commencement
Pt 2 s. 55(1)-(6): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the
Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 2 s. 55(1)-(6): United Kingdom

Functions

56 Introduction
(1) The persons to whom this section applies have the functions conferred or imposed on them by or by virtue of this Act or any other enactment or prerogative instrument.
(2) This section applies to the Welsh Ministers, the First Minister and the Counsel General.

Commencement
Pt 2 s. 56(1)-(2): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 2 s. 56(1)-(2): United Kingdom

57 Exercise of functions
(1) Functions may be conferred or imposed on the Welsh Ministers by that name.
(2) Functions of the Welsh Ministers, the First Minister and the Counsel General are exercisable on behalf of Her Majesty.
(3) Functions of the Welsh Ministers are exercisable by the First Minister or any of the Welsh Ministers appointed under section 48.
(4) Any act or omission of, or in relation to, the First Minister or any of the Welsh Ministers appointed under section 48 is to be treated as an act or omission of, or in relation to, each of them.
(5) But subsection (4) does not apply in relation to the exercise of functions conferred or imposed on the First Minister alone.
(6) Where a function conferred or imposed on the Counsel General is (either generally or in particular circumstances) exercisable concurrently by the Welsh Ministers or the First Minister, subsection (4) applies in relation to the exercise of the function (or to its exercise in those circumstances) as if the Counsel General were included among the Welsh Ministers.
58 Transfer of Ministerial functions

(1) Her Majesty may by Order in Council—
   (a) provide for the transfer to the Welsh Ministers, the First Minister or the Counsel General of any function so far as exercisable by a Minister of the Crown in relation to Wales or the Welsh zone,
   (b) direct that any function so far as so exercisable is to be exercisable by the Welsh Ministers, the First Minister or the Counsel General concurrently with the Minister of the Crown, or
   (c) direct that any function so far as exercisable by a Minister of the Crown in relation to Wales or the Welsh zone is to be exercisable by the Minister of the Crown only with the agreement of, or after consultation with, the Welsh Ministers, the First Minister or the Counsel General.

[(1A) An Order in Council under this section may not make provision about a function of a Minister of the Crown exercisable in relation to the area of the Welsh zone beyond the seaward limit of the territorial sea unless the function is connected with fishing, fisheries or fish health.

(1B) Subsection (1A) does not have effect in relation to an Order in Council to the extent that it contains provision made by virtue of paragraph 4 of Schedule 3 (functions exercisable beyond the territorial sea).]

(2) An Order in Council under this section may, in particular, provide for any function exercisable by the Welsh Ministers, the First Minister or the Counsel General by virtue of an Order in Council under subsection (1)(a) or (b) to be exercisable either generally or in such circumstances as may be specified in the Order in Council, concurrently with any other of the Welsh Ministers, the First Minister or the Counsel General.

(3) An Order in Council under this section may make such modifications of—
   (a) any enactment (including any enactment comprised in or made under this Act) or prerogative instrument, or
   (b) any other instrument or document,
   as Her Majesty considers appropriate in connection with the provision made by the Order in Council.

(4) No recommendation is to be made to Her Majesty in Council to make an Order in Council under this section unless a draft of the statutory instrument containing the Order in Council—
   (a) has been laid before, and approved by a resolution of, each House of Parliament, and
   (b) has been approved by the Welsh Ministers.
For further provision in connection with the transfer etc. of functions by Orders in Council under this section see Schedule 3.

Notes
1 Words inserted by Marine and Coastal Access Act 2009 c. 23 Sch.4(2) para.6(3)(a) (November 12, 2009 for any power ro make an Order in Council under 2006 c.32; January 12, 2010 otherwise)
2 Words inserted by Marine and Coastal Access Act 2009 c. 23 Sch.4(2) para.6(3)(b) (November 12, 2009 for any power ro make an Order in Council under 2006 c.32; January 12, 2010 otherwise)
3 Added by Marine and Coastal Access Act 2009 c. 23 Sch.4(2) para.6(3)(c) (November 12, 2009 for any power ro make an Order in Council under 2006 c.32; January 12, 2010 otherwise)

Commencement
Pt 2 s. 58(1)-(5): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 2 s. 58(1)-(5): United Kingdom

Law In Force
59 Implementation of [EU]¹ law

(1) The power to designate a Minister of the Crown or government department under section 2(2) of the European Communities Act 1972 (c. 68) may be exercised to designate the Welsh Ministers.

(2) Accordingly, the Welsh Ministers may exercise the power conferred by section 2(2) of the European Communities Act 1972 in relation to any matter, or for any purpose, if they have been designated in relation to that matter or for that purpose, but subject to such restrictions or conditions (if any) as may be specified by the Order in Council designating them.

(3) A statutory instrument containing provision made by the Welsh Ministers in the exercise of that power, if made without a draft having been approved by resolution of the Assembly, is subject to annulment in pursuance of a resolution of the Assembly.

(4) Paragraph 2(2) of Schedule 2 to the European Communities Act 1972 (Parliamentary procedure) does not apply to the statutory instrument unless it contains provision—
   (a) made by a Minister of the Crown or government department (whether or not jointly with the Welsh Ministers),
   (b) relating to an English border area, or
   (c) relating to a cross-border body (and not relating only to the exercise of functions, or the carrying on of activities, by the body in or with respect to [Wales, the Welsh zone or a part of Wales or the Welsh zone]²).

(5) The power conferred by section 56 of the Finance Act 1973 (c. 51) (services provided in pursuance of [an EU]³ obligation etc.) on the Minister in charge of a government department to make (with the consent of the Treasury) regulations prescribing, or providing for the determination of, fees and charges in respect of things done by the department may be exercised by the Welsh
Ministers (with the consent of the Treasury) for prescribing, or providing for the determination of, fees and charges in respect of corresponding things done by the Welsh Ministers.

(6) A statutory instrument containing regulations made by the Welsh Ministers in the exercise of that power is subject to annulment in pursuance of a resolution of the Assembly.

(7) Section 56(4) of the Finance Act 1973 does not cause the statutory instrument to be subject to annulment in pursuance of a resolution of a House of Parliament unless it contains regulations—

(a) made by a Minister of the Crown or government department (whether or not jointly with the Welsh Ministers),

(b) relating to an English border area, or

(c) relating to a cross-border body (and not relating only to the exercise of functions, or the carrying on of activities, by the body in or with respect to [Wales, the Welsh zone or a part of Wales or the Welsh zone]).

Notes

1 Word substituted by Treaty of Lisbon (Changes in Terminology) Order 2011/1043 Pt 2 art.6(2)(a) (April 22, 2011)

2 Words substituted by Marine and Coastal Access Act 2009 c. 23 Sch.4(2) para.6(4)(a) (November 12, 2009 for any power to make an Order in Council under 2006 c.32; January 12, 2010 otherwise)

3 Word substituted by Treaty of Lisbon (Changes in Terminology) Order 2011/1043 Pt 2 art.6(1)(e) (April 22, 2011)

4 Words substituted by Marine and Coastal Access Act 2009 c. 23 Sch.4(2) para.6(4)(b) (November 12, 2009 for any power to make an Order in Council under 2006 c.32; January 12, 2010 otherwise)

Commencement

Pt 2 s. 59(1)-(7)(c): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Pt 2 s. 59(1)-(7)(c): United Kingdom

60 Promotion etc. of well-being

(1) The Welsh Ministers may do anything which they consider appropriate to achieve any one or more of the following objects—

(a) the promotion or improvement of the economic well-being of Wales,

(b) the promotion or improvement of the social well-being of Wales, and

(c) the promotion or improvement of the environmental well-being of Wales.

(2) The power under subsection (1) may be exercised in relation to or for the benefit of—

(a) the whole or any part of Wales, or

(b) all or any persons resident or present in Wales.

(3) The power under subsection (1) includes power to do anything in relation to or for the benefit of any area outside Wales, or all or any persons resident or present anywhere outside Wales, if the Welsh Ministers consider that it is likely to achieve one or more of the objects in that subsection.
(4) The power under subsection (1) includes power—
(a) to enter into arrangements or agreements with any person,
(b) to co-operate with, or facilitate or co-ordinate the activities of, any person,
(c) to exercise on behalf of any person any functions of that person, and
(d) to provide staff, goods, services or accommodation to any person.

Commencement
Pt 2 s. 60(1)-(4)(d): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 2 s. 60(1)-(4)(d): United Kingdom

Law In Force
61 Support of culture etc.
The Welsh Ministers may do anything which they consider appropriate to support—
(a) archaeological remains in Wales,
(b) ancient monuments in Wales,
(c) buildings and places of historical or architectural interest in Wales,
(d) historic wrecks in Wales,
(e) arts and crafts relating to Wales,
(f) museums and galleries in Wales,
(g) libraries in Wales,
(h) archives and historical records relating to Wales,
(i) cultural activities and projects relating to Wales,
(j) sport and recreational activities relating to Wales, and
(k) the Welsh language.

Commencement
Pt 2 s. 61(a)-(k): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 2 s. 61(a)-(k): United Kingdom

Law In Force
62 Representations about matters affecting Wales
The Welsh Ministers, the First Minister and the Counsel General may make appropriate representations about any matter affecting Wales.
63 Consultation about cross-border bodies

(1) A Minister of the Crown must consult the Welsh Ministers—
   (a) before exercising any function which relates to the appointment or removal of a relevant cross-border body,
   (b) before exercising any function which relates to the appointment or removal of any member or office-holder of a relevant cross-border body, other than one who is not concerned in the functions or activities which the body exercises or carries on in or with respect to Wales, and
   (c) before exercising, in relation to a relevant cross-border body, any function the exercise of which might affect Wales in relation to any matter as respects which functions are exercisable by the Welsh Ministers.

(2) A body is a relevant cross-border body if it is a cross-border body which exercises functions of a public nature and which is not a government department.

(3) Subsection (1) does not apply in relation to the exercise of a function if it is not reasonably practicable to comply with it in relation to the exercise of the function (for reasons of urgency or for any other reasons).

(4) If subsection (1) does not apply in relation to the exercise of a function by a Minister of the Crown by reason of subsection (3), the Minister of the Crown must as soon as is reasonably practicable inform the Welsh Ministers of the exercise of the function and of the reasons for its exercise.

(5) A failure to comply with subsection (1) in relation to the exercise of a function does not affect the validity of its exercise.
64  Polls for ascertaining views of the public

(1) The Welsh Ministers may hold a poll in an area consisting of Wales or any part (or parts) of Wales for the purpose of ascertaining the views of those polled about whether or how any of the functions of the Welsh Ministers (other than that under section 62) should be exercised.

(2) The persons entitled to vote in a poll under this section are those who—
   (a) would be entitled to vote as electors at a local government election in an electoral area wholly or partly included in the area in which the poll is held, and
   (b) are registered in the register of local government electors at an address within the area in which the poll is held.

(3) The Welsh Ministers may by order make provision—
   (a) as to the conduct of polls (or any poll) under this section, or
   (b) for the combination of polls (or any poll) under this section with polls at any elections.

(4) An order under subsection (3) may apply or incorporate, with or without modifications or exceptions, any provision of or made under any enactment relating to elections or referendums; and the provision which may be made under paragraph (a) of that subsection includes, in particular, provision for disregarding alterations in a register of electors.

(5) A statutory instrument containing an order under subsection (3) is subject to annulment in pursuance of a resolution of the Assembly.

Commencement
Pt 2 s. 64(1)-(5): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 2 s. 64(1)-(5): United Kingdom

65  Private bills


(2) Subsection (1) does not cause the Welsh Ministers to have power to apply for orders under section 1 or 3 of the Transport and Works Act 1992 (c. 42) by virtue of section 20 of that Act (which gives a body with power to promote and oppose private bills power to apply for and object to such orders).

Commencement
Pt 2 s. 65(1)-(2): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the
66  Provision of information to Treasury
Where it appears to the Treasury that any information in the possession, or under the control, of the Welsh Ministers is required for the exercise of any function by the Treasury, the Treasury may require the Welsh Ministers to provide the information to the Treasury in such form as the Treasury may reasonably specify.

Commencement
Pt 2 s. 66: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 2 s. 66: United Kingdom

67  Legal proceedings
(1) Where the Counsel General considers it appropriate for the promotion or protection of the public interest, the Counsel General may institute in the Counsel General’s name, defend or appear in any legal proceedings to which this section applies.

(2) This section applies to legal proceedings relating to matters with respect to which any functions of the Welsh Ministers, the First Minister or the Counsel General are exercisable.

Commencement
Pt 2 s. 67(1)-(2): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 2 s. 67(1)-(2): United Kingdom
68  Contracts

(1) The Secretary of State may by order provide that the Local Government (Contracts) Act 1997 (c. 65) applies in relation to contracts entered into by the Welsh Ministers, the First Minister or the Counsel General but subject to any appropriate modifications.

(2) A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

Commencement
Pt 2 s. 68(1)-(2): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 2 s. 68(1)-(2): United Kingdom

69  Charges for documents

(1) The Welsh Ministers may make a charge for supplying copies of (or of any part of) any document which they publish or make available for public inspection.

(2) Subsection (1) has effect subject to any provision contained in, or made under, any enactment which makes provision for—
   (a) the making of charges for the inspection of documents,
   (b) the making of charges for supplying copies of documents (or parts of documents), or
   (c) the supply of copies of documents (or parts of documents) free of charge.

(3) This section applies to the First Minister and the Counsel General as to the Welsh Ministers.

Commencement
Pt 2 s. 69(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 2 s. 69(1)-(3): United Kingdom

70  Financial assistance

(1) The Welsh Ministers may give financial assistance (whether by way of grant, loan or guarantee) to any person engaged in any activity which the Welsh Ministers consider will secure, or help to
secure, the attainment of any objective which they aim to attain in the exercise of any of their functions.

(2) The Welsh Ministers may attach conditions to the giving of financial assistance by them; and the conditions which may be attached include, in particular, conditions requiring the repayment of the whole or any part of a grant, or the making of any other payments, in any circumstances.

(3) This section applies in relation to the First Minister and the Counsel General as in relation to the Welsh Ministers.

Commencement
Pt 2 s. 70(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 2 s. 70(1)-(3): United Kingdom

71 Supplementary

(1) The persons to whom this section applies may do anything (including the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the exercise of any of their other functions.

(2) This section applies to the Welsh Ministers, the First Minister and the Counsel General.

Commencement
Pt 2 s. 71(1)-(2): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 2 s. 71(1)-(2): United Kingdom

“Inclusive” approach to exercise of functions

72 Partnership Council

(1) The Welsh Ministers must establish and maintain a body to be known as the Partnership Council for Wales or Cyngor Partneriaeth Cymru (“the Partnership Council”).

(2) The Partnership Council is to consist of members appointed by the Welsh Ministers from among—
(a) the Welsh Ministers,
(b) the Deputy Welsh Ministers, and
(c) the members of local authorities in Wales.

(3) Before appointing members of the Partnership Council under subsection (2)(c), the Welsh Ministers must consult such associations of local authorities in Wales as they consider appropriate.

(4) The Partnership Council may—
(a) give advice to the Welsh Ministers about matters affecting the exercise of any of their functions,
(b) make representations to the Welsh Ministers about any matters affecting, or of concern to, those involved in local government in Wales, and
(c) give advice to those involved in local government in Wales.

(5) For the purposes of this section the following are local authorities in Wales—
(a) county councils, county borough councils and community councils in Wales,
(b) National Park authorities for National Parks in Wales,
(c) police authorities for police areas in Wales,
(d) fire and rescue authorities for areas in Wales, and
(e) authorities of any description specified for the purposes of this paragraph by order made by the Welsh Ministers.

(6) No order may be made under subsection (5)(e) unless the Welsh Ministers have consulted the Partnership Council.

(7) A statutory instrument containing an order under subsection (5)(e) is subject to annulment in pursuance of a resolution of the Assembly.

Amendments Pending
Pt 2 s. 72(5)(c): words substituted by Police Reform and Social Responsibility Act 2011 c. 13, Sch. 16(3) para. 352 (date to be appointed)

Commencement
Pt 2 s. 72(1)-(7): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 2 s. 72(1)-(7): United Kingdom

Law In Force

73 Local government scheme

(1) The Welsh Ministers must make a scheme (“the local government scheme”) setting out how they propose, in the exercise of their functions, to sustain and promote local government in Wales.

(2) The Welsh Ministers—
(a) must keep the local government scheme under review, and
(b) may from time to time remake or revise it.
(3) In determining the provision to be included in the local government scheme, the Welsh Ministers must have regard to any advice which has been given, and to any representations which have been made, to them by the Partnership Council.

(4) The Welsh Ministers must publish the local government scheme when they make it and whenever they remake it; and, if they revise the scheme without remaking it, they must publish either the revisions or the scheme as revised (as they consider appropriate).

(5) If the Welsh Ministers publish a scheme or revisions under subsection (4) they must lay a copy of the scheme or revisions before the Assembly.

(6) After each financial year the Welsh Ministers must—
   (a) publish a report of how the proposals set out in the local government scheme were implemented in that financial year, and
   (b) lay a copy of the report before the Assembly.

Commencement
Pt 2 s. 73(1)-(6)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 2 s. 73(1)-(6)(b): United Kingdom

74 Voluntary sector scheme

(1) The Welsh Ministers must make a scheme (“the voluntary sector scheme”) setting out how they propose, in the exercise of their functions, to promote the interests of relevant voluntary organisations.

(2) In this section “relevant voluntary organisations” means bodies (other than local authorities or other public bodies) whose activities—
   (a) are carried on otherwise than for profit, and
   (b) directly or indirectly benefit the whole or any part of Wales (whether or not they also benefit any other area).

(3) In determining the provision to be included in the voluntary sector scheme, the Welsh Ministers must consider how they intend to exercise such of their functions as relate to matters affecting, or of concern to, relevant voluntary organisations.

(4) The voluntary sector scheme must specify—
   (a) how the Welsh Ministers propose to provide assistance to relevant voluntary organisations (whether by grants, loans, guarantees or any other means),
   (b) how the Welsh Ministers propose to monitor the use made of any assistance provided by them to relevant voluntary organisations, and
(c) how the Welsh Ministers propose to consult relevant voluntary organisations about the exercise of such of their functions as relate to matters affecting, or of concern to, such organisations.

(5) The Welsh Ministers—
   (a) must keep the voluntary sector scheme under review, and
   (b) may from time to time remake or revise it.

(6) Before making, remaking or revising the voluntary sector scheme, the Welsh Ministers must consult such relevant voluntary organisations as they consider appropriate.

(7) The Welsh Ministers must publish the voluntary sector scheme when they make it and whenever they remake it; and, if they revise the scheme without remaking it, they must publish either the revisions or the scheme as revised (as they consider appropriate).

(8) If the Welsh Ministers publish a scheme or revisions under subsection (7) they must lay a copy of the scheme or revisions before the Assembly.

(9) After each financial year the Welsh Ministers must—
   (a) publish a report of how the proposals set out in the voluntary sector scheme were implemented in that financial year, and
   (b) lay a copy of the report before the Assembly.

Commencement
Pt 2 s. 74(1)-(9)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 2 s. 74(1)-(9)(b): United Kingdom

75 Business scheme
(1) The Welsh Ministers must make a scheme (“the business scheme”) setting out how they propose, in the exercise of their functions, to take account of the interests of business.

(2) The business scheme must specify how the Welsh Ministers propose—
   (a) to carry out consultation about the exercise of such of their functions as relate to matters affecting the interests of business, and
   (b) to consider the impact of the exercise of their functions on the interests of business.

(3) The Welsh Ministers—
   (a) must keep the business scheme under review, and
   (b) may from time to time remake or revise it.

(4) Before making, remaking or revising the business scheme, the Welsh Ministers must consult such organisations representative of business (including trade unions) and such other organisations as they consider appropriate.
(5) The Welsh Ministers must publish the business scheme when they make it and whenever they
remake it; and, if they revise the scheme without remaking it, they must publish either the revisions
or the scheme as revised (as they consider appropriate).

(6) If the Welsh Ministers publish a scheme or revisions under subsection (5) they must lay a copy
of the scheme or revisions before the Assembly.

(7) The Welsh Ministers must—
   (a) within the period of two years beginning with the day on which the business scheme is
       first made, and
   (b) subsequently at intervals of no more than two years,
       publish a report of how the proposals set out in the business scheme have been implemented.

(8) The Welsh Ministers must lay before the Assembly a copy of each report published under
subsection (7).

**Commencement**

Pt 2 s. 75(1)-(8): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007
immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the
Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor
General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

**Extent**

Pt 2 s. 75(1)-(8): United Kingdom

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76 Regulatory impact assessments

(1) The Welsh Ministers must make a code of practice setting out their policy on—
   (a) the carrying out of regulatory impact assessments in connection with relevant Welsh
       subordinate legislation, and
   (b) the carrying out of consultation in connection with regulatory impact assessments,
       (“the regulatory impact assessment code”).

(2) For the purposes of this section—
   (a) a regulatory impact assessment is an assessment as to the likely costs and benefits of
       complying with relevant Welsh subordinate legislation, and
   (b) subordinate legislation is relevant Welsh subordinate legislation if it is made by the
       Welsh Ministers, the First Minister or the Counsel General and the statutory instrument (or
       a draft of the statutory instrument) containing it is required to be laid before the Assembly.

(3) The Welsh Ministers—
   (a) must keep the regulatory impact assessment code under review, and
   (b) may from time to time remake or revise it.

(4) Before making, remaking or revising the regulatory impact assessment code, the Welsh Ministers
must consult such persons as they consider appropriate.

(5) The Welsh Ministers must publish the regulatory impact assessment code when they make it
and whenever they remake it; and, if they revise the code without remaking it, they must publish
either the revisions or the code as revised (as they consider appropriate).
If the Welsh Ministers publish a code or revisions under subsection (5) they must lay a copy of the code or revisions before the Assembly.

Commencement
Pt 2 s. 76(1)-(6): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 2 s. 76(1)-(6): United Kingdom

77 Equality of opportunity

(1) The Welsh Ministers must make appropriate arrangements with a view to securing that their functions are exercised with due regard to the principle that there should be equality of opportunity for all people.

(2) After each financial year the Welsh Ministers must publish a report containing—
   (a) a statement of the arrangements made in pursuance of subsection (1) which had effect during that financial year, and
   (b) an assessment of how effective those arrangements were in promoting equality of opportunity,
and must lay a copy of the report before the Assembly.

Commencement
Pt 2 s. 77(1)-(2)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 2 s. 77(1)-(2)(b): United Kingdom

78 The Welsh language

(1) The Welsh Ministers must adopt a strategy (“the Welsh language strategy”) setting out how they propose to promote and facilitate the use of the Welsh language.

(2) The Welsh Ministers must adopt a scheme (“the Welsh language scheme”) specifying measures which they propose to take, for the purpose mentioned in subsection (3), as to the use of the Welsh language in connection with the provision of services to the public in Wales by them, or by others who—
   (a) are acting as servants or agents of the Crown, or
(b) are public bodies (within the meaning of Part 2 of the Welsh Language Act 1993 (c. 38)).

(3) The purpose referred to in subsection (2) is that of giving effect, so far as is both appropriate in the circumstances and reasonably practicable, to the principle that in the conduct of public business in Wales the English and Welsh languages should be treated on a basis of equality.

(4) The Welsh Ministers—
   (a) must keep under review both the Welsh language strategy and the Welsh language scheme, and
   (b) may from time to time adopt a new strategy or scheme or revise them.

(5) Before adopting or revising a strategy or scheme, the Welsh Ministers must consult such persons as they consider appropriate.

(6) The Welsh Ministers must publish the Welsh language strategy and the Welsh language scheme when they first adopt it and—
   (a) if they adopt a new strategy or scheme they must publish it, and
   (b) if they revise the Welsh language strategy or the Welsh language scheme (rather than adopting a new strategy or scheme) they must publish either the revisions or the strategy or scheme as revised (as they consider appropriate).

(7) If the Welsh Ministers publish a strategy or scheme, or revisions, under subsection (6) they must lay a copy of the strategy or scheme, or revisions, before the Assembly.

(8) After each financial year the Welsh Ministers must publish a report of—
   (a) how the proposals set out in the Welsh language strategy were implemented in that financial year and how effective their implementation has been in promoting and facilitating the use of the Welsh language, and
   (b) how the proposals set out in the Welsh language scheme were implemented in that financial year,
and must lay a copy of the report before the Assembly.

[ (9) For each financial year, the Welsh Ministers must publish a plan setting out how they will implement the proposals set out in the Welsh language strategy during that year.

(10) The plan must be published as soon as reasonably practicable before the commencement of the financial year to which it relates. ]

Notes

1 Added by Welsh Language (Wales) Measure 2011 c. 01 Pt 10 s.148(2) (February 5, 2012 as SI 2012/223)

Commencement

Pt 2 s. 78(1)-(8)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Pt 2 s. 78(1)-(10): United Kingdom
79 Sustainable development

(1) The Welsh Ministers must make a scheme ("the sustainable development scheme") setting out how they propose, in the exercise of their functions, to promote sustainable development.

(2) The Welsh Ministers—
   (a) must keep the sustainable development scheme under review, and
   (b) may from time to time remake or revise it.

(3) Before making, remaking or revising the sustainable development scheme, the Welsh Ministers must consult such persons as they consider appropriate.

(4) The Welsh Ministers must publish the sustainable development scheme when they make it and whenever they remake it; and, if they revise the scheme without remaking it, they must publish either the revisions or the scheme as revised (as they consider appropriate).

(5) If the Welsh Ministers publish a scheme or revisions under subsection (4) they must lay a copy of the scheme or revisions before the Assembly.

(6) After each financial year the Welsh Ministers must—
   (a) publish a report of how the proposals set out in the sustainable development scheme were implemented in that financial year, and
   (b) lay a copy of the report before the Assembly.

(7) In the year following that in which an ordinary general election is (or, apart from section 5(5), would be) held, the Welsh Ministers must—
   (a) publish a report containing an assessment of how effective their proposals (as set out in the scheme and implemented) have been in promoting sustainable development, and
   (b) lay a copy of the report before the Assembly.

Commencement

Pt 2 s. 79(1)-(7)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Pt 2 s. 79(1)-(7)(b): United Kingdom

[EU]¹ law, human rights and international obligations etc.

Notes

¹ Word substituted by Treaty of Lisbon (Changes in Terminology) Order 2011/1043 Pt 2 art.6(2)(a) (April 22, 2011)
80 [EU]¹ law

(1) A community obligation of the United Kingdom is also an obligation of the Welsh Ministers if and to the extent that the obligation could be implemented (or enabled to be implemented) or complied with by the exercise by the Welsh Ministers of any of their functions.

(2) Subsection (1) does not apply in the case of [an EU]² obligation of the United Kingdom if—
   (a) it is an obligation to achieve a result defined by reference to a quantity (whether expressed as an amount, proportion or ratio or otherwise), and
   (b) the quantity relates to the United Kingdom (or to an area including the United Kingdom or to an area consisting of a part of the United Kingdom which includes [the whole or part of Wales or of the Welsh zone]³).

(3) But if such [an EU]² obligation could (to any extent) be implemented (or enabled to be implemented) or complied with by the exercise by the Welsh Ministers of any of their functions, a Minister of the Crown may by order provide for the achievement by the Welsh Ministers (in the exercise of their functions) of so much of the result to be achieved under the [EU]² obligation as is specified in the order.

(4) The order may specify the time by which any part of the result to be achieved by the Welsh Ministers is to be achieved.

(5) No order is to be made by a Minister of the Crown under subsection (3) unless the Minister of the Crown has consulted the Welsh Ministers.

(6) A statutory instrument containing an order under subsection (3) is subject to annulment in pursuance of a resolution of either House of Parliament.

(7) Where an order under subsection (3) is in force in relation to [an EU]² obligation, to the extent that the [EU]² obligation involves achieving what is specified in the order it is also an obligation of the Welsh Ministers (enforceable as if it were an obligation of the Welsh Ministers under subsection (1)).

(8) The Welsh Ministers have no power—
   (a) to make, confirm or approve any subordinate legislation, or
   (b) to do any other act,
so far as the subordinate legislation or act is incompatible with [EU]¹ law or an obligation under subsection (7).

(9) Subsections (1) and (8) apply to the First Minister and the Counsel General as to the Welsh Ministers.

Notes

¹ Word substituted by Treaty of Lisbon (Changes in Terminology) Order 2011/1043 Pt 2 art.6(2)(a) (April 22, 2011)
² Words substituted by Treaty of Lisbon (Changes in Terminology) Order 2011/1043 Pt 2 art.6(1)(e) (April 22, 2011)
³ Words substituted by Marine and Coastal Access Act 2009 c. 23 Sch.4(2) para.6(5) (November 12, 2009 for any power to make an Order in Council under 2006 c.32; January 12, 2010 otherwise)

Commencement

Pt 2 s. 80(1)-(9): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the
81 Human rights

(1) The Welsh Ministers have no power—
   (a) to make, confirm or approve any subordinate legislation, or
   (b) to do any other act,
so far as the subordinate legislation or act is incompatible with any of the Convention rights.

(2) Subsection (1) does not enable a person—
   (a) to bring any proceedings in a court or tribunal, or
   (b) to rely on any of the Convention rights in any such proceedings,
in respect of an act unless that person would be a victim for the purposes of Article 34 of the
Convention if proceedings were brought in the European Court of Human Rights in respect of that
act.

(3) Subsection (2) does not apply to the Attorney General, the Counsel General, the Advocate
General for Scotland, the Advocate General for Northern Ireland or the Attorney General for
Northern Ireland.

(4) Subsection (1)—
   (a) does not apply to an act which, by virtue of subsection (2) of section 6 of the Human
Rights Act 1998 (c. 42), is not unlawful under subsection (1) of that section, and
   (b) does not enable a court or tribunal to award in respect of any act any damages which
it could not award on finding the act unlawful under that subsection.

(5) Subsection (1) applies to the First Minister and the Counsel General as to the Welsh Ministers.

(6) In subsection (2) “the Convention” has the same meaning as in the Human Rights Act 1998.
82 International obligations etc.

(1) If the Secretary of State considers that any action proposed to be taken by the Welsh Ministers would be incompatible with any international obligation, the Secretary of State may by order direct that the proposed action is not to be taken.

(2) If the Secretary of State considers that an action capable of being taken by the Welsh Ministers is required for the purposes of giving effect to any international obligation, the Secretary of State may by order direct the Welsh Ministers to take the action.

(3) If the Secretary of State considers that any subordinate legislation made, or which could be revoked, by the Welsh Ministers is incompatible with any international obligation or the interests of defence or national security, the Secretary of State may by order revoke the legislation.

(4) An order under subsection (3) may include provision for the order to have effect from a date earlier than that on which it is made; but—
   (a) such a provision does not affect any rights or liabilities acquired or incurred before the date on which the order is made, and
   (b) no person is to be guilty of an offence merely because of such a provision.

(5) The Secretary of State may make an order containing provision such as is specified in subsection (6) where—
   (a) an international obligation is an obligation to achieve a result defined by reference to a quantity (whether expressed as an amount, proportion or ratio or otherwise), and
   (b) the quantity relates to the United Kingdom (or to an area including the United Kingdom or to an area consisting of a part of the United Kingdom which includes [the whole or part of Wales or of the Welsh zone]1).

(6) The provision referred to in subsection (5) is provision for the achievement by the Welsh Ministers (in the exercise of their functions) of so much of the result to be achieved under the international obligation as is specified in the order.

(7) The order may specify the time by which any part of the result to be achieved by the Welsh Ministers is to be achieved.

(8) Where an order under subsection (5) is in force in relation to an international obligation, references to the international obligation in subsections (1) to (3) are to an obligation to achieve so much of the result to be achieved under the international obligation as is specified in the order by the time or times so specified.

(9) No order is to be made by the Secretary of State under subsection (2), (3) or (5) unless the Secretary of State has consulted the Welsh Ministers.

(10) An order under this section must state the reasons for making it.

(11) A statutory instrument containing—
   (a) subject to subsection (12), an order under subsection (1), or
   (b) an order under subsection (5),

is (unless a draft of the statutory instrument has been approved by a resolution of each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament.

(12) A statutory instrument containing only an order under subsection (1) revoking a previous order under that subsection—
(a) is not subject to annulment in pursuance of a resolution of either House of Parliament, but
(b) is to be laid before Parliament.

(13) No order is to be made under subsection (2) or (3) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.

(14) Subsections (1), (2) and (3) apply to the First Minister and the Counsel General as to the Welsh Ministers; and where subsection (9) operates in relation to an order under subsection (2) or (3) relating to the First Minister or the Counsel General the reference in subsection (9) to the Welsh Ministers is to the First Minister or the Counsel General.

(15) In this section “action” includes making, confirming or approving subordinate legislation and in subsection (2) also includes introducing into the Assembly a proposed Assembly Measure or a Bill.

Notes
1 Words substituted by Marine and Coastal Access Act 2009 c. 23 Sch.4(2) para.6(6) (November 12, 2009 for any power to make an Order in Council under 2006 c.32; January 12, 2010 otherwise)

Commencement
Pt 2 s. 82(1)-(15): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 2 s. 82(1)-(15): United Kingdom

Functions: supplementary

83 Agency arrangements and provision of services

(1) Arrangements may be made between the Welsh Ministers and any relevant authority for—
(a) any functions of one of them to be exercised by the other,
(b) any functions of the Welsh Ministers to be exercised by members of staff of the relevant authority,
(c) any functions of the relevant authority to be exercised by members of the staff of the Welsh Assembly Government, or
(d) the provision of administrative, professional or technical services by one of them for the other.

(2) Any arrangements under paragraph (a), (b) or (c) of subsection (1) for the exercise of functions of the Welsh Ministers do not affect the responsibility of the Welsh Ministers; and such arrangements for the exercise of any functions of a relevant authority do not affect the responsibility of the relevant authority.
(3) The references in subsections (1) and (2) to functions do not include functions of making, confirming or approving subordinate legislation contained in a statutory instrument.

(4) In this section “relevant authority” means any Minister of the Crown or government department, any public authority (including any local authority) in England and Wales or the holder of any public office in England and Wales.

(5) This section applies to the First Minister and the Counsel General as to the Welsh Ministers.

Commencement
Pt 2 s. 83(1)-(5): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 2 s. 83(1)-(5): United Kingdom

Law In Force

84 Different exercise of functions by Welsh Ministers etc.

(1) This section applies where—
   (a) an enactment confers or imposes a function exercisable in relation to England and Wales, and
   (b) the function is to any extent conferred or imposed on the Welsh Ministers by the enactment or transferred to, or made exercisable by, the Welsh Ministers by or by virtue of this Act.

(2) The enactment is to be taken to permit—
   (a) the exercise of the function by the Welsh Ministers whether or not it is exercised otherwise than by the Welsh Ministers, and
   (b) the exercise of the function differently by the Welsh Ministers (on the one hand) and otherwise than by the Welsh Ministers (on the other).

(3) The reference in subsection (1)(a) to a function exercisable in relation to England and Wales includes a function exercisable in relation both to England and Wales and to another country or territory or other countries or territories.

(4) Subsection (2) is subject to—
   (a) the enactment by which the function is conferred or imposed on the Welsh Ministers, or
   (b) any provision by or by virtue of which the function is transferred to, or made exercisable by, the Welsh Ministers.

(5) Subsection (2) does not limit any power to exercise a function in relation to Wales whether or not it is exercised in relation to England, or to exercise a function differently in relation to Wales and England, where this section does not apply.

(6) In this section “enactment” includes a future enactment.
(7) This section applies in relation to the First Minister and the Counsel General as to the Welsh Ministers.

**Commencement**

Pt 2 s. 84(1)-(7): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

**Extent**

Pt 2 s. 84(1)-(7): United Kingdom

**Law In Force**

**85 Construction of references to Ministers and departments**

(1) So far as may be necessary for the purpose or in consequence of the exercise of any functions of the Welsh Ministers, the First Minister or the Counsel General, any reference in any enactment or other document to—

(a) a Minister of the Crown, or
(b) a government department,

(whether by name or in general terms) is to be construed as being or including a reference to the Welsh Ministers, the First Minister or the Counsel General (according to by whom the function in question is exercisable).

(2) References in any enactment to property vested in or held for the purposes of a government department is to be construed as including references to property vested in or held for the purposes of the Welsh Ministers, the First Minister or the Counsel General (and in relation to property so vested or held the Welsh Ministers, the First Minister or the Counsel General are each deemed to be a government department for the purposes of any enactment).

(3) In this section “enactment” includes a future enactment.

**Commencement**

Pt 2 s. 85(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

**Extent**

Pt 2 s. 85(1)-(3): United Kingdom

**Law In Force**

**86 Laying of reports and statements**

(1) This section applies where—

(a) any enactment makes provision (“provision for Parliamentary laying”) for any report or statement to be laid before Parliament or either House of Parliament,
(b) the report or statement is not one which, by or by virtue of this Act, is to be made by or given to the Welsh Ministers, the First Minister, the Counsel General or the Assembly Commission, and
(c) the report or statement relates to matters with respect to which functions are exercisable by the Welsh Ministers, the First Minister, the Counsel General or the Assembly Commission.

(2) If no functions relating to the matters are exercisable by a Minister of the Crown, the provision for Parliamentary laying is to be construed as provision for the report or statement to be laid before the Assembly instead of before Parliament or either House of Parliament.

(3) If any are, the provision for Parliamentary laying is to be construed as provision for the report or statement to be laid before the Assembly as well as before Parliament or either House of Parliament.

(4) In this section—
(a) references to a report or statement include any other document (except one containing subordinate legislation), and
(b) “enactment” includes a future enactment.

Commencement
Pt 2 s. 86(1)-(4)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 2 s. 86(1)-(4)(b): United Kingdom

Property, rights and liabilities

(1) Property, rights and liabilities may belong to—
(a) the Welsh Ministers by that name,
(b) the First Minister by that name, or
(c) the Counsel General by that name.

(2) Property and rights acquired by or transferred to the Welsh Ministers belong to, and liabilities incurred by the Welsh Ministers are liabilities of, the Welsh Ministers for the time being.

(3) Property and rights acquired by or transferred to any of the Welsh Ministers appointed under section 48 belong to, and liabilities incurred by any of those Welsh Ministers are liabilities of, the Welsh Ministers for the time being.

(4) Property and rights acquired by or transferred to the First Minister belong to, and liabilities incurred by the First Minister are liabilities of, the First Minister for the time being.
(5) Property and rights acquired by or transferred to the Counsel General belong to, and liabilities incurred by the Counsel General are liabilities of, the Counsel General for the time being.

(6) In relation to property and rights acquired by or transferred to (or belonging to), or to liabilities incurred by–
   
   (a) the Welsh Ministers or any of the Welsh Ministers appointed under section 48,
   
   (b) the First Minister, or
   
   (c) the Counsel General,

references to the Welsh Ministers, the First Minister or the Counsel General in any register or other document are to be read in accordance with this section.

Commencement

Pt 2 s. 87(1)-(6)(c): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Pt 2 s. 87(1)-(6)(c): United Kingdom

Law In Force

88 Transfer of Ministerial property, rights and liabilities

For provision about the transfer of property, rights and liabilities of Ministers of the Crown to the Welsh Ministers etc. see Schedule 4.

Commencement

Pt 2 s. 88: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Pt 2 s. 88: United Kingdom

Supplementary

Law In Force

89 Rights and liabilities of the Crown in different capacities

(1) Rights and liabilities may arise between the Crown in right of Her Majesty's Government in the United Kingdom and the Crown in right of the Welsh Assembly Government by virtue of a contract, by operation of law or by virtue of an enactment as they may arise between subjects.
(2) Property, rights and liabilities may be transferred between the Crown in one of those capacities and the Crown in the other capacity as they may be transferred between subjects; and they may together create, vary or extinguish any property, rights or liabilities as subjects may.

(3) Proceedings in respect of—
   (a) any property, rights or liabilities to which the Crown in one of those capacities is entitled or subject under subsection (1) or (2), or
   (b) the exercise of, or failure to exercise, any function exercisable by an office-holder of the Crown in one of those capacities,
may be instituted by the Crown in either capacity; and the Crown in the other capacity may be a separate party in the proceedings.

(4) This section applies to the Crown in right of a devolved administration (other than the Welsh Assembly Government) as it applies to the Crown in right of Her Majesty's Government in the United Kingdom.

(5) In this section “office-holder” means—
   (a) in relation to the Crown in right of Her Majesty's Government in the United Kingdom, any Minister of the Crown or other office-holder under the Crown in that capacity,
   (b) in relation to the Crown in right of the Welsh Assembly Government, the First Minister, a Welsh Minister appointed under section 48 or the Counsel General, and
   (c) in relation to the Crown in right of a devolved administration other than the Welsh Assembly Government, an office-holder in that administration;
and “subject” means a person not acting on behalf of the Crown.

Commencement

Pt 2 s. 89(1)-(5)(c): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Pt 2 s. 89(1)-(5)(c): United Kingdom

90 Documents

(1) A document is validly executed by the Welsh Ministers if it is executed by the First Minister or any Welsh Minister appointed under section 48.

(2) The application of the seal of the Welsh Ministers is to be authenticated by the First Minister, any Welsh Minister appointed under section 48 or any person authorised by the Welsh Ministers (whether generally or specifically) for that purpose.

(3) A document purporting to be—
   (a) duly executed under the seal of the Welsh Ministers, or
   (b) signed on behalf of the Welsh Ministers,
is to be received in evidence and, unless the contrary is proved, is to be taken to be so executed or signed.
(4) A certificate signed by the First Minister or a Welsh Minister appointed under section 48 that any document purporting to be executed by the Welsh Ministers or signed by them or on their behalf was so executed or signed is conclusive evidence of that fact.

(5) A document purporting to be signed by or on behalf of—
   (a) the First Minister, or
   (b) the Counsel General,
is to be received in evidence and, unless the contrary is proved, is to be taken to be so signed.

(6) A certificate signed by the First Minister or the Counsel General that any document purporting to be signed by or on behalf of the First Minister or the Counsel General was so signed is conclusive evidence of that fact.

(7) The Documentary Evidence Act 1868 (c. 37) (proof of documents) has effect as if—
   (a) in the first column of Schedule 1 there were included a reference to the Welsh Ministers, the First Minister, a Welsh Minister appointed under section 48 and the Counsel General,
   (b) in the second column of that Schedule there were included in connection with that reference a reference to a member of the staff of the Welsh Assembly Government, and
   (c) in section 2 of that Act the reference to regulations issued by or under the authority of an officer mentioned in the first column of the Schedule included a reference to any document issued by or under the authority of a person or persons within paragraph (a).

Commencement
Pt 2 s. 90(1)-(7)(c): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 2 s. 90(1)-(7)(c): United Kingdom

91 Validity of acts

(1) The validity of any act of a person as First Minister is not affected by any defect in the person's nomination by the Assembly.

(2) The validity of any act of a person as the Counsel General is not affected by any defect in the Assembly's agreement to the person's appointment.

Commencement
Pt 2 s. 91(1)-(2): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 2 s. 91(1)-(2): United Kingdom
92  Official secrets
The following are Crown servants for the purposes of the Official Secrets Act 1989 (c. 6)—
(a) the First Minister and any person designated to exercise the functions of the First Minister,
(b) each Welsh Minister appointed under section 48,
(c) the Counsel General and any person designated to exercise the functions of the Counsel General, and
(d) each Deputy Welsh Minister.

Commencement
Pt 2 s. 92(a)-(d): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 2 s. 92(a)-(d): United Kingdom

PART 3
ASSEMBLY MEASURES

Power

93  Assembly Measures
(1) The Assembly may make laws, to be known as Measures of the National Assembly for Wales or Mesurau Cynulliad Cenedlaethol Cymru (referred to in this Act as “Assembly Measures”).
(2) A proposed Assembly Measure is enacted by being passed by the Assembly and approved by Her Majesty in Council.
(3) The validity of an Assembly Measure is not affected by any invalidity in the Assembly proceedings leading to its enactment.
(4) Every Assembly Measure is to be judicially noticed.
(5) This Part does not affect the power of the Parliament of the United Kingdom to make laws for Wales.

Commencement
Pt 3 s. 93(1)-(5): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the
Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 3 s. 93(1)-(5): United Kingdom

Law In Force

94 Legislative competence

(1) Subject to the provisions of this Part, an Assembly Measure may make any provision that could be made by an Act of Parliament.

(2) An Assembly Measure is not law so far as any provision of the Assembly Measure is outside the Assembly's legislative competence.

(3) A provision of an Assembly Measure is within the Assembly's legislative competence only if it falls within subsection (4) or (5).

(4) A provision of an Assembly Measure falls within this subsection if—

(a) it relates to one or more of the matters specified in Part 1 of Schedule 5 [and does not fall within any of the exceptions specified in paragraph A1 of Part 2 of that Schedule (whether or not the exception is under a heading corresponding to the field which includes the matter)], and

(b) it neither applies otherwise than in relation to Wales nor confers, imposes, modifies or removes (or gives power to confer, impose, modify or remove) functions exercisable otherwise than in relation to Wales.

(5) A provision of an Assembly Measure falls within this subsection if—

(a) it provides for the enforcement of a provision (of that or any other Assembly Measure) which falls within subsection (4) or it is otherwise appropriate for making such a provision effective, or

(b) it is otherwise incidental to, or consequential on, such a provision.

(6) But a provision which falls within subsection (4) or (5) is outside the Assembly's legislative competence if—

(a) it breaches any of the restrictions in [paragraphs 1 to 6 of ] Part 2 of Schedule 5, having regard to any exception in Part 3 of that Schedule from those restrictions,

(b) it extends otherwise than only to England and Wales, or

(c) it is incompatible with the Convention rights or with [EU] law.

(7) For the purposes of this section the question whether a provision of an Assembly Measure relates to one or more of the matters specified in Part 1 of Schedule 5 [ (or falls within any of the exceptions specified in paragraph A1 of Part 2 of that Schedule) ] is to be determined by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances.

Notes

1 Words inserted by National Assembly for Wales (Legislative Competence) ( Exceptions to Matters) Order 2009/3006 art.2(2) (November 19, 2009)
95 Legislative competence: supplementary

(1) Her Majesty may by Order in Council—
   (a) amend Part 1 of Schedule 5 to add a matter which relates to one or more of the fields listed in that Part, or to vary or remove any matter,
   (b) amend that Part to add a new field or to vary or remove any field, or
   (c) amend Part 2 or 3 of that Schedule.

(2) An Order in Council under this section does not have effect to amend Part 1 of Schedule 5 by adding a field if, at the time when the amendment comes into force, no functions in the field are exercisable by the Welsh Ministers, the First Minister or the Counsel General.

(3) An Order in Council under this section may make such modifications of—
   (a) any enactment (including any enactment comprised in or made under this Act) or prerogative instrument, or
   (b) any other instrument or document,

as Her Majesty considers appropriate in connection with the provision made by the Order in Council.

(4) An Order in Council under this section may make provision having retrospective effect.

(5) No recommendation is to be made to Her Majesty in Council to make an Order in Council under this section unless a draft of the statutory instrument containing the Order in Council—
   (a) has been laid before, and approved by a resolution of, the Assembly, and
   (b) having been so approved, has been laid before, and approved by a resolution of, each House of Parliament.

(6) As soon as is reasonably practicable after the draft of an Order in Council under this section has been approved by a resolution of the Assembly, the First Minister must ensure that—
   (a) notice in writing of the resolution, and
   (b) a copy of the draft,

is sent to the Secretary of State.

(7) The Secretary of State must, before the end of the period of 60 days beginning immediately after the day on which notice of the Assembly's resolution is received, either—
(a) lay the draft before each House of Parliament, or
(b) give notice in writing to the First Minister of the Secretary of State's refusal to do so and the reasons for that refusal.

(8) As soon as is reasonably practicable after the First Minister receives notice of the Secretary of State's refusal to lay the draft before each House of Parliament and the reasons for that refusal—
(a) the First Minister must lay a copy of the notice before the Assembly, and
(b) the Assembly must ensure that it is published.

(9) In reckoning the period of 60 days mentioned in subsection (7) no account is to be taken of any period during which Parliament is dissolved or prorogued or both Houses are adjourned for more than four days.

(10) The amendment of Schedule 5 by an Order in Council under this section does not affect—
(a) the validity of an Assembly Measure passed before the amendment comes into force, or
(b) the previous or continuing operation of such an Assembly Measure.

Commencement
Pt 3 s. 95(1)-(10)(b): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Pt 3 s. 95(1)-(10)(b): United Kingdom

96 Scrutiny of proposed Orders in Council
The Counsel General or the Attorney General may refer to the Supreme Court for decision the question whether a matter which a proposed Order in Council under section 95 proposes to add to Part 1 of Schedule 5 relates to a field listed in that Part.

Commencement
Pt 3 s. 96: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Pt 3 s. 96: United Kingdom

Procedure

97 Introduction of proposed Assembly Measures
(1) A proposed Assembly Measure may, subject to the standing orders, be introduced in the Assembly—
(a) by the First Minister, any Welsh Minister appointed under section 48, any Deputy Welsh Minister or the Counsel General, or
(b) by any other Assembly member.

(2) The person in charge of a proposed Assembly Measure must, on or before the introduction of the proposed Assembly Measure, state that, in that person's view, its provisions would be within the Assembly's legislative competence.

(3) The Presiding Officer must, on or before the introduction of a proposed Assembly Measure in the Assembly—
   (a) decide whether or not, in the view of the Presiding Officer, the provisions of the proposed Assembly Measure would be within the Assembly's legislative competence, and
   (b) state that decision.

(4) A statement under this section must be made in both English and Welsh; but, subject to that, the form of the statement and the manner in which it is to be made are to be determined under the standing orders.

(5) The standing orders—
   (a) may provide for a statement under this section to be published, and
   (b) if they do so, must provide for it to be published in both English and Welsh.

Commencement
Pt 3 s. 97(1)-(5)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 3 s. 97(1)-(5)(b): United Kingdom

98 Proceedings on proposed Assembly Measures

(1) The standing orders must include provision—
   (a) for general debate on a proposed Assembly Measure with an opportunity for Assembly members to vote on its general principles,
   (b) for the consideration of, and an opportunity for Assembly members to vote on, the details of a proposed Assembly Measure, and
   (c) for a final stage at which a proposed Assembly Measure can be passed or rejected.

(2) Subsection (1) does not prevent the standing orders making provision to enable the Assembly to expedite proceedings in relation to a particular proposed Assembly Measure.

(3) The standing orders may make provision different from that required by subsection (1) for the procedure applicable to proposed Assembly Measures of any of the following kinds—
   (a) proposed Assembly Measures which restate the law,
   (b) proposed Assembly Measures which repeal or revoke spent enactments, and
   (c) private proposed Assembly Measures.

(4) The standing orders must include provision for securing that the Assembly may only pass a proposed Assembly Measure containing provisions which would, if contained in a Bill for an Act
of Parliament, require the consent of Her Majesty or the Duke of Cornwall if such consent has been signified in accordance with the standing orders.

(5) The standing orders must include provision for securing that the Assembly may only pass a proposed Assembly Measure if the text of the proposed Assembly Measure is in both English and Welsh, unless the circumstances are such as are specified by the standing orders as any in which the text need not be in both languages.

(6) The standing orders must provide for an opportunity for the reconsideration of a proposed Assembly Measure after its passing if (and only if)—

(a) the Supreme Court decides on a reference made in relation to the proposed Assembly Measure under section 99 that the proposed Assembly Measure or any provision of it would not be within the Assembly's legislative competence,
(b) a reference made in relation to the proposed Assembly Measure under section 99 is withdrawn following a request for withdrawal of the reference under section 100(2)(b), or
(c) an order is made in relation to the proposed Assembly Measure under section 101.

(7) The standing orders must, in particular, ensure that any proposed Assembly Measure amended on reconsideration is subject to a final stage at which it can be approved or rejected.

(8) References in subsections (4), (5) and (6) of this section and sections 93(2) and 95(10) to the passing of a proposed Assembly Measure are, in the case of a proposed Assembly Measure which has been amended on reconsideration, to be read as references to its approval.

Commencement

Pt 3 s. 98(1)-(8): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Pt 3 s. 98(1)-(8): United Kingdom

Law In Force

99 Scrutiny of proposed Assembly Measures by Supreme Court

(1) The Counsel General or the Attorney General may refer the question whether a proposed Assembly Measure, or any provision of a proposed Assembly Measure, would be within the Assembly's legislative competence to the Supreme Court for decision.

(2) Subject to subsection (3), the Counsel General or the Attorney General may make a reference in relation to a proposed Assembly Measure at any time during—

(a) the period of four weeks beginning with the passing of the proposed Assembly Measure, and
(b) any period of four weeks beginning with any subsequent approval of the proposed Assembly Measure in accordance with provision included in the standing orders in compliance with section 98(7).

(3) No reference may be made in relation to a proposed Assembly Measure—
(a) by the Counsel General if the Counsel General has notified the Clerk that no reference is to be made in relation to it by the Counsel General, or
(b) by the Attorney General if the Attorney General has notified the Clerk that no reference is to be made in relation to it by the Attorney General.

(4) But subsection (3) does not apply if the proposed Assembly Measure has been approved as mentioned in subsection (2)(b) since the notification.

**Commencement**

Pt 3 s. 99(1)-(4): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

**Extent**

Pt 3 s. 99(1)-(4): United Kingdom

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**Law In Force**

100 ECJ references

(1) This section applies where—

(a) a reference has been made in relation to a proposed Assembly Measure under section 99,

(b) a reference for a preliminary European Court ruling has been made by the Supreme Court in connection with that reference, and

(c) neither of those references has been decided or otherwise disposed of.

(2) If the Assembly resolves that it wishes to reconsider the proposed Assembly Measure—

(a) the Clerk must notify the Counsel General and the Attorney General of that fact, and

(b) the person who made the reference in relation to the proposed Assembly Measure under section 99 must request the withdrawal of the reference.

(3) In this section “a reference for a preliminary European Court ruling” means a reference of a question to the European Court under Article 234 of the Treaty establishing the European Community, Article 41 of the Treaty establishing the European Coal and Steel Community or Article 150 of the Treaty establishing the European Atomic Energy Community.

**Commencement**

Pt 3 s. 100(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

**Extent**

Pt 3 s. 100(1)-(3): United Kingdom
101  Power to intervene in certain cases

(1) This section applies if a proposed Assembly Measure contains provisions which the Secretary of State has reasonable grounds to believe—
   (a) would have an adverse effect on any matter which is not specified in Part 1 of Schedule 5[ (or falls within any of the exceptions specified in paragraph A1 of Part 2 of that Schedule) ]¹,
   (b) might have a serious adverse impact on water resources in England, water supply in England or the quality of water in England,
   (c) would have an adverse effect on the operation of the law as it applies in England, or
   (d) would be incompatible with any international obligation or the interests of defence or national security.

(2) The Secretary of State may make an order prohibiting the Clerk from submitting the proposed Assembly Measure for approval by Her Majesty in Council.

(3) The order must identify the proposed Assembly Measure and the provisions in question and state the reasons for making the order.

(4) The order may be made at any time during—
   (a) the period of four weeks beginning with the passing of the proposed Assembly Measure,
   (b) any period of four weeks beginning with any subsequent approval of the proposed Assembly Measure in accordance with provision included in the standing orders in compliance with section 98(7), or
   (c) if a reference is made in relation to the proposed Assembly Measure under section 99, the period of four weeks beginning with the reference being decided or otherwise disposed of by the Supreme Court.

(5) The Secretary of State must not make an order in relation to a proposed Assembly Measure if the Secretary of State has notified the Clerk that no order is to be made in relation to the proposed Assembly Measure.

(6) Subsection (5) does not apply if the proposed Assembly Measure has been approved as mentioned in subsection (4)(b) since the notification.

(7) An order in force under this section at a time when such approval is given ceases to have effect.

(8) A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

Notes

¹ Words inserted by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(5) (November 19, 2009)
Approval of proposed Assembly Measures

(1) It is for the Clerk to submit proposed Assembly Measures for approval by Her Majesty in Council.

(2) The Clerk may not submit a proposed Assembly Measure for approval by Her Majesty in Council at any time when—
   (a) the Attorney General or the Counsel General is entitled to make a reference in relation to the proposed Assembly Measure under section 99,
   (b) such a reference has been made but has not been decided or otherwise disposed of by the Supreme Court, or
   (c) an order may be made in relation to the proposed Assembly Measure under section 101.

(3) The Clerk may not submit a proposed Assembly Measure in its unamended form for approval by Her Majesty in Council if—
   (a) the Supreme Court has decided on a reference made in relation to the proposed Assembly Measure under section 99 that the proposed Assembly Measure or any provision of it would not be within the Assembly's legislative competence, or
   (b) a reference made in relation to the proposed Assembly Measure under section 99 has been withdrawn following a request for withdrawal of the reference under section 100(2)(b).

(4) Once an Assembly Measure has been approved by Her Majesty in Council, the Clerk of the Privy Council must send the Order in Council approving the Assembly Measure to the Clerk.

(5) The date of the approval by Her Majesty in Council of an Assembly Measure is to be written on the Assembly Measure by the Clerk, and forms part of the Assembly Measure.

(6) The Clerk must publish the Order in Council by which an Assembly Measure is approved.

(7) The standing orders must include provision for the notification by the Clerk to the Assembly of the date of the approval of an Assembly Measure by Her Majesty in Council.

(8) The validity of an Assembly Measure is not affected by any failure to comply with provision made by or by virtue of subsection (4), (5) or (7).
PART 4

ACTS OF THE ASSEMBLY

Referendum

103 Referendum about commencement of Assembly Act provisions

(1) Her Majesty may by Order in Council cause a referendum to be held throughout Wales about whether the Assembly Act provisions should come into force.

(2) If the majority of the voters in a referendum held by virtue of subsection (1) vote in favour of the Assembly Act provisions coming into force, the Assembly Act provisions are to come into force in accordance with section 105.

(3) But if they do not, that does not prevent the making of a subsequent Order in Council under subsection (1).

(4) No recommendation is to be made to Her Majesty in Council to make an Order in Council under subsection (1) unless a draft of the statutory instrument containing the Order in Council has been laid before, and approved by a resolution of, each House of Parliament and the Assembly.

(5) But subsection (4) is not satisfied unless the resolution of the Assembly is passed on a vote in which the number of Assembly members voting in favour of it is not less than two-thirds of the total number of Assembly seats.

(6) A draft of a statutory instrument containing an Order in Council under subsection (1) may not be laid before either House of Parliament, or the Assembly, until the Secretary of State has undertaken such consultation as the Secretary of State considers appropriate.

(7) For further provision about referendums held by virtue of subsection (1) see Schedule 6.

(8) In this Act “the Assembly Act provisions” means–
   (a) sections 107 and 108, and
   (b) sections 110 to 115.

Commencement

Pt 4 s. 103(1)-(8)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Pt 4 s. 103(1)-(8)(b): United Kingdom
104 Proposal for referendum by Assembly

(1) This section applies if—
   (a) the Assembly passes a resolution moved by the First Minister or a Welsh Minister appointed under section 48 that, in its opinion, a recommendation should be made to Her Majesty in Council to make an Order in Council under section 103(1), and
   (b) the resolution of the Assembly is passed on a vote in which the number of Assembly members voting in favour of it is not less than two-thirds of the total number of Assembly seats.

(2) The First Minister must, as soon as is reasonably practicable after the resolution is passed, ensure that notice in writing of the resolution is given to the Secretary of State.

(3) The Secretary of State must, within the period of 120 days beginning immediately after the day on which it is received—
   (a) lay a draft of a statutory instrument containing an Order in Council under section 103(1) before each House of Parliament, or
   (b) give notice in writing to the First Minister of the Secretary of State's refusal to do so and the reasons for that refusal.

(4) As soon as is reasonably practicable after the First Minister receives notice given under subsection (3)(b)—
   (a) the First Minister must lay a copy of the notice before the Assembly, and
   (b) the Assembly must ensure that the notice is published.

Commencement

Pt 4 s. 104(1)-(4)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Pt 4 s. 104(1)-(4)(b): United Kingdom

105 Commencement of Assembly Act provisions

(1) This section applies where the majority of the voters in a referendum held by virtue of section 103(1) are in favour of the Assembly Act provisions coming into force.

(2) The Welsh Ministers may by order make provision for the Assembly Act provisions to come into force on the date specified in the order.

(3) An order under subsection (2) may make such modifications of—
   (a) any enactment (including any enactment comprised in or made under this Act) or prerogative instrument, or
   (b) any other instrument or document,
as the Welsh Ministers consider appropriate in connection with the coming into force of the Assembly Act provisions.

(4) No order is to be made under subsection (2) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Assembly.

Commencement
Pt 4 s. 105(1)-(4): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 4 s. 105(1)-(4): United Kingdom

106 Effect on Measures of commencement of Assembly Act provisions

(1) Part 3 ceases to have effect on the day on which the Assembly Act provisions come into force.

[ (2) But that does not affect—

(a) the continuing operation, on and after that day, of any Assembly Measure enacted before that day, or

(b) the continuing operation, after the enactment of the Measure, of any Assembly Measure enacted in accordance with section 106A.

(3) Subsection (1) is subject to section 106A. ]¹

Notes
¹ S.106(2) and (3) substituted for s.106(2) by Government of Wales Act 2006 (Commencement of Assembly Act Provisions, Transitional and Saving Provisions and Modifications) Order 2011/1011 art.4(1) (May 5, 2011)

Commencement
Pt 4 s. 106(1)-(2): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 4 s. 106(1)-(3): United Kingdom
[106A.—  Enactment of proposed Assembly Measures]

(1) This section applies if, immediately before the coming into force of the Assembly Act provisions, one or more proposed Assembly Measures have been passed by the Assembly but have not been approved by Her Majesty in Council (“the proposed Measures”).

(2) Part 3 continues to have effect, for the purposes of enabling the proposed Measures to be enacted, until an Order in Council in respect of every such Measure has been published by the Clerk in accordance with section 102(6).

Notes


Extent

Pt 4 s. 106A(1)-(2): United Kingdom

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107  Acts of the Assembly

(1) The Assembly may make laws, to be known as Acts of the National Assembly for Wales or Deddfau Cynulliad Cenedlaethol Cymru (referred to in this Act as “Acts of the Assembly”).

(2) Proposed Acts of the Assembly are to be known as Bills; and a Bill becomes an Act of the Assembly when it has been passed by the Assembly and has received Royal Assent.

(3) The validity of an Act of the Assembly is not affected by any invalidity in the Assembly proceedings leading to its enactment.

(4) Every Act of the Assembly is to be judicially noticed.

(5) This Part does not affect the power of the Parliament of the United Kingdom to make laws for Wales.

Commencement

Pt 4 s. 107(1)-(5): May 5, 2011 (2006 c. 32 Pt 6 s. 161(7); SI 2011/1011 art. 3)

Extent

Pt 4 s. 107(1)-(5): United Kingdom
108 Legislative competence

(1) Subject to the provisions of this Part, an Act of the Assembly may make any provision that could be made by an Act of Parliament.

(2) An Act of the Assembly is not law so far as any provision of the Act is outside the Assembly’s legislative competence.

(3) A provision of an Act of the Assembly is within the Assembly's legislative competence only if it falls within subsection (4) or (5).

(4) A provision of an Act of the Assembly falls within this subsection if—
   (a) it relates to one or more of the subjects listed under any of the headings in Part 1 of Schedule 7 and does not fall within any of the exceptions specified in that Part of that Schedule (whether or not under that heading or any of those headings), and
   (b) it neither applies otherwise than in relation to Wales nor confers, imposes, modifies or removes (or gives power to confer, impose, modify or remove) functions exercisable otherwise than in relation to Wales.

(5) A provision of an Act of the Assembly falls within this subsection if—
   (a) it provides for the enforcement of a provision (of that or any other Act of the Assembly) which falls within subsection (4) or a provision of an Assembly Measure or it is otherwise appropriate for making such a provision effective, or
   (b) it is otherwise incidental to, or consequential on, such a provision.

(6) But a provision which falls within subsection (4) or (5) is outside the Assembly’s legislative competence if—
   (a) it breaches any of the restrictions in Part 2 of Schedule 7, having regard to any exception in Part 3 of that Schedule from those restrictions,
   (b) it extends otherwise than only to England and Wales, or
   (c) it is incompatible with the Convention rights or with EU law.

(7) For the purposes of this section the question whether a provision of an Act of the Assembly relates to one or more of the subjects listed in Part 1 of Schedule 7 (or falls within any of the exceptions specified in that Part of that Schedule) is to be determined by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances.

Notes

1 Word substituted by Treaty of Lisbon (Changes in Terminology) Order 2011/1043 Pt 2 art.6(2)(a) (May 5, 2011: substitution has effect from April 22, 2011)

Commencement

Pt 4 s. 108(1)-(7): May 5, 2011 (2006 c. 32 Pt 6 s. 161(7); SI 2011/1011 art. 3)

Extent

Pt 4 s. 108(1)-(7): United Kingdom
109  Legislative competence: supplementary

(1) Her Majesty may by Order in Council amend Schedule 7.

(2) An Order in Council under this section may make such modifications of—
   (a) any enactment (including any enactment comprised in or made under this Act) or
   prerogative instrument, or
   (b) any other instrument or document,
   as Her Majesty considers appropriate in connection with the provision made by the Order in Council.

(3) An Order in Council under this section may make provision having retrospective effect.

(4) No recommendation is to be made to Her Majesty in Council to make an Order in Council under this section unless a draft of the statutory instrument containing the Order in Council—
   (a) has been laid before, and approved by a resolution of, each House of Parliament, and
   (b) except where the Order in Council is the first of which a draft has been laid under paragraph (a), has been laid before, and approved by a resolution of, the Assembly.

(5) The amendment of Schedule 7 by an Order in Council under this section does not affect—
   (a) the validity of an Act of the Assembly passed before the amendment comes into force, or
   (b) the previous or continuing operation of such an Act of the Assembly.

Commencement
Pt 4 s. 109(1)-(5)(b): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Pt 4 s. 109(1)-(5)(b): United Kingdom

Procedure

110  Introduction of Bills

(1) A Bill may, subject to the standing orders, be introduced in the Assembly—
   (a) by the First Minister, any Welsh Minister appointed under section 48 any Deputy Welsh Minister or the Counsel General, or
   (b) by any other Assembly member.

(2) The person in charge of a Bill must, on or before the introduction of the Bill, state that, in that person's view, its provisions would be within the Assembly's legislative competence.

(3) The Presiding Officer must, on or before the introduction of a Bill in the Assembly—
   (a) decide whether or not, in the view of the Presiding Officer, the provisions of the Bill would be within the Assembly's legislative competence, and
   (b) state that decision.
(4) A statement under this section must be made in both English and Welsh; but, subject to that, the form of the statement and the manner in which it is to be made are to be determined under the standing orders.

(5) The standing orders—
(a) may provide for a statement under this section to be published, and
(b) if they do so, must provide for it to be published in both English and Welsh.

Commencement
Pt 4 s. 110(1)-(5)(b): May 5, 2011 (2006 c. 32 Pt 6 s. 161(7); SI 2011/1011 art. 3)

Extent
Pt 4 s. 110(1)-(5)(b): United Kingdom

111 Proceedings on Bills

(1) The standing orders must include provision—
(a) for general debate on a Bill with an opportunity for Assembly members to vote on its general principles,
(b) for the consideration of, and an opportunity for Assembly members to vote on, the details of a Bill, and
(c) for a final stage at which a Bill can be passed or rejected.

(2) Subsection (1) does not prevent the standing orders making provision to enable the Assembly to expedite proceedings in relation to a particular Bill.

(3) The standing orders may make provision different from that required by subsection (1) for the procedure applicable to Bills of any of the following kinds—
(a) Bills which restate the law,
(b) Bills which repeal or revoke spent enactments, and
(c) private Bills.

(4) The standing orders must include provision for securing that the Assembly may only pass a Bill containing provisions which would, if contained in a Bill for an Act of Parliament, require the consent of Her Majesty or the Duke of Cornwall if such consent has been signified in accordance with the standing orders.

(5) The standing orders must include provision for securing that the Assembly may only pass a Bill if the text of the Bill is in both English and Welsh, unless the circumstances are such as are specified by the standing orders as any in which the text need not be in both languages.

(6) The standing orders must provide for an opportunity for the reconsideration of a Bill after its passing if (and only if)—
(a) the Supreme Court decides on a reference made in relation to the Bill under section 112 that the Bill or any provision of it would not be within the Assembly's legislative competence,
(b) a reference made in relation to the Bill under section 112 is withdrawn following a request for withdrawal of the reference under section 113(2)(b), or
(c) an order is made in relation to the Bill under section 114.
(7) The standing orders must, in particular, ensure that any Bill amended on reconsideration is subject to a final stage at which it can be approved or rejected.

(8) References in subsections (4), (5) and (6) of this section and sections 107(2), 109(5) and 116(3) to the passing of a Bill are, in the case of a Bill which has been amended on reconsideration, to be read as references to its approval.

Commencement
Pt 4 s. 111(1)-(8): May 5, 2011 (2006 c. 32 Pt 6 s. 161(7); SI 2011/1011 art. 3)

Extent
Pt 4 s. 111(1)-(8): United Kingdom

112 Scrutiny of Bills by Supreme Court

(1) The Counsel General or the Attorney General may refer the question whether a Bill, or any provision of a Bill, would be within the Assembly's legislative competence to the Supreme Court for decision.

(2) Subject to subsection (3), the Counsel General or the Attorney General may make a reference in relation to a Bill at any time during—
   (a) the period of four weeks beginning with the passing of the Bill, and
   (b) any period of four weeks beginning with any subsequent approval of the Bill in accordance with provision included in the standing orders in compliance with section 111(7).

(3) No reference may be made in relation to a Bill—
   (a) by the Counsel General if the Counsel General has notified the Clerk that no reference is to be made in relation to it by the Counsel General, or
   (b) by the Attorney General if the Attorney General has notified the Clerk that no reference is to be made in relation to it by the Attorney General.

(4) But subsection (3) does not apply if the Bill has been approved as mentioned in subsection (2)(b) since the notification.

Commencement
Pt 4 s. 112(1)-(4): May 5, 2011 (2006 c. 32 Pt 6 s. 161(7); SI 2011/1011 art. 3)

Extent
Pt 4 s. 112(1)-(4): United Kingdom

113 ECJ references

(1) This section applies where—
   (a) a reference has been made in relation to a Bill under section 112,
(b) a reference for a preliminary European Court ruling has been made by the Supreme Court in connection with that reference, and
(c) neither of those references has been decided or otherwise disposed of.

(2) If the Assembly resolves that it wishes to reconsider the Bill–
   (a) the Clerk must notify the Counsel General and the Attorney General of that fact, and
   (b) the person who made the reference in relation to the Bill under section 112 must request the withdrawal of the reference.

(3) In this section “a reference for a preliminary European Court ruling” means a reference of a question to the European Court under [Article 267 of the treaty on the Functioning of the European Union]¹ or Article 150 of the Treaty establishing the European Atomic Energy Community.

Notes
¹ Words substituted by Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012/1809 Sch.1(1) para.1 (August 1, 2012: substitution has effect subject to savings specified in SI 2012/1809 art.2(2))

Commencement
Pt 4 s. 113(1)-(3): May 5, 2011 (2006 c. 32 Pt 6 s. 161(7); SI 2011/1011 art. 3)

Extent
Pt 4 s. 113(1)-(3): United Kingdom

Law In Force

114 Power to intervene in certain cases

(1) This section applies if a Bill contains provisions which the Secretary of State has reasonable grounds to believe–
   (a) would have an adverse effect on any matter which is not listed under any of the headings in Part 1 of Schedule 7 (or falls within any of the exceptions specified in that Part of that Schedule),
   (b) might have a serious adverse impact on water resources in England, water supply in England or the quality of water in England,
   (c) would have an adverse effect on the operation of the law as it applies in England, or
   (d) would be incompatible with any international obligation or the interests of defence or national security.

(2) The Secretary of State may make an order prohibiting the Clerk from submitting the Bill for Royal Assent.

(3) The order must identify the Bill and the provisions in question and state the reasons for making the order.

(4) The order may be made at any time during–
   (a) the period of four weeks beginning with the passing of the Bill,
   (b) any period of four weeks beginning with any subsequent approval of the Bill in accordance with provision included in the standing orders in compliance with section 111(7), or
(c) if a reference is made in relation to the Bill under section 112, the period of four weeks beginning with the reference being decided or otherwise disposed of by the Supreme Court.

(5) The Secretary of State must not make an order in relation to a Bill if the Secretary of State has notified the Clerk that no order is to be made in relation to the Bill.

(6) Subsection (5) does not apply if the Bill has been approved as mentioned in subsection (4)(b) since the notification.

(7) An order in force under this section at a time when such approval is given ceases to have effect.

(8) A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

Commencement
Pt 4 s. 114(1)-(8): May 5, 2011 (2006 c. 32 Pt 6 s. 161(7); SI 2011/1011 art. 3)

Extent
Pt 4 s. 114(1)-(8): United Kingdom

Law In Force

115 Royal Assent

(1) It is for the Clerk to submit Bills for Royal Assent.

(2) The Clerk may not submit a Bill for Royal Assent at any time when—
   (a) the Attorney General or the Counsel General is entitled to make a reference in relation to the Bill under section 112,
   (b) such a reference has been made but has not been decided or otherwise disposed of by the Supreme Court, or
   (c) an order may be made in relation to the Bill under section 114.

(3) The Clerk may not submit a Bill in its unamended form for Royal Assent if—
   (a) the Supreme Court has decided on a reference made in relation to the Bill under section 112 that the Bill or any provision of it would not be within the Assembly’s legislative competence, or
   (b) a reference made in relation to the Bill under section 112 has been withdrawn following a request for withdrawal of the reference under section 113(2)(b).

(4) A Bill receives Royal Assent when Letters Patent under the Welsh Seal signed with Her Majesty's own hand signifying Her Assent are notified to the Clerk.

[ (4A) The Keeper of the Welsh Seal (see section 116(2)) must make arrangements to send the Letters Patent to the National Library of Wales. ]

(5) The date of Royal Assent is to be written on the Act of the Assembly by the Clerk, and forms part of the Act.

[ (5A) On the copy of the Act of the Assembly on which the Clerk writes the date of Royal Assent the Clerk must write—
   (a) the calendar year, and
   (b) any prefix and number which has been assigned to that Act of the Assembly. ]
(5B) The information written on the Act of the Assembly in pursuance of subsection (5A) forms part of the Act.

(5C) The copy of the Act of the Assembly on which the date of Royal Assent and the information in subsection (5A) is written is to be known as the official print of the Act.

(5D) The Clerk must make a copy of the official print and certify it as a true copy.

(5E) The Clerk must send the certified copy to the Queen's Printer and the official print to the National Library of Wales.

(5F) The National Library of Wales must ensure that the official prints and Letters Patent it receives are preserved and open to public inspection at all reasonable times. ]^2

(6) The standing orders must include provision for notification by the Clerk to the Assembly of the date of Royal Assent to an Act of the Assembly.

(7) The validity of an Act of the Assembly is not affected by any failure to comply with provision made by or by virtue of subsection (4), (5) or (6).

Notes

Commencement
Pt 4 s. 115(1)-(7): May 5, 2011 (2006 c. 32 Pt 6 s. 161(7); SI 2011/1011 art. 3)

Extent
Pt 4 s. 115(1)-(7): United Kingdom

116 Welsh Seal and Letters Patent

(1) There is to be a Welsh Seal.

(2) The First Minister is to be the Keeper of the Welsh Seal.

(3) Her Majesty may by Order in Council make provision as to—
(a) the form and manner of preparation, and
(b) the publication,
of Letters Patent signed with Her Majesty's own hand signifying Her Assent to a Bill passed by the Assembly.

(4) A statutory instrument containing an Order in Council under subsection (3) is subject to annulment in pursuance of a resolution of the Assembly.

Commencement
Pt 4 s. 116(1)-(4): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and
PART 5
FINANCE

Welsh Consolidated Fund

117 Welsh Consolidated Fund
(1) There is to be a Welsh Consolidated Fund.
(2) The Welsh Consolidated Fund is to be held with the Paymaster General.

Commencement
Pt 5 s. 117(1)-(2): April 1, 2007 (2006 c. 32 Pt 6 s. 161(3))

Extent
Pt 5 s. 117(1)-(2): United Kingdom

Payments into Welsh Consolidated Fund

118 Grants
(1) The Secretary of State must from time to time make payments into the Welsh Consolidated Fund out of money provided by Parliament of such amounts as the Secretary of State may determine.
(2) Any Minister of the Crown, and any government department, may make payments to the Welsh Ministers, the First Minister or the Counsel General of such amounts as may be determined by the Minister of the Crown or those responsible in the department.

Commencement
Pt 5 s. 118(1)-(2): April 1, 2007 (2006 c. 32 Pt 6 s. 161(3))

Extent
Pt 5 s. 118(1)-(2): United Kingdom
119 Statement of estimated payments

(1) The Secretary of State must, for each financial year, make a written statement showing—
   (a) the total amount of the payments which the Secretary of State estimates will be made
       for the financial year under section 118(1),
   (b) the total amount of the payments which the Secretary of State estimates will be made
       to the Welsh Ministers, the First Minister or the Counsel General for the financial year by
       Ministers of the Crown and government departments, and
   (c) the total amount of the payments which the Secretary of State estimates will be made
       to the Welsh Ministers, the First Minister or the Counsel General for the financial year
       otherwise than by a Minister of the Crown or government department.

(2) A statement under this section must also include such other information as the Secretary of
    State considers appropriate.

(3) A statement under this section for any financial year must also show the total amount which
    the Secretary of State for Wales proposes to expend for the financial year out of money
    provided by Parliament otherwise than on making payments into the Welsh Consolidated
    Fund.

(4) A statement under this section for a financial year must include details of how the total amounts
    mentioned in subsections (1)(a), (b) and (c) and (3) have been arrived at.

(5) A statement under this section for a financial year is to be made no later than four months before
    the beginning of the financial year.

(6) The Secretary of State must lay before the Assembly each statement under this section.

Commencement
Pt 5 s. 119(1)-(6): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Pt 5 s. 119(1)-(6): United Kingdom

120 Destination of receipts

(1) Any sum received by or on behalf of—
   (a) the Welsh Ministers, the First Minister or the Counsel General,
   (b) the Assembly Commission,
   (c) the Auditor General, or
   (d) the Public Services Ombudsman for Wales,
   is to be paid into the Welsh Consolidated Fund (unless it is paid out of that Fund, and subject as
   follows); and this subsection applies in spite of provision contained in any other enactment unless
   the enactment provides expressly that any such sum is not to be paid into the Welsh Consolidated
   Fund.

(2) If and to the extent that sums received as mentioned in subsection (1) are received in connection
    with resources—
(a) which are within a category specified by resolution of the Assembly for the purposes of this subsection,
(b) which accrued to a person within subsection (1), and
(c) the retention of which by that person is authorised by a Budget resolution of the Assembly for the financial year in which the resources accrued,
the sums may be retained for use for the services and purposes specified in a Budget resolution of the Assembly for the financial year in which they are received as services and purposes for which retained resources may be used.

(3) The Treasury may, after consulting the Welsh Ministers, by order designate any description of sums received as mentioned in subsection (1).

(4) The Welsh Ministers must make payments to the Secretary of State of sums equal to the total amount of sums of that description.

(5) Payments by the Welsh Ministers under subsection (4) are to be made at such times, and by such methods, as the Treasury may from time to time determine.

(6) Sums required for the making of the payments are to be charged on the Welsh Consolidated Fund.

(7) A statutory instrument containing an order under subsection (3) is subject to annulment in pursuance of a resolution of the House of Commons.

(8) In this Act “Budget resolution of the Assembly” means a resolution on an annual Budget motion (see section 125) or a supplementary Budget motion (see section 126).

Commencement
Pt 5 s. 120(1)-(2)(c), (4)-(6), (8): April 1, 2007 (2006 c. 32 Pt 6 s. 161(3))
Pt 5 s. 120(3), (7): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Pt 5 s. 120(1)-(8): United Kingdom

Borrowing

121 Borrowing by Welsh Ministers

(1) The Welsh Ministers may borrow from the Secretary of State any amounts it appears to them are required by them for the purpose of–
   (a) meeting a temporary excess of sums paid out of the Welsh Consolidated Fund over sums paid into that Fund, or
   (b) providing a working balance in that Fund.

(2) Amounts borrowed under this section must be repaid to the Secretary of State at such times and by such methods, and interest on such sums must be paid to the Secretary of State at such rates and at such times, as the Treasury may from time to time determine.
(3) Sums required for the repayment of, or the payment of interest on, amounts borrowed under this section are to be charged on the Welsh Consolidated Fund.

Commencement
Pt 5 s. 121(1)-(3): April 1, 2007 (2006 c. 32 Pt 6 s. 161(3))

Extent
Pt 5 s. 121(1)-(3): United Kingdom

122  Lending by Secretary of State

(1) The Treasury may issue to the Secretary of State out of the National Loans Fund such sums as the Secretary of State needs for making loans under section 121.

(2) The aggregate outstanding in respect of the principal of sums borrowed under that section must not exceed £500 million.

(3) The Secretary of State may by order made with the consent of the Treasury substitute for the amount for the time being specified in subsection (2) such greater amount as is specified in the order.

(4) No order is to be made under subsection (3) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the House of Commons.

(5) Sums received by the Secretary of State under section 121(2) must be paid into the National Loans Fund.

Commencement
Pt 5 s. 122(1)-(5): April 1, 2007 (2006 c. 32 Pt 6 s. 161(3))

Extent
Pt 5 s. 122(1)-(5): United Kingdom

123  Accounts relating to loans

(1) The Secretary of State must for each financial year prepare accounts in such form and manner as the Treasury may direct of—

(a) loans made by the Secretary of State under section 121 or treated as made by paragraph 11(6) of Schedule 3 or paragraph 44(6) of Schedule 11, and

(b) repayments and payments of interest made to the Secretary of State in respect of those loans.

(2) The Secretary of State must send accounts under subsection (1) relating to a financial year to the Comptroller and Auditor General no later than five months after the end of the financial year.

(3) The Comptroller and Auditor General must—
(a) examine, certify and report on accounts sent under subsection (2), and
(b) lay copies of the accounts, together with the report prepared under paragraph (a), before each House of Parliament.

Commencement
Pt 5 s. 123(1)-(3)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 5 s. 123(1)-(3)(b): United Kingdom

Expendediture

124 Payments out of Welsh Consolidated Fund

(1) A sum may only be paid out of the Welsh Consolidated Fund if—
   (a) it has been charged on that Fund by any enactment, or
   (b) its payment out is authorised or deemed to be authorised by a Budget resolution of the Assembly (see sections 125 to 128) for or in connection with either of the purposes mentioned in subsection (2),

and an approval to draw the payment of the sum out of the Welsh Consolidated Fund is granted by the Auditor General (see section 129).

(2) Those purposes are—
   (a) meeting expenditure of a relevant person, and
   (b) meeting expenditure payable pursuant to a relevant enactment.

(3) For the purposes of this section and sections 125 to 128 the relevant persons are—
   (a) the Welsh Ministers, the First Minister and the Counsel General,
   (b) the Assembly Commission,
   (c) the Auditor General, and
   (d) the Public Services Ombudsman for Wales.

(4) For the purposes of this section and sections 125 to 128 a relevant enactment is an enactment which provides for payment out of the Welsh Consolidated Fund.

(5) This section does not apply to sums paid out of the Welsh Consolidated Fund by virtue of section 130.

(6) Any enactment which—
   (a) charges the payment of sums on the Consolidated Fund or requires or authorises the payment of any sum from the Consolidated Fund, or
   (b) requires or authorises the payment of sums out of money provided by Parliament, does not have effect if the sums are payable by any of the relevant persons.
125 Annual Budget motions

(1) For each financial year there is to be moved in the Assembly a motion (referred to in this Act as an “annual Budget motion”) for the purpose of authorising—
   (a) the amount of resources which may be used in the financial year by the relevant persons, or pursuant to a relevant enactment, for the services and purposes specified in the motion, 
   (b) the amount of resources accruing to the relevant persons in the financial year which may be retained by them to be used for the services and purposes so specified (rather than being paid into the Welsh Consolidated Fund), and  
   (c) the amount which may be paid out of the Welsh Consolidated Fund in the financial year to the relevant persons, or for use pursuant to a relevant enactment, for the services and purposes so specified.

(2) An annual Budget motion may only be moved by the First Minister or a Welsh Minister appointed under section 48.

(3) An annual Budget motion must be accompanied by a written statement made by the Welsh Ministers showing—
   (a) the total amount of the payments which they estimate will be made for the financial year under section 118(1), 
   (b) the total amount of the payments which they estimate will be made to the Welsh Ministers, the First Minister or the Counsel General for the financial year by Ministers of the Crown and government departments, and  
   (c) the total amount of the payments which they estimate will be made to the Welsh Ministers, the First Minister or the Counsel General for the financial year otherwise than by a Minister of the Crown or government department.

(4) In this Act a reference to the use of resources is a reference to their expenditure, consumption or reduction in value.
126  Supplementary Budget motions

(1) For any financial year there may be moved in the Assembly one or more motions (referred to in this Act as a “supplementary Budget motion”) for either or both of the purposes specified in subsections (2) and (3).

(2) A supplementary Budget motion may approve a variation in any one or more of the following—
   (a) the amount of resources authorised to be used in the financial year by a relevant person, or pursuant to a relevant enactment, for any service or purpose,
   (b) the amount of resources accruing to a relevant person in the financial year and authorised to be retained by that person to be used for any service or purpose, and
   (c) the amount authorised to be paid out of the Welsh Consolidated Fund in the financial year to a relevant person, or for use pursuant to a relevant enactment, for any service or purpose.

(3) A supplementary Budget motion may authorise any one or more of the following—
   (a) the amount of resources which may be used in the financial year by a relevant person, or pursuant to a relevant enactment, for a service or purpose specified in the motion,
   (b) the amount of resources accruing to a relevant person in the financial year which may be retained by that person to be used for a service or purpose so specified, and
   (c) the amount which may be paid out of the Welsh Consolidated Fund in the financial year to a relevant person, or for use pursuant to a relevant enactment, for a service or purpose so specified.

(4) A supplementary Budget motion for any financial year may be expressed to have effect from a time before it is made; but that time may not be earlier than—
   (a) the date on which the last supplementary Budget motion for the financial year was passed, or
   (b) (if none has) the date on which the annual Budget motion for the financial year was passed.

(5) A supplementary Budget motion may only be moved by the First Minister or a Welsh Minister appointed under section 48.

Commencement
Pt 5 s. 126(1)-(5): April 1, 2007 (2006 c. 32 Pt 6 s. 161(3))

Extent
Pt 5 s. 126(1)-(5): United Kingdom

126A  Inclusion in Budget motions of resources used by designated bodies

(1) A Budget motion for a financial year may include information relating to resources expected to be used by any body that is a designated body in relation to a relevant person.

(2) For the purposes of this section a body is a “designated” body in relation to a relevant person if—
(a) it is designated in relation to the relevant person by an order made by the Welsh Ministers, or
(b) it falls within a description of body designated in relation to the relevant person by such an order.

(3) A body, or a description of body, may be designated in relation to a relevant person for a particular financial year or generally.

(4) If the Welsh Ministers expect the use of resources by a body in a financial year to involve payments out of a relevant Consolidated Fund to or for the benefit of the body, they may not make an order under which the body would be a designated body for the year unless the Treasury have consented to the making of the order.

(5) “A relevant Consolidated Fund” means—
(a) the Consolidated Fund of the United Kingdom,
(b) the Scottish Consolidated Fund, or
(c) the Consolidated Fund of Northern Ireland.

(6) The Welsh Ministers must, where they think it appropriate, consult the Treasury before designating a body or a description of body.

(7) In determining for any purpose whether a body has a particular relationship with a relevant person (for example, whether it is controlled by, or otherwise dependent on, the person), the following must be disregarded—
(a) the fact that the provisions of a Budget motion relating to the relevant person in respect of a financial year include information relating to the body, and
(b) the fact that the relevant person's accounts for a financial year prepared under this or any other Act include information relating to the body.

(8) An order under subsection (2) is to be made by statutory instrument.

(9) A statutory instrument containing an order under that subsection is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

(10) But subsection (9) does not apply if a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the National Assembly for Wales.

Notes
1 Added by Constitutional Reform and Governance Act 2010 c. 25 Pt 5 s.44(2) (November 11, 2010)

Extent
Pt 5 s. 126A(1)-(10): United Kingdom

127 Appropriation without Budget resolution

(1) If a Budget resolution for a financial year is not passed before the beginning of the financial year, the following are deemed to have been authorised by a Budget resolution of the Assembly for that year—
(a) the use in the year for any service or purpose of the relevant percentage of the amount of the resources authorised to be used in the preceding financial year for the service or purpose,
(b) the retention in the year for use for any service or purpose of the relevant percentage of the amount of the resources authorised to be retained in the previous financial year for use for the service or purpose, and
(c) the payment out of the Welsh Consolidated Fund in the year for any service or purpose of the relevant percentage of the amount authorised to be paid out of the Fund in the previous financial year for the service or purpose.

(2) “The relevant percentage” is—
(a) where a Budget resolution for the financial year is not passed before the end of July in the financial year, 95%, and
(b) otherwise, 75%.

Commencement
Pt 5 s. 127(1)-(2)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 5 s. 127(1)-(2)(b): United Kingdom

128 Contingencies

(1) This section applies where it is proposed—
(a) that resources be used in any financial year by any of the relevant persons, or pursuant to a relevant enactment, otherwise than as authorised by virtue of sections 125 to 127, or
(b) that amounts be paid out of the Welsh Consolidated Fund in the year to the relevant persons, or for use pursuant to a relevant enactment, otherwise than as authorised by virtue of those sections.

(2) The resources may be so used, or the amounts may be so issued, only with the authority of the Welsh Ministers.

(3) The Welsh Ministers may authorise the use of resources, or the payment of amounts, only if they consider that—
(a) the use of the resources, or the payment of the amounts, is necessary in the public interest, and
(b) it is not reasonably practicable, for reasons of urgency, for a motion to be moved under section 125 or 126 to authorise the use of the resources or the payment of the amounts.

(4) The aggregate amount of resources which the Welsh Ministers may at any time authorise to be used under this section by any person, or pursuant to any enactment, in any financial year must not exceed 0.5% of—
(a) the aggregate amount of the resources which, at the time, have been authorised by virtue of sections 125 and 126 to be used by that person, or pursuant to that enactment, in that financial year, or
(b) (if none have) the aggregate amount of the resources which were so authorised to be used by that person, or pursuant to that enactment, in the immediately preceding financial year.

(5) The aggregate amount which the Welsh Ministers may at any time authorise to be paid out of the Welsh Consolidated Fund under this section to any person, or for use pursuant to any enactment, in any financial year must not exceed 0.5% of—
(a) the aggregate of the amounts which, at the time, have been authorised by virtue of sections 125 and 126 to be paid to that person, or for use pursuant to that enactment, in that financial year, or
(b) (if none have) the aggregate of the amounts which were so authorised to be paid to that person, or for use pursuant to that enactment, in the immediately preceding financial year.

(6) The use of resources, or the payment of amounts, authorised by the Welsh Ministers in accordance with this section is deemed to have been authorised by a Budget resolution of the Assembly.

(7) Where the Welsh Ministers authorise the use of resources or the payment of amounts under this section, they must, as soon as possible, lay before the Assembly a report setting out—
(a) the resources authorised to be used or the amounts authorised to be paid,
(b) the services or purposes for which the resources were authorised to be used, or the amounts were authorised to be paid, and
(c) why they considered it to be necessary to authorise the use of the resources, or the payment of the amounts, under this section.

Commencement
Pt 5 s. 128(1)-(7)(c): April 1, 2007 (2006 c. 32 Pt 6 s. 161(3))

Extent
Pt 5 s. 128(1)-(7)(c): United Kingdom

129 Approvals to draw

(1) The Auditor General must grant approvals to draw payments out of the Welsh Consolidated Fund from time to time at the request of the Welsh Ministers.

(2) An approval to draw may only be granted if, in the Auditor General's opinion, the proposed payment out of the Welsh Consolidated Fund would comply with section 124.

(3) A request for the grant of an approval to draw is to be made in any manner which the Welsh Ministers, with the approval of the Auditor General, decide to adopt.

(4) Where an approval to draw is granted the Paymaster General must make the funds available to the Welsh Ministers, the First Minister, the Counsel General, the Assembly Commission, the Auditor General or the Public Services Ombudsman for Wales (as appropriate).

(5) The Paymaster General must make available to—
(a) the Auditor General, and
(b) the principal accounting officer for the Welsh Ministers,
a daily statement regarding all the issues made out of the Welsh Consolidated Fund in respect of
sums charged on that Fund and other payments out of it.

(6) For the purposes of this Act the principal accounting officer for the Welsh Ministers is the
Permanent Secretary to the Welsh Assembly Government.

(7) But the Treasury may designate another member of the staff of the Welsh Assembly Government
to be the principal accounting officer for the Welsh Ministers if and for so long as—
(a) the Permanent Secretary to the Welsh Assembly Government is incapable of discharging
the responsibilities of principal accounting officer for the Welsh Ministers, or
(b) the office of Permanent Secretary to the Welsh Assembly Government is vacant.

(8) In this section “Permanent Secretary to the Welsh Assembly Government” means the person
appointed in accordance with section 52 to be the head of the staff of the Welsh Assembly
Government (whether or not that person is known by the title of Permanent Secretary to the Welsh
Assembly Government).

Commencement
Pt 5 s. 129(1)-(8): April 1, 2007 (2006 c. 32 Pt 6 s. 161(3))

Extent
Pt 5 s. 129(1)-(8): United Kingdom

130 Payments in by mistake
Where a sum is paid into the Welsh Consolidated Fund which should not or need not have been
paid into the Fund, the Auditor General may grant an approval to draw a payment equal to the
amount of that sum out of the Fund.

Commencement
Pt 5 s. 130: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007
immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the
Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor
General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 5 s. 130: United Kingdom
Financial accountability of Welsh Ministers

131 Welsh Ministers’ accounts

(1) The Welsh Ministers must, for each financial year, prepare accounts in accordance with directions given to them by the Treasury.

(2) The accounts must include details of the financial affairs and transactions of the Counsel General.

(3) The directions which the Treasury may give under subsection (1) include directions to prepare accounts relating to financial affairs and transactions of persons other than the Welsh Ministers.

(4) The directions which the Treasury may give under subsection (1) include, in particular, directions as to—
   (a) the financial affairs and transactions to which the accounts are to relate,
   (b) the information to be contained in the accounts and the manner in which it is to be presented,
   (c) the methods and principles in accordance with which the accounts are to be prepared, and
   (d) the additional information (if any) that is to accompany the accounts.

(5) Any accounts which the Welsh Ministers are directed under this section to prepare for any financial year must be submitted by the Welsh Ministers to the Auditor General no later than 30th November in the following financial year.

(6) The Auditor General must—
   (a) examine and certify any accounts submitted under this section, and
   (b) no later than four months after the accounts are submitted, lay before the Assembly a copy of them as certified by the Auditor General together with the Auditor General’s report on them.

(7) In examining accounts submitted under this section, the Auditor General must, in particular, be satisfied—
   (a) that the expenditure to which the accounts relate has been incurred lawfully and in accordance with the authority which governs it, and
   (b) that money received for a particular purpose or particular purposes has not been expended otherwise than for that purpose or those purposes.

(8) Where—
   (a) by virtue of any enactment other than this section the Welsh Ministers are under an obligation to prepare accounts dealing with any matters, and
   (b) it appears to the Treasury that those matters fall to be dealt with in accounts directed to be prepared under this section,

the Treasury may relieve the Welsh Ministers of that obligation for or in respect of such periods as the Treasury may direct.

Commencement

Pt 5 s. 131(1)-(8)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and
132 Account relating to Welsh Consolidated Fund

(1) The Welsh Ministers must, for each financial year, prepare an account of the payments into and out of the Welsh Consolidated Fund.

(2) The account must be prepared in accordance with directions given to the Welsh Ministers by the Treasury.

(3) The directions which the Treasury may give under subsection (2) include, in particular, directions as to—
   (a) the information to be contained in the account and the manner in which it is to be presented,
   (b) the methods and principles in accordance with which the account is to be prepared, and
   (c) the additional information (if any) that is to accompany the account.

(4) Any account which the Welsh Ministers are directed under this section to prepare for any financial year must be submitted by the Welsh Ministers to the Auditor General no later than 30th November in the following financial year.

(5) The Auditor General must—
   (a) examine and certify any account submitted under this section, and
   (b) no later than four months after the account is submitted, lay before the Assembly a copy of it as certified by the Auditor General together with the Auditor General's report on it.

(6) In examining an account submitted under this section the Auditor General must, in particular, be satisfied—
   (a) that any payment out of the Welsh Consolidated Fund to which the account relates was paid out in compliance with section 124 or 130, and
   (b) that money which is required to be paid into the Welsh Consolidated Fund has been paid into that Fund.

Commencement
Pt 5 s. 132(1)-(6)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))
Law In Force

133 Accounting officers for Welsh Ministers

(1) The principal accounting officer for the Welsh Ministers has—
   (a) in relation to the accounts of the Welsh Ministers and the finances of the Welsh Ministers and the Counsel General, and
   (b) in relation to the performance by persons designated as accounting officers in pursuance of any provision of this Act of their responsibilities as accounting officers, the responsibilities which are from time to time specified by the Treasury.

(2) The principal accounting officer for the Welsh Ministers may designate other members of the staff of the Welsh Assembly Government as additional accounting officers.

(3) An additional accounting officer has, in relation to such of the accounts of the Welsh Ministers and the finances of the Welsh Ministers and the Counsel General as may be specified by the principal accounting officer for the Welsh Ministers, the responsibilities which are from time to time specified by the principal accounting officer for the Welsh Ministers.

Commencement
Pt 5 s. 133(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 5 s. 133(1)-(3): United Kingdom

Law In Force

134 Accounts of subsidiaries of Welsh Ministers

(1) For the purposes of the examination by the Auditor General of any accounts of the Welsh Ministers the Auditor General—
   (a) has a right of access at all reasonable times to every document relating to the accounts of any subsidiary of the Welsh Ministers (whether or not the accounts of the Welsh Ministers being examined relate to the financial affairs and transactions of the subsidiary),
   (b) is entitled to require from any person holding or accountable for any of those documents any assistance, information or explanation which the Auditor General reasonably thinks necessary for those purposes, and
   (c) may require any subsidiary of the Welsh Ministers to provide the Auditor General at times specified by the Auditor General with accounts of such of the subsidiary's transactions as the Auditor General may specify.

(2) The Treasury may, by directions given to a subsidiary of the Welsh Ministers, require the subsidiary to include in any accounts which the subsidiary prepares (under, for example, the law relating to companies or charities) such additional information as may be specified in the directions.
(3) The inclusion of information in any accounts in compliance with such directions does not constitute a breach of any provision which prohibits, or does not authorise, the inclusion in the accounts of that information.

(4) In this section “subsidiary of the Welsh Ministers” means—
   (a) any body corporate or other undertaking in relation to which, if the Welsh Ministers were an undertaking, the Welsh Ministers would be a parent undertaking,
   (b) any trust of which the Welsh Ministers are settlors, or
   (c) any charitable institution of which the Welsh Ministers are founders but which is neither a body corporate nor a trust.

(5) For the purposes of subsection (4)(a)—
   “undertaking” has the meaning given by [section 1161(1) of the Companies Act 2006] \(^1\), and
   “parent undertaking” is to be construed in accordance with [section 1162] \(^2\) of that Act.

Notes

\(^1\) Words substituted subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.243(2)(a) (April 6, 2008)

\(^2\) Words substituted subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.243(2)(b) (April 6, 2008)

Commencement

Pt 5 s. 134(1)-(5) definition of "parent undertaking": May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Pt 5 s. 134(1)-(5) definition of "parent undertaking": United Kingdom

135 Examinations into Welsh Ministers' use of resources

(1) The Auditor General may carry out examinations into the economy, efficiency and effectiveness with which the Welsh Ministers and the Counsel General have used their resources in discharging their functions.

(2) Subsection (1) does not entitle the Auditor General to question the merits of the policy objectives of the Welsh Ministers or the Counsel General.

(3) In determining how to exercise functions under this section the Auditor General must take into account the views of the Audit Committee as to the examinations to be carried out under this section.

(4) The Auditor General may lay before the Assembly a report of the results of any examination carried out under this section.
136 Examinations by Comptroller and Auditor General

(1) The Comptroller and Auditor General may carry out examinations into the payments into and out of the Welsh Consolidated Fund.

(2) The Comptroller and Auditor General may report the results of any examination carried out under subsection (1) to the House of Commons.

(3) If a report is made under subsection (2), the Comptroller and Auditor General must at the same time lay a report of the results of the examination before the Assembly.

(4) For the purpose of enabling examinations under subsection (1) to be carried out the Comptroller and Auditor General—
   (a) has a right of access at all reasonable times to all such documents in the custody or under the control of any of the persons mentioned in subsection (5) as the Comptroller and Auditor General may reasonably require for that purpose, and
   (b) is entitled to require from any person holding or accountable for any of those documents any assistance, information or explanation which the Comptroller and Auditor General reasonably thinks necessary for that purpose.

(5) The persons referred to in subsection (4) are—
   (a) the Welsh Ministers and the Counsel General,
   (b) the Assembly Commission,
   (c) any other person audited by the Auditor General other than a Welsh NHS body (within the meaning given in section 60 of the Public Audit (Wales) Act 2004 (c. 23)), and
   (d) the Auditor General.

(6) Before carrying out an examination under subsection (1) or acting in reliance on subsection (4) the Comptroller and Auditor General must—
   (a) consult the Auditor General, and
   (b) take into account any relevant work done or being done by the Auditor General.
Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 5 s. 136(1)-(6)(b): United Kingdom

Financial accountability of Assembly Commission

Law In Force

137 Assembly Commission's accounts

(1) The Assembly Commission must, for each financial year, prepare accounts in accordance with directions given to it by the Treasury.

(2) The directions which the Treasury may give under subsection (1) include directions to prepare accounts relating to financial affairs and transactions of persons other than the Assembly Commission.

(3) The directions which the Treasury may give under subsection (1) include, in particular, directions as to—

(a) the financial affairs and transactions to which the accounts are to relate,
(b) the information to be contained in the accounts and the manner in which it is to be presented,
(c) the methods and principles in accordance with which the accounts are to be prepared, and
(d) the additional information (if any) that is to accompany the accounts.

(4) Any accounts which the Assembly Commission is directed under this section to prepare for any financial year must be submitted by the Assembly Commission to the Auditor General no later than 30th November in the following financial year.

(5) The Auditor General must—

(a) examine and certify any accounts submitted under this section, and
(b) no later than four months after the accounts are submitted, lay before the Assembly a copy of them as certified by the Auditor General together with the Auditor General's report on them.

(6) In examining accounts submitted under this section the Auditor General must, in particular, be satisfied—

(a) that the expenditure to which the accounts relate has been incurred lawfully and in accordance with the authority which governs it, and
(b) that money received by the Assembly Commission for a particular purpose or particular purposes has not been expended otherwise than for that purpose or those purposes.

Commencement
Pt 5 s. 137(1)-(6)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and
138 Accounting officers for Assembly Commission

(1) For the purposes of this Act the principal accounting officer for the Assembly Commission is the Clerk.

(2) But the Treasury may designate another member of the staff of the Assembly to be the principal accounting officer for the Assembly Commission if and for so long as—

(a) the Clerk is incapable of discharging the responsibilities of the principal accounting officer for the Assembly Commission, or

(b) the office of Clerk is vacant.

(3) The principal accounting officer for the Assembly Commission has—

(a) in relation to the Assembly Commission's accounts and finances, and

(b) in relation to the performance by persons designated as accounting officers in pursuance of any provision of this Act of their responsibilities as accounting officers, the responsibilities which are from time to time specified by the Treasury.

(4) The principal accounting officer for the Assembly Commission may designate other members of the staff of the Assembly as additional accounting officers.

(5) An additional accounting officer has, in relation to such of the Assembly Commission's accounts and finances as may be specified by the principal accounting officer for the Assembly Commission, the responsibilities which are from time to time specified by the principal accounting officer for the Assembly Commission.

Commencement

Pt 5 s. 138(1)-(5): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Pt 5 s. 138(1)-(5): United Kingdom
(a) has a right of access at all reasonable times to every document relating to the accounts of any subsidiary of the Assembly Commission (whether or not the accounts of the Assembly Commission being examined relate to the financial affairs and transactions of the subsidiary),
(b) is entitled to require from any person holding or accountable for any of those documents any assistance, information or explanation which the Auditor General reasonably thinks necessary for those purposes, and
(c) may require any subsidiary of the Assembly Commission to provide the Auditor General at times specified by the Auditor General with accounts of such of the subsidiary's transactions as the Auditor General may specify.

(2) The Treasury may, by directions given to a subsidiary of the Assembly Commission, require the subsidiary to include in any accounts which the subsidiary prepares (under, for example, the law relating to companies or charities) such additional information as may be specified in the directions.

(3) The inclusion of information in any accounts in compliance with such directions does not constitute a breach of any provision which prohibits, or does not authorise, the inclusion in the accounts of that information.

(4) In this section “subsidiary of the Assembly Commission” means—
(a) any body corporate or other undertaking in relation to which the Assembly Commission is a parent undertaking,
(b) any trust of which the Assembly Commission is settlor, or
(c) any charitable institution of which the Assembly Commission is founder but which is neither a body corporate nor a trust.

(5) For the purposes of subsection (4)(a)—
“undertaking” has the meaning given by [section 1161(1) of the Companies Act 2006],
and
“parent undertaking” is to be construed in accordance with [section 1162] of that Act.

Notes

1 Words substituted subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.243(3)(a) (April 6, 2008)

2 Words substituted subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.243(3)(b) (April 6, 2008)

Commencement

Pt 5 s. 139(1)-(5) definition of “parent undertaking”: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Pt 5 s. 139(1)-(5) definition of "parent undertaking": United Kingdom
140 Examinations into Assembly Commission's use of resources

(1) The Auditor General may carry out examinations into the economy, efficiency and effectiveness with which the Assembly Commission has used its resources in discharging its functions.

(2) Subsection (1) does not entitle the Auditor General to question the merits of the policy objectives of the Assembly Commission.

(3) In determining how to exercise functions under this section the Auditor General must take into account the views of the Audit Committee as to the examinations to be carried out under this section.

(4) The Auditor General may lay before the Assembly a report of the results of any examination carried out under this section.

Commencement

Pt 5 s. 140(1)-(4): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Pt 5 s. 140(1)-(4): United Kingdom

Whole of Government of Wales accounts

141 Whole of government accounts: Welsh Ministers

(1) This section applies in respect of a financial year for which the Treasury make arrangements with the Welsh Ministers under section 10(8) of the Government Resources and Accounts Act 2000 (c. 20) (whole of government accounts: consolidation of Welsh accounts).

(2) The Welsh Ministers must prepare a set of accounts for the group of bodies which provide information to the Welsh Ministers in accordance with the arrangements under section 10(8).

(3) Accounts prepared under this section may include information referring wholly or partly to activities which—
   (a) are not activities of bodies falling within subsection (2), but
   (b) appear to the Welsh Ministers to be activities of a public nature.

(4) The accounts must contain such information in such form as the Treasury may direct.

(5) The Treasury must exercise the power under subsection (4) with a view to ensuring that the accounts—
   (a) present a true and fair view, and
   (b) conform to generally accepted accounting practice subject to such adaptations as are necessary in the context.

(6) For the purposes of subsection (5)(a) and (b) the Treasury must in particular—
(a) have regard to any relevant guidance issued by the Accounting Standards Board Limited or any other body prescribed for the purposes of section 464 of the Companies Act 2006 (accounting standards) or to international accounting standards (as defined in section 474 of that Act), and
(b) require the accounts to include, subject to paragraph (a), a statement of financial performance, a statement of financial position and a cash flow statement.

(7) Any accounts which the Welsh Ministers are required to prepare under this section for any financial year must be submitted by the Welsh Ministers to the Auditor General no later than 30th November in the following financial year.

(8) But the Welsh Ministers may by order substitute another date for the date for the time being specified in subsection (7).

(9) No order may be made under subsection (7) unless the Welsh Ministers have consulted—
(a) the Treasury, and
(b) the Auditor General.

(10) A statutory instrument containing an order under subsection (7) is subject to annulment in pursuance of a resolution of the Assembly.

Notes
1 Words substituted subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.243(4) (April 6, 2008)
2 Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.256 (October 1, 2009)

Commencement
Pt 5 s. 141(1)-(10): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 5 s. 141(1)-(10): United Kingdom

Law In Force

142 Functions of Auditor General

(1) The Auditor General must examine accounts submitted under section 141 with a view to being satisfied that they present a true and fair view.

(2) Where the Auditor General has conducted an examination of accounts under subsection (1), the Auditor General must—
(a) certify them and issue a report, and
(b) no later than four months after the accounts are submitted, lay before the Assembly a copy of them as certified by the Auditor General together with the Auditor General's report on them.
A person who acts as auditor for the purposes of section 10(2)(c) or (8)(c) of the Government Resources and Accounts Act 2000 (c. 20) must give the Auditor General such information and explanations as the Auditor General may reasonably require for the purposes of this section.

Commencement
Pt 5 s. 142(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 5 s. 142(1)-(3): United Kingdom

Treatment of accounts and audit reports etc.

143 Audit Committee reports
(1) The Audit Committee may consider, and lay before the Assembly a report on, any accounts, statement of accounts or report laid before the Assembly by—
   (a) the Auditor General, or
   (b) the auditor appointed under paragraph 14 of Schedule 8 (auditor of Auditor General’s accounts).
(2) If requested to do so by the House of Commons Committee of Public Accounts, the Audit Committee may—
   (a) on behalf of the Committee of Public Accounts take evidence from any of the persons mentioned in subsection (3), and
   (b) report to the Committee of Public Accounts and transmit to that Committee any evidence so taken.
(3) The persons referred to in subsection (2)(a) are—
   (a) the principal accounting officer for the Welsh Ministers,
   (b) the principal accounting officer for the Assembly Commission, and
   (c) additional accounting officers designated under section 133 or 138.

Commencement
Pt 5 s. 143(1)-(3)(c): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 5 s. 143(1)-(3)(c): United Kingdom
144 Publication of accounts and audit reports etc.

(1) The Assembly must publish a document to which this subsection applies as soon after the document is laid before the Assembly as is reasonably practicable.

(2) The documents to which subsection (1) applies are—
(a) any accounts, statement of accounts or report laid before the Assembly by the Auditor General,
(b) any accounts or report laid before the Assembly by the auditor appointed under paragraph 14 of Schedule 8, and
(c) any report or estimate laid before the Assembly by the Audit Committee under section 143(1) or paragraph 12(3) of Schedule 8.

Commencement
Pt 5 s. 144(1)-(2)(c): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 5 s. 144(1)-(2)(c): United Kingdom

Auditor General for Wales

145 Auditor General

(1) There is to be an office of Auditor General for Wales or Archwilydd Cyffredinol Cymru (referred to in this Act as “the Auditor General”).

(2) For provision about the Auditor General see Schedule 8.

(3) The Welsh Ministers must co-operate with the Auditor General where it seems to them appropriate to do so for the efficient and effective discharge of their functions in relation to Welsh NHS bodies.

(4) “Welsh NHS bodies” has the meaning given by section 60 of the Public Audit (Wales) Act 2004 (c. 23).

Commencement
Pt 5 s. 145(1)-(4): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and
PART 6
MISCELLANEOUS AND SUPPLEMENTARY

Welsh public records

Law In Force

146 Status of Welsh public records

(1) Welsh public records are not public records for the purposes of the Public Records Act 1958 (c. 51).

(2) But that Act has effect in relation to Welsh public records (as if they were public records for the purpose of that Act) until an order under section 147 imposes a duty to preserve them on the Welsh Ministers (or a member of the staff of the Welsh Assembly Government).

(3) Subsection (2) applies to Welsh public records whether or not, apart from subsection (1), they would be public records for the purposes of the Public Records Act 1958.

Commencement

Pt 6 s. 146(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Pt 6 s. 146(1)-(3): United Kingdom

Law In Force

147 Transfer of responsibility

(1) The Lord Chancellor may by order make provision—
   (a) imposing or conferring on the Welsh Ministers (or a member of the staff of the Welsh Assembly Government) functions relating to Welsh public records (including, in particular, functions of preserving them and of making them available for inspection by the public), and
   (b) imposing on persons responsible for Welsh public records duties relating to the selection of such records for permanent preservation, the safe-keeping of such records and their transfer to a place specified in, or appointed under, the order.
(2) An order under this section may (in particular) make in relation to Welsh public records provision analogous to that made by the Public Records Act 1958 (c. 51) in relation to records which are public records for the purposes of that Act.

(3) An order under this section may make such modifications of—
   (a) any enactment (including any enactment comprised in or made under this Act) or prerogative instrument, or
   (b) any other instrument or document,
as the Lord Chancellor considers appropriate in connection with the provision made by the order.

(4) An order under this section which imposes on the Welsh Ministers (or a member of the staff of the Welsh Assembly Government) a duty to preserve Welsh public records, or Welsh public records of a particular description, must include provision for the Lord Chancellor to make such arrangements as appear appropriate for the transfer of Welsh public records, or Welsh public records of that description, which are in—
   (a) the Public Record Office, or
   (b) a place of deposit appointed under the Public Records Act 1958,
to a place specified in, or appointed under, the order.

(5) No order is to be made under this section unless the Lord Chancellor has consulted the Welsh Ministers.

(6) No order under this section which contains provisions in the form of amendments or repeals of enactments contained in an Act is to be made unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.

(7) A statutory instrument containing an order under this section is (unless a draft of the statutory instrument has been approved by a resolution of each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament.

Commencement
Pt 6 s. 147(1)-(7): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 6 s. 147(1)-(7): United Kingdom

148 Meaning of “Welsh public records”
(1) The following are Welsh public records—
   (a) administrative and departmental records belonging to Her Majesty which are records of the Welsh Assembly Government,
   (b) administrative and departmental records of the Auditor General,
   (c) administrative and departmental records belonging to Her Majesty which are records of or held in any government department which is wholly or mainly concerned with Welsh affairs,
(d) administrative and departmental records belonging to Her Majesty which are records of any office, commission or other body or establishment under Her Majesty's Government which is wholly or mainly concerned with Welsh affairs in a field or fields in which the Welsh Ministers have functions, or the First Minister or the Counsel General has functions,
(e) administrative and departmental records of the bodies and establishments specified in subsection (2) (but not records of health service hospitals in Wales which are of the descriptions excepted from being public records for the purposes of the Public Records Act 1958 (c. 51) in the case of health service hospitals in England), and
(f) any other description of records (other than records of the Assembly or the Assembly Commission or records of any court or tribunal or held in any department of the Senior Courts) which is specified by order made by the Lord Chancellor.

(2) The bodies and establishments referred to in subsection (1)(e) are—
(a) the Care Council for Wales,
(b) the Countryside Council for Wales,
(c) the Curriculum and Assessment Authority for Wales,
(d) Family Practitioner Committees for localities in Wales,
(e) the Further Education Funding Council for Wales,
(f) the General Teaching Council for Wales,
(g) health service hospitals, within the meaning of the [National Health Service (Wales) Act 2006]¹, in Wales,
(h) the Higher Education Funding Council for Wales,
(i) the Local Government Boundary Commission for Wales,
(j) the National Council for Education and Training for Wales,
(k) National Health Service Authorities for districts or localities in Wales, or for areas in or consisting of Wales, including National Health Service trusts all of whose hospitals, establishments and facilities are situated in Wales,
(l) the Qualifications, Curriculum and Assessment Authority for Wales,
(m) the Wales Centre for Health, and
(n) the Welsh Board of Health.

(3) An order under subsection (1)(f) may be made in relation to a description of records—
(a) which (immediately before the order is made) are public records for the purposes of the Public Records Act 1958, or
(b) which (at that time) are not public records for those purposes.

(4) No order under subsection (1)(f) may be made—
(a) in relation to records within paragraph (a) of subsection (3), unless the Lord Chancellor has consulted the Welsh Ministers, and
(b) in relation to records within paragraph (b) of that subsection, without the agreement of the Welsh Ministers.

(5) A statutory instrument containing an order under subsection (1)(f) is subject to annulment in pursuance of a resolution of either House of Parliament.

(6) In this section “records” includes—
(a) written records, and
(b) records conveying information by any other means.
Notes

1 Words substituted by National Health Service (Consequential Provisions) Act 2006 c. 43 Sch.1 para.303 (May 3, 2007: substitution came into force on March 1, 2007 but cannot take effect until the commencement of 2006 c.32 s.148 on May 3, 2007)

Commencement

Pt 6 s. 148(1)-(6)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Pt 6 s. 148(1)-(6)(b): United Kingdom

Miscellaneous

Law In Force

149 Resolution of devolution issues
For provision about the resolution of devolution issues see Schedule 9.

Commencement

Pt 6 s. 149: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Pt 6 s. 149: United Kingdom

Law In Force

150 Power to make consequential provision
(1) The Secretary of State may by order make such provision as the Secretary of State considers appropriate in consequence of—
(a) any provision made by an Assembly Measure or Act of the Assembly,
(b) any provision of subordinate legislation made, or purporting to be made, under an Assembly Measure or Act of the Assembly,
(c) any provision of subordinate legislation made, or purporting to be made, by the Welsh Ministers, the First Minister or the Counsel General, or
(d) any provision of subordinate legislation made, or purporting to be made, by any other person (not being a Minister of the Crown) in the exercise of a function conferred or imposed by Act of Parliament where the statutory instrument (or a draft of the statutory instrument) containing the subordinate legislation is required to be laid before the Assembly.
(2) An order under this section may make such modifications of—
   (a) any enactment (including any enactment comprised in or made under this Act) or
   prerogative instrument, or
   (b) any other instrument or document,
as the Secretary of State considers appropriate.

(3) An order under this section may not make provision with respect to matters within the legislative competence of the Scottish Parliament.

(4) An order under this section may make provision having retrospective effect.

(5) No order under this section which contains provisions in the form of amendments or repeals of enactments contained in an Act is to be made unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.

(6) A statutory instrument containing an order under this section is (unless a draft of the statutory instrument has been approved by a resolution of each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament.

(7) In subsection (1) “made” includes confirmed or approved.

Commencement
Pt 6 s. 150(1)-(7): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 6 s. 150(1)-(7): United Kingdom

151 Power to remedy ultra vires acts

(1) Her Majesty may by Order in Council make such provision as Her Majesty considers appropriate in consequence of—
   (a) an Assembly Measure or Act of the Assembly, or any provision of an Assembly Measure or Act of the Assembly, which is not, or may not be, within the Assembly’s legislative competence, or
   (b) any purported exercise by any person of a function conferred or imposed by or under an Assembly Measure or Act of the Assembly which is not, or may not be, an exercise or proper exercise of that function.

(2) An Order in Council under this section may make such modifications of—
   (a) any enactment (including any enactment comprised in or made under this Act) or
   prerogative instrument, or
   (b) any other instrument or document,
as Her Majesty considers appropriate.

(3) An Order in Council under this section may make provision having retrospective effect.
(4) No recommendation is to be made to Her Majesty in Council to make an Order in Council under this section which contains provisions in the form of amendments or repeals of enactments contained in an Act unless a draft of the statutory instrument containing the Order in Council has been laid before, and approved by a resolution of, each House of Parliament.

(5) A statutory instrument containing an Order in Council under this section is (unless a draft of the statutory instrument has been approved by a resolution of each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament.

Commencement
Pt 6 s. 151(1)-(5): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 6 s. 151(1)-(5): United Kingdom

Law In Force

152 Intervention in case of functions relating to water etc.

(1) This section applies where it appears to the Secretary of State that the exercise of a relevant function (or the failure to exercise a relevant function) in any particular case might have a serious adverse impact on–

(a) water resources in England,
(b) water supply in England, or
(c) the quality of water in England.

(2) The Secretary of State may intervene under this paragraph in that case, so that–

(a) the Secretary of State may in that case exercise the function, and
(b) the person or persons on whom the function is conferred or imposed may not in that case exercise the function.

(3) “Relevant function” means–

(a) a function conferred or imposed on any person by or under an Assembly Measure or Act of the Assembly, or
(b) a function which is not so conferred or imposed but is exercisable by the Welsh Ministers, the First Minister or the Counsel General.

(4) An intervention by the Secretary of State under this section in relation to a function is to be made by giving notice to the person or persons on whom it is conferred or imposed.

(5) The notice–

(a) must state the reason for the Secretary of State’s intervention,
(b) may make provision about the effect of any steps previously taken by the person or persons on whom the function is conferred or imposed, and
(c) may extend the time for the taking of any steps by the Secretary of State or any other person (even if the time for taking them would otherwise have expired before the notice is given).
(6) Where an intervention has been made under this section in a case, the Secretary of State must, in addition to the notice under subsection (4), give notice to—

(a) any person who has previously been given notice of any steps taken, or proposed to be taken, in the case,
(b) the Environment Agency, if concerned in the case, and
(c) any water undertaker or sewerage undertaker concerned in the case.

Commencement
Pt 6 s. 152(1)-(6)(c): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 6 s. 152(1)-(6)(c): United Kingdom

Law In Force

153 Power to vary retrospective decisions

(1) This section applies where any court or tribunal decides—

(a) that an Assembly Measure or Act of the Assembly, or any provision of an Assembly Measure or Act of the Assembly, is outside the Assembly's legislative competence,
(b) that any provision of subordinate legislation made, or purporting to be made, under an Assembly Measure or Act of the Assembly is outside the powers under which it was, or purported to be, made, or
(c) that any provision of subordinate legislation made, or purporting to be made, by the Welsh Ministers, the First Minister or the Counsel General is outside the powers under which it was, or purported to be, made.

(2) The court or tribunal may make an order—

(a) removing or limiting any retrospective effect of the decision, or
(b) suspending the effect of the decision for any period and on any conditions to allow the defect to be corrected.

(3) In determining whether to make an order under this section, the court or tribunal must (among other things) have regard to the extent to which persons who are not parties to the proceedings would otherwise be adversely affected by the decision.

(4) Where a court or tribunal is considering whether to make an order under this section, it must order notice (or intimation) of that fact to be given to the persons specified in subsection (5) (unless a party to the proceedings).

(5) The persons mentioned in subsection (4) are—

(a) in relation to proceedings in England and Wales, the Attorney General and the Counsel General,
(b) in relation to proceedings in Scotland, the Advocate General for Scotland, and
(c) in relation to proceedings in Northern Ireland, the Advocate General for Northern Ireland.
(6) A person to whom notice (or intimation) is given in pursuance of subsection (4) may take part as a party in the proceedings, so far as they relate to the making of the order.

(7) In deciding any question as to costs or expenses, the court or tribunal may—
   (a) take account of any additional expense which it considers that any party to the proceedings has incurred as a result of the participation of any person in pursuance of subsection (6), and
   (b) award the whole or part of the additional expense as costs or expenses to the party who incurred it (whether or not it makes an order under this section and whatever the terms of any such order it does make).

(8) Any power to make provision for regulating the procedure before any court or tribunal includes power to make provision for the purposes of this section including, in particular, provision for determining the manner in which and the time within which any notice (or intimation) is to be given.

(9) In subsection (1) “made” includes confirmed or approved.

Commencement
Pt 6 s. 153(1)-(9): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 6 s. 153(1)-(9): United Kingdom

Law In Force

154 Interpretation of legislation

(1) This section applies to—
   (a) any provision of an Assembly Measure, or proposed Assembly Measure, which could be read in such a way as to be outside the Assembly's legislative competence,
   (b) any provision of an Act of the Assembly, or a Bill for such an Act, which could be read in such a way as to be outside the Assembly's legislative competence, and
   (c) any provision of subordinate legislation made, or purporting to be made, under an Assembly Measure or Act of the Assembly which could be read in such a way as to be outside the powers under which it was, or purported to be, made.

(2) The provision is to be read as narrowly as is required for it to be within competence or within the powers, if such a reading is possible, and is to have effect accordingly.

(3) In subsection (1)(c) “made” includes confirmed or approved.

Commencement
Pt 6 s. 154(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and
Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 6 s. 154(1)-(3): United Kingdom

Law In Force

155 Functions exercisable in relation to Wales

(1) Her Majesty may by Order in Council specify functions which are to be treated for such purposes of this Act as may be specified in the Order in Council—
   (a) as being, or as not being, functions which are exercisable by the Welsh Ministers, the First Minister or the Counsel General, or
   (b) as being, or as not being, functions which are exercisable in relation to Wales [ or the Welsh zone ]

(2) A statutory instrument containing an Order in Council under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

Notes
1 Words inserted by Marine and Coastal Access Act 2009 c. 23 Sch.4(2) para.6(7) (November 12, 2009 for any power to make an Order in Council under 2006 c.32; January 12, 2010 otherwise)

Commencement
Pt 6 s. 155(1)-(2): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 6 s. 155(1)-(2): United Kingdom

Law In Force

156 English and Welsh texts of legislation

(1) The English and Welsh texts of—
   (a) any Assembly Measure or Act of the Assembly which is in both English and Welsh when it is enacted, or
   (b) any subordinate legislation which is in both English and Welsh when it is made, are to be treated for all purposes as being of equal standing.

(2) The Welsh Ministers may by order provide in respect of any Welsh word or phrase that, when it appears in the Welsh text of any Assembly Measure or Act of the Assembly, or any subordinate legislation made under an Assembly Measure or Act of the Assembly or by the Welsh Ministers, it is to be taken as having the same meaning as the English word or phrase specified in relation to it in the order.
(3) No order is to be made under subsection (2) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Assembly.

(4) An Assembly Measure or Act of the Assembly, or any subordinate legislation made under an Assembly Measure or Act of the Assembly or by the Welsh Ministers, is to be construed in accordance with any order under subsection (2); but this is subject to anything to the contrary contained in the Assembly Measure, Act of the Assembly or subordinate legislation.

(5) This section applies in relation to subordinate legislation made by the First Minister or the Counsel General as in relation to subordinate legislation made by the Welsh Ministers.

Commencement
Pt 6 s. 156(1)-(5): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 6 s. 156(1)-(5): United Kingdom

Supplementary

157 Orders and directions

(1) Any power of a Minister of the Crown or the Welsh Ministers under this Act to make an order is exercisable by statutory instrument.

(2) Any such power and any power under this Act to make an Order in Council—
   (a) may be exercised so as to make different provision for different cases or classes of case or different purposes,
   (b) may be exercised so as to make provision which applies generally or subject to specified exemptions or exceptions or only in relation to specific cases or classes of case, and
   (c) includes power to make supplementary, incidental, consequential, transitory, transitional or saving provision.

(3) Any power conferred by this Act to give a direction includes power to vary or revoke the direction.

Commencement

Extent
Pt 6 s. 157(1)-(3): United Kingdom
158 Interpretation

(1) In this Act (except where the context otherwise requires)—

[“EU law”] means—
(a) all the rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties, and
(b) all the remedies and procedures from time to time provided for by or under the Community Treaties,

“the Convention rights” has the same meaning as in the Human Rights Act 1998 (c. 42),

“cross-border body” means any body (including a government department) or undertaker exercising functions, or carrying on activities, in or with respect to Wales (or any part of Wales) and anywhere else,

“enactment” includes an Assembly Measure, an Act of the Assembly and subordinate legislation (but see also subsection (2)),

“English border area” means a part of England adjoining Wales (but not the whole of England),

“financial year” means the twelve months ending with 31st March,

“function” means power or duty,

“government department” means any department of the Government of the United Kingdom,

“international obligations” means any international obligations of the United Kingdom other than obligations to observe and implement [EU] law or the Convention rights,

“Minister of the Crown” includes the Treasury,

“modifications” includes amendments, repeals and revocations,

“subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30) (including an instrument made under an Assembly Measure or Act of the Assembly),

“tribunal” means any tribunal in which legal proceedings may be brought,

“Wales” includes the sea adjacent to Wales out as far as the seaward boundary of the territorial sea [and] [“Welsh zone” means the sea adjacent to Wales which is—
(a) within British fishery limits (that is, the limits set by or under section 1 of the Fishery Limits Act 1976), and
(b) specified in an Order in Council under section 58 or an order under subsection (3).]

(2) In sections 95(3), 109(2) and 151(2) “enactment” includes an Act of the Scottish Parliament and an instrument made under such an Act.

[ (3) The Secretary of State may by order determine, or make provision for determining, for the purposes of the definitions of “Wales” and the “Welsh zone”, any boundary between waters which are to be treated as parts of the sea adjacent to Wales, or sea within British fishery limits adjacent to Wales, and those which are not. ]

(4) An Order in Council under section 58 may include any provision that may be included in an order under subsection (3).

(5) No order is to be made under subsection (3) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.
Section 13 of the National Audit Act 1983 (c. 44) (interpretation of references to the Committee of Public Accounts) applies for the purposes of this Act as for those of that Act.

Notes
1 Word substituted by Treaty of Lisbon (Changes in Terminology) Order 2011/1043 Pt 2 art.6(2)(a) (April 22, 2011)
2 Word repealed by Marine and Coastal Access Act 2009 c. 23 Sch.22(1) para.1 (January 12, 2010 as SI 2009/3345)
3 Definition inserted by Marine and Coastal Access Act 2009 c. 23 Pt 2 s.43(2) (November 12, 2009 for any power to make an Order in Council under 2006 c.32; January 12, 2010 otherwise)
4 Substituted by Marine and Coastal Access Act 2009 c. 23 Pt 2 s.43(3) (November 12, 2009 for any power to make an Order in Council under 2006 c.32; January 12, 2010 otherwise)

Commencement
Pt 6 s. 158(1)-(6): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Pt 6 s. 158(1)-(6): United Kingdom

Law In Force

159 Index of defined expressions
In this Act the following expressions are defined or otherwise explained by the provisions indicated—

the 2007 election section 161(1)
Acts of the Assembly section 107(1)
annual Budget motion section 125(1)
the Assembly section 1(1)
the Assembly Act provisions section 103(8)
the Assembly Commission section 27(1)
Assembly constituency section 2(1)
Assembly constituency member section 1(2)(a)
Assembly electoral region [section 2(2) and (3) ]
Assembly Measures section 93(1)
Assembly member section 1(3)
Assembly proceedings section 1(5)
Assembly regional member section 1(2)(b)
Assembly’s legislative competence (in relation to Acts of the Assembly) section 108
Assembly’s legislative competence (in relation to Assembly Measures) section 94
the Audit Committee section 30(1)
the Auditor General section 145(1)
Budget resolution of the Assembly section 120(8)
the Clerk section 26(1)
the Committee of Public Accounts section 158(6)
[ EU ] law section 158(1)
constituency vote  
the Convention rights  
the Counsel General  
cross-border body  
the Deputy Presiding Officer  
Deputy Welsh Minister  
electoral region figure  
electoral region vote  
enactment  
English border area  
financial year  
the First Minister  
function  
government department  
the initial period  
international obligations  
member of the staff of the Assembly  
member of the staff of the Welsh Assembly Government  
Minister of the Crown  
modifications  
political group  
political group with an executive role  
the Presiding Officer  
the principal accounting officer for the Assembly Commission  
the principal accounting officer for the Welsh Ministers  
regional returning officer  
registered political party  
relevant enactment (in sections 124 to 128)  
the relevant persons (in sections 124 to 128)  
the standing orders  
subordinate legislation  
supplementary Budget motion  
tribunal  
use of resources  
Wales  
Welsh Assembly Government  
Welsh Consolidated Fund  
the Welsh Ministers  
[“Welsh zone”]  

section 6(2)  
section 158(1)  
section 45(1)(c)  
section 158(1)  
section 25(1)(b)  
section 50  
section 8(5)  
section 6(3)  
section 158(1) and (2)  
section 158(1)  
section 158(1)  
sections 46 and 47  
section 158(1)  
section 158(1)  
section 161(5)  
section 158(1)  
paragraph 3(2) of Schedule 2  
section 52  
section 158(1)  
section 158(1)  
section 24(5)  
section 25(8)  
section 25(1)(a)  
section 138(1) and (2)  
section 129(6) and (7)  
section 7(7)  
section 6(6)  
section 124(4)  
section 124(3)  
section 31(1)  
section 158(1)  
section 126(1)  
section 158(1)  
section 125(4)  
section 158(1), (3) and (4)  
section 45(1)  
section 117  
section 45(2)  
section 158(1), (3) and (4)]
Notes
1 Words repealed by Parliamentary Voting System and Constituencies Act 2011 c. 1 Sch.12(2) para.1 (February 16, 2011)
2 Word substituted by Treaty of Lisbon (Changes in Terminology) Order 2011/1043 Pt 2 art.6(2)(a) (April 22, 2011)
3 Entry inserted by Marine and Coastal Access Act 2009 c. 23 Sch.4(2) para.6(8) (November 12, 2009 for any power to make an Order in Council under 2006 c.32; January 12, 2010 otherwise)

Commencement
Pt 6 s. 159: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Pt 6 s. 159: United Kingdom

160 Minor and consequential amendments
(1) For minor and consequential amendments see Schedule 10.

(2) The Secretary of State may by order make such modifications of—
   (a) any enactment contained in an Act passed before or in the same session as this Act, or
   (b) any enactment contained in an instrument made before the passing of this Act or in the
session in which this Act is passed,
as the Secretary of State considers appropriate in consequence of this Act.

(3) No order containing provision under subsection (2)(a) is to be made unless a draft of the statutory
instrument containing it has been laid before, and approved by a resolution of, each House of
Parliament.

(4) A statutory instrument containing an order under subsection (2) is (unless a draft of the statutory
instrument has been approved by a resolution of each House of Parliament) subject to annulment
in pursuance of a resolution of either House of Parliament.

Commencement

Extent
Pt 6 s. 160(1)-(4): United Kingdom

161 Commencement
(1) Subject as follows, this Act comes into force immediately after the ordinary election under
section 3 of the Government of Wales Act 1998 (c. 38) held in 2007 (referred to in this Act as “the
2007 election”).
(2) The following provisions come into force on the day on which this Act is passed—
paragraphs 5, 6 and 12 of Schedule 2,
sections 95 and 96 and Schedule 5,
section 109 and Schedule 7,
section 119 and the repeal by Schedule 12 of section 81 of the Government of Wales Act 1998,
section 120(3) and (7),
section 125 and the repeal by Schedule 12 of section 86 of the Government of Wales Act 1998,
sections 157 to 159,
section 160(2) to (4),
the amendment made by paragraph 61 of Schedule 10 in section 13 of the Political Parties,
Elections and Referendums Act 2000 (c. 41),
this section,
section 162 and Schedule 11,
the repeal by Schedule 12 of section 12(1)(d) of the Government of Wales Act 1998, and
sections 164 to 166.

(3) The following provisions come into force on 1st April 2007—
sections 117 and 118 and the repeal by Schedule 12 of section 80 of the Government of Wales Act 1998,
section 120(1) and (2), (4) to (6) and (8) and the repeal by Schedule 12 of section 84 of that Act,
sections 121 and 122 and the repeal by Schedule 12 of section 82 of that Act,
section 124 and the repeal by Schedule 12 of sections 85(1) and 89 of that Act,
section 126,
sections 128 and 129, and
the amendments in the Local Government, Planning and Land Act 1980 (c. 65), the Local
Government Finance Act 1988 (c. 41) and the Housing Act 1988 (c. 50) made by Schedule
10.

(4) Subject to subsections (2), (3) and (6), the following provisions come into force immediately
after the end of the initial period—
(a) any provision of this Act so far as relating to functions of the Welsh Ministers, the First
Minister, the Counsel General or the Assembly Commission,
(b) any provision of this Act so far as relating to the Auditor General or the Comptroller
and Auditor General,
(c) any other provision consisting of an amendment made in the Government of Wales Act
1998 (c. 38) by Schedule 10, and
(d) the repeal by Schedule 12 of provisions falling to be repealed in consequence of any
provision within paragraph (a), (b) or (c).

(5) In this Act “the initial period” means the period—
(a) beginning with the day of the poll at the 2007 election, and
(b) ending with the day on which the first appointment is made under section 46.

(6) The repeals by Schedule 12 of each of sections 83, 88, 93(8), 97 and 101A of the Government
of Wales Act 1998 (and of the other provisions of that Act so far as relating to them) come into
force when the section has been complied with for the financial year ending with 31st March 2007.
(and earlier financial years); and sections 123, 131, 132 and 141 do not apply for that financial year.

(7) The Assembly Act provisions come into force in accordance with section 105.

### Commencement
Pt 6 s. 161(1)-(7): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

### Extent
Pt 6 s. 161(1)-(7): United Kingdom

#### Law In Force

**162 Transitional etc. provision**

(1) For transitional and transitory provisions and savings see Schedule 11.

(2) The Secretary of State may by order make any other transitional, transitory or saving provision which may appear appropriate in consequence of, or otherwise in connection with, this Act.

(3) An order under subsection (2) may, in particular, include any savings from the effect of any amendment or repeal or revocation made by this Act.

(4) Nothing in Schedule 11 limits the power conferred by subsection (2); and such an order may, in particular, make modifications of that Schedule.

(5) Nothing in that Schedule, or in any provision made by virtue of subsection (2), prejudices the operation of sections 16 and 17 of the Interpretation Act 1978 (c. 30).

(6) No order under subsection (2) which contains provisions in the form of amendments or repeals of any provision contained in any of paragraphs 30 to 35, 50 and 51 of Schedule 11 is to be made unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.

(7) A statutory instrument containing an order under subsection (2) is (unless a draft of the statutory instrument has been approved by a resolution of each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament.

### Commencement
Pt 6 s. 162(1)-(7): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

### Extent
Pt 6 s. 162(1)-(7): United Kingdom

#### Law In Force

**163 Repeals and revocations**

For repeals and revocations of enactments (including some spent enactments) see Schedule 12.
Commencement
Pt 6 s. 163: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Pt 6 s. 163: United Kingdom

Law In Force

164 Financial provision

(1) There is to be paid out of money provided by Parliament–
   (a) any expenditure incurred by a Minister of the Crown or government department by virtue of this Act, and
   (b) any increase attributable to this Act in the sums payable under any other Act out of money provided by Parliament.

(2) There are to be paid into the Consolidated Fund any sums received by a Minister of the Crown by virtue of this Act (other than any required to be paid into the National Loans Fund).

Commencement
Pt 6 s. 164(1)-(2): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Pt 6 s. 164(1)-(2): United Kingdom

Law In Force

165 Extent

(1) The following provisions—
    section 36(7) to (9),
    section 39, and
    section 40(2) and (3),
extend only to England and Wales.

(2) The amendments, and repeals and revocations, made by this Act have the same extent as the enactments amended or repealed or revoked.

Commencement
Pt 6 s. 165(1)-(2): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Pt 6 s. 165(1)-(2): United Kingdom
166 Short title
This Act may be cited as the Government of Wales Act 2006.

Commencement
Pt. 6 s. 166: July 25, 2006 (2006 c. 32 Pt. 6 s. 161(2))

Extent
Pt. 6 s. 166: United Kingdom

SCHEDULE 1
ALTERATION OF ASSEMBLY ELECTORAL REGIONS

Section 2
Repealed
1 […]\(^1\)

Notes
1 Repealed by Parliamentary Voting System and Constituencies Act 2011 c. 1 Sch.12(2) para.1 (February 16, 2011)

Repealed
2 […]\(^1\)

Notes
1 Repealed by Parliamentary Voting System and Constituencies Act 2011 c. 1 Sch.12(2) para.1 (February 16, 2011)

Repealed
3 […]\(^1\)

Notes
1 Repealed by Parliamentary Voting System and Constituencies Act 2011 c. 1 Sch.12(2) para.1 (February 16, 2011)

Repealed
4 […]\(^1\)

Notes
1 Repealed by Parliamentary Voting System and Constituencies Act 2011 c. 1 Sch.12(2) para.1 (February 16, 2011)

Repealed
5 […]\(^1\)
Notes
1  Repealed by Parliamentary Voting System and Constituencies Act 2011 c. 1 Sch.12(2) para.1 (February 16, 2011)

6 […]

Notes
1  Repealed by Parliamentary Voting System and Constituencies Act 2011 c. 1 Sch.12(2) para.1 (February 16, 2011)

7 […]

Notes
1  Repealed by Parliamentary Voting System and Constituencies Act 2011 c. 1 Sch.12(2) para.1 (February 16, 2011)

8 […]

Notes
1  Repealed by Parliamentary Voting System and Constituencies Act 2011 c. 1 Sch.12(2) para.1 (February 16, 2011)

9 […]

Notes
1  Repealed by Parliamentary Voting System and Constituencies Act 2011 c. 1 Sch.12(2) para.1 (February 16, 2011)

10 […]

Notes
1  Repealed by Parliamentary Voting System and Constituencies Act 2011 c. 1 Sch.12(2) para.1 (February 16, 2011)

11 […]

Notes
1  Repealed by Parliamentary Voting System and Constituencies Act 2011 c. 1 Sch.12(2) para.1 (February 16, 2011)

12 […]
Section 27

Membership

1

(1) The Presiding Officer holds office as a member of the Assembly Commission until another person is elected to the office of Presiding Officer unless the Presiding Officer ceases to be an Assembly member otherwise than by reason of a dissolution.

(2) Any other member of the Assembly Commission holds office until another Assembly member is appointed as a replacement unless sub-paragraph (3) applies.

(3) This sub-paragraph applies if the person—
   (a) resigns office as a member of the Assembly Commission,
   (b) ceases to be an Assembly member otherwise than by reason of a dissolution, or
   (c) is removed from office as a member of the Assembly Commission by the Assembly.

Commencement

Sch. 2 para. 1(1)-(3)(c): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 2 para. 1(1)-(3)(c): United Kingdom

Property

2

The Assembly Commission may acquire, hold and dispose of property.
Commencement

Sch. 2 para. 2: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 2 para. 2: United Kingdom

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Staff

Law In Force

3

(1) The Assembly Commission may appoint staff.

(2) The Clerk and the other persons appointed by the Assembly Commission are referred to in this Act as the members of the staff of the Assembly.

(3) Employment as a member of the staff of the Assembly is not employment under the Crown (but see paragraph 12).

(4) The Assembly Commission must ensure that—
   (a) the procedures for the recruitment and selection of persons as members of the staff of the Assembly are broadly in line with those applying to the recruitment and selection of persons as members of the staff of the Welsh Assembly Government, and
   (b) the terms and conditions of employment of the members of the staff of the Assembly are broadly in line with those of the members of the staff of the Welsh Assembly Government.

(5) The Assembly Commission is to pay the salaries and expenses of the members of the staff of the Assembly.

(6) The Assembly Commission may make arrangements for the payment of pensions, gratuities or allowances to or in respect of anyone who has ceased to be a member of the staff of the Assembly.

(7) The Assembly Commission may, in particular, make contributions to, or payments towards the provision of, such pensions, gratuities or allowances.

(8) In Schedule 1 to the Superannuation Act 1972 (c. 11) (employments etc. to which section 1 of the Act applies), in the appropriate place in the list of “Other Bodies” insert—

   “Employment as a member of the staff of the National Assembly for Wales.”

(9) The Assembly Commission must make payments to the Minister for the Civil Service, at such times as the Minister for the Civil Service may determine, of such amounts as may be so determined in respect of—
   (a) the provision of pensions, allowances or gratuities by virtue of section 1 of the Superannuation Act 1972 to or in respect of persons who are or have been members of the staff of the Assembly, and
(b) the expenses incurred in administering those pensions, allowances and gratuities.

Commencement
Sch. 2 para. 3(1)-(9)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 2 para. 3(1)-(9)(b): United Kingdom

Powers

Law In Force

4

(1) The Assembly Commission may do anything which appears to it necessary or appropriate for the purpose of, or in connection with, the discharge of its functions.

(2) That includes, in particular—
   (a) entering into contracts,
   (b) charging for goods or services,
   (c) investing sums not immediately required for the discharge of its functions, and
   (d) accepting gifts.

(3) Where (by will or otherwise) any property is (by whatever words used) expressed to be given to the Assembly, the gift takes effect as a gift to the Assembly Commission.

(4) The Assembly Commission may—
   (a) sell goods or provide services to the public, or
   (b) make arrangements for the sale of goods or the provision of services to the public.

(5) The Assembly Commission may borrow sums in sterling by way of overdraft or otherwise for the purpose of meeting a temporary excess of expenditure over sums otherwise available to meet expenditure.

(6) The Assembly Commission—
   (a) may not borrow money otherwise than under sub-paragraph (5), and
   (b) may borrow under that sub-paragraph only in accordance with special or general directions given by the Assembly to the Assembly Commission under section 27(6).

(7) The Secretary of State may by order provide that the Local Government (Contracts) Act 1997 (c. 65) applies in relation to contracts entered into by the Assembly Commission but subject to any appropriate modifications.

(8) A statutory instrument containing an order under sub-paragraph (7) is subject to annulment in pursuance of a resolution of either House of Parliament.
Promotion of awareness of election system and devolved government

Law In Force

5

(1) The Assembly Commission may promote public awareness of—
   (a) the current or any pending system for the election of Assembly members, and
   (b) the current or any pending system of devolved government in Wales.

(2) For the purposes of this paragraph and paragraph 6 a system is “pending” if arrangements for
    giving effect to it have been made by any enactment but the arrangements are not yet in force.

(3) The Assembly Commission may exercise its power under sub-paragraph (1) in such manner as
    it thinks fit but may, in particular, do so by—
    (a) carrying out programmes of education or information to promote public awareness, or
    (b) making grants to other persons or bodies for the purpose of enabling them to carry out
        such programmes.

(4) Any grant under sub-paragraph (3)(b) may be made subject to such conditions as the Assembly
    Commission considers appropriate.

Commencement
Sch. 2 para. 5(1)-(4): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 2 para. 5(1)-(4): United Kingdom

Law In Force

6

The Assembly Commission may provide financial assistance to the Electoral Commission for the
purpose of enabling it to carry out its functions under section 13(1) of the Political Parties, Elections
and Referendums Act 2000 (c. 41) so far as relating to the promotion of public awareness of—
   (a) the current or any pending system for the election of Assembly members, and
   (b) the current or any pending system of devolved government in Wales.
Delegation

The Assembly Commission may delegate any of its functions to—

(a) the Presiding Officer, or
(b) the Clerk.

Principles in accordance with which functions are to be exercised

(1) The Assembly Commission must make appropriate arrangements with a view to securing that its functions are exercised with due regard to the principle that there should be equality of opportunity for all people.

(2) In the exercise of the functions of the Assembly Commission due regard must be had to the principle of promoting sustainable development.

(3) In the exercise of the functions of the Assembly Commission effect must be given, so far as is both appropriate in the circumstances and reasonably practicable, to the principle that the English and Welsh languages should be treated on a basis of equality.
Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 2 para. 8(1)-(3): United Kingdom

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**Annual report**

Law In Force

9

After each financial year the Assembly Commission must—

(a) publish a report relating to the exercise of its functions during the financial year, and

(b) lay a copy of the report before the Assembly.

Commencement
Sch. 2 para. 9(a)-(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 2 para. 9(a)-(b): United Kingdom

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**Validity of acts**

Law In Force

10

The validity of any act of the Assembly Commission is not affected by—

(a) any vacancy in its membership,

(b) any defect in the appointment of any member, or

(c) any lack of qualification for membership of any member.

Commencement
Sch. 2 para. 10(a)-(c): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 2 para. 10(a)-(c): United Kingdom
Proceedings

Law In Force

11

(1) The Assembly Commission may determine its own procedure.

(2) The Presiding Officer is to preside at meetings of the Assembly Commission but the Assembly Commission may appoint another of its members to preside if—
   (a) the office of Presiding Officer is vacant, or
   (b) the Presiding Officer is for any reason unable to act.

Commencement

Sch. 2 para. 11(1)-(2)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 2 para. 11(1)-(2)(b): United Kingdom

Crown status

Law In Force

12

(1) Her Majesty may by Order in Council provide for the Assembly Commission to be treated to any extent as a Crown body for the purposes of any enactment.

(2) In particular, the Order in Council may for the purposes of any enactment provide—
   (a) for employment as a member of the staff of the Assembly to be treated as employment by the Assembly Commission as a Crown body, or
   (b) for land held, used or managed by the Assembly Commission, or operations carried out by or on behalf of the Assembly Commission, to be treated as land held, used or managed by, or operations carried out by or on behalf of, the Assembly Commission as a Crown body.

(3) For the purposes of this paragraph “Crown body” means a body which is a servant or agent of the Crown, and includes a government department.

(4) A statutory instrument containing an Order in Council under this paragraph is subject to annulment in pursuance of—
   (a) a resolution of either House of Parliament, or
   (b) a resolution of the Assembly.


SCHEDULE 3

TRANSFER ETC. OF FUNCTIONS: FURTHER PROVISIONS

Section 58

PART 1

FUNCTIONS TRANSFERABLE ETC.

Law In Force

1 Existing and future functions

(1) Subject to sub-paragraph (2), an Order in Council under section 58 may make provision about any function of a Minister of the Crown (including a function conferred or imposed after the passing of this Act).

(2) Such an Order in Council may not make provision about any function conferred or imposed by any provision of this Act except section 4.

Law In Force

2 Functions relating to culture

If and to the extent that any function is exercisable by a Minister of the Crown in relation to the Welsh language or any other aspect of Welsh culture it is to be regarded for the purposes of section 58 as exercisable by the Minister of the Crown in relation to Wales.
Commencement
Sch. 3(1) para. 2: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 3(1) para. 2: United Kingdom

3 Cross-border functions

(1) The power conferred by section 58 to make an Order in Council about a function so far as exercisable by a Minister of the Crown in relation to Wales includes power to make provision about a function so far as exercisable by a Minister of the Crown in relation to—
   (a) a cross-border body, or
   (b) subject to sub-paragraph (2), an English border area.

(2) An Order in Council under section 58 may only include provision about a function so far as exercisable by a Minister of the Crown in relation to an English border area if—
   (a) the function relates to water resources management, water supply, rivers or other watercourses, control of pollution of water resources, sewerage or land drainage, and
   (b) the Order in Council makes (or another such Order in Council has made) corresponding provision about the function so far as so exercisable in relation to a part of Wales adjoining England or the whole of Wales.

(3) This paragraph does not affect the power conferred by section 58 to make an Order in Council about a function so far as exercisable by a Minister of the Crown in relation to the whole or any part of Wales.

Commencement
Sch. 3(1) para. 3(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 3(1) para. 3(1)-(3): United Kingdom

4 Functions exercisable beyond the territorial sea

(1) The power conferred by section 58(1)(c) includes power to direct that any function under—
   (a) […]
(b) Part 4 of the Petroleum Act 1998 (c. 17) (abandonment of offshore installations),
(c) the provisions of Parts 4 and 8 of the Marine and Coastal Access Act 2009 (marine licensing and enforcement) specified in sub-paragraph (1A), or
(d) regulations under section 73 of that Act (appeals).  

so far as exercisable by a Minister of the Crown in relation to Welsh controlled waters is to be exercisable by the Minister of the Crown only after consultation with the Welsh Ministers.

[(1A) The provisions of the Marine and Coastal Access Act 2009 mentioned in sub-paragraph (1)(c) are—
(a) sections 67(1) to (5), 69(1), (3) and (4), 71(1) to (3) and 72(1) to (3) (marine licences), so far as relating to items 1 to 6 and 11 to 13 in section 66(1) of that Act (licensable marine activities);
(b) section 101 (registers);
(c) sections 106 and 91(7)(c) (power to take remedial action, and power to require payment of sum representing reasonable expenses of taking such action);
(d) section 107 (power to test, and charge for testing, certain substances);
(e) sections 235(3) and 240(1)(c) (enforcement officers).]  

(2) In this paragraph “Welsh controlled waters” means so much of the sea beyond the seaward boundary of the territorial sea as is adjacent to Wales.

(3) The power conferred by section 58(3) includes (in particular) power to determine, or make provision for determining, for the purposes of the definition of “Welsh controlled waters” any boundary between—
(a) the parts of the sea which are to be treated as adjacent to Wales, and
(b) those which are not,
including power to make different determinations or provision for different purposes; and an order under section 158(3) may include any provision that by virtue of this sub-paragraph may be included in an Order in Council under section 58.

Notes
1 Repealed by Marine and Coastal Access Act 2009 c. 23 Sch.22(2) para.1 (April 6, 2011 as SI 2011/556)
2 Added by Marine and Coastal Access Act 2009 c. 23 Sch.8(1) para.3(2)(b) (April 6, 2011)
3 Added by Marine and Coastal Access Act 2009 c. 23 Sch.8(1) para.3(3) (April 6, 2011)

Commencement
Sch. 3(1) para. 4(1)-(3)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 3(1) para. 4(1)-(3)(b): United Kingdom
PART 2

EXERCISE OF TRANSFERRED FUNCTIONS

Community obligations

5

Any power of a Minister of the Crown to make subordinate legislation which has been transferred by an Order in Council under section 58 continues to be exercisable by the Minister of the Crown (as it would be had it not been transferred) for the purpose of—

(a) implementing any [EU] obligation of the United Kingdom,
(b) enabling any such obligation to be implemented,
(c) enabling any rights enjoyed or to be enjoyed by the United Kingdom under or by virtue of the Community Treaties to be exercised, or
(d) dealing with matters arising out of or related to any such obligation or rights or the operation of section 2(1) of the European Communities Act 1972 (c. 68).

Notes

1 Word substituted by Treaty of Lisbon (Changes in Terminology) Order 2011/1043 Pt 2 art.6(1)(e) (April 22, 2011)

Commencement

Sch. 3(2) para. 5(a)-(d): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 3(2) para. 5(a)-(d): United Kingdom

Agreement or consultation: Ministers and Parliament

6

An Order in Council under section 58 which includes provision—

(a) transferring to the Welsh Ministers, the First Minister or the Counsel General any function so far as exercisable by a Minister of the Crown in relation to a cross-border body or an English border area, or
(b) directing that any function is to be exercisable by the Welsh Ministers, the First Minister or the Counsel General in relation to a cross-border body or an English border area concurrently with the Minister of the Crown by whom it is exercisable,
may provide that (either generally or to such extent as may be specified in the Order in Council) the function may be exercised by the Welsh Ministers, the First Minister or the Counsel General only with the agreement of, or after consultation with, a Minister of the Crown.

Commencement

Sch. 3(2) para. 6(a)-(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 3(2) para. 6(a)-(b): United Kingdom

(1) This paragraph applies where a function is exercisable by a Minister of the Crown—
   (a) only with the agreement of, or after consultation with, another Minister of the Crown, or
   (b) only with the authorisation of Parliament or either House of Parliament.

(2) If an Order in Council under section 58 includes provision transferring the function to the Welsh Ministers, the First Minister or the Counsel General it is to be exercisable free from that requirement unless the Order in Council provides otherwise.

(3) If an Order in Council under that section includes provision directing that the function is to be exercisable by the Welsh Ministers, the First Minister or the Counsel General concurrently with the Minister of the Crown by whom it is exercisable, the Order in Council may provide that is to be exercisable free from that requirement.

Commencement

Sch. 3(2) para. 7(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 3(2) para. 7(1)-(3): United Kingdom
Agreement or consultation etc.: Assembly and Assembly Commission

Law In Force

8

(1) An Order in Council under section 58 may make provision for a function to be exercisable by the Welsh Ministers, the First Minister or the Counsel General only with the authorisation of, or after consultation with, the Assembly or the Assembly Commission.

(2) An Order in Council under section 58 making provision for a function to be exercisable by the Welsh Ministers, the First Minister or the Counsel General may, by virtue of subsection (3) of that section, require the Welsh Ministers, the First Minister or the Counsel General—
   (a) to lay a report before the Assembly, or
   (b) to send documents to the Clerk,
in connection with the exercise of the function.

Commencement

Sch. 3(2) para. 8(1)-(2)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 3(2) para. 8(1)-(2)(b): United Kingdom

Parliamentary and Assembly procedure

Law In Force

9

(1) This paragraph applies where a function to make subordinate legislation (including a function conferred or imposed by or by virtue of this Act or an Act passed after this Act) is transferred to, or made exercisable by, the Welsh Ministers, the First Minister or the Counsel General by an Order in Council under section 58.

(2) If, immediately before the coming into force of the provisions of the Order in Council relating to the function, a provision of any of the descriptions specified in sub-paragraph (3) applied to its exercise by a Minister of the Crown—
   (a) that provision does not apply to its exercise by the Welsh Ministers, the First Minister or the Counsel General unless the case is one to which sub-paragraph (6) applies, but
   (b) (whether or not the case is one to which that sub-paragraph applies) that provision has effect in relation to its exercise by the Welsh Ministers, the First Minister or the Counsel General as if any reference in it to Parliament or either House of Parliament were (or, if it is such a case, included) a reference to the Assembly.

(3) The descriptions of provision referred to in sub-paragraph (2) are—
(a) provision requiring any instrument made in the exercise of the function, or a draft of any such instrument, to be laid before Parliament or either House of Parliament,
(b) provision for the annulment or approval of any such instrument or draft by or in pursuance of a resolution of either House of Parliament or of both Houses, and
(c) provision prohibiting the making of any such instrument without such approval.

(4) If, immediately before the coming into force of the provisions of the Order in Council relating to the function, a provision of either of the descriptions specified in sub-paragraph (5) applied to its exercise by a Minister of the Crown—

(a) that provision does not apply to its exercise by the Welsh Ministers, the First Minister or the Counsel General unless the case is one to which sub-paragraph (6) or (7) applies, but
(b) (whether or not the case is one to which either of those sub-paragraphs applies) any instrument made in the exercise of the function by the Welsh Ministers, the First Minister or the Counsel General is (or, if it is such a case, is also) subject to the procedure in the Assembly specified by the standing orders.

(5) The descriptions of provision referred to in sub-paragraph (4) are—

(a) provision for any instrument made in the exercise of the function to be a provisional order (that is, an order which requires to be confirmed by Act of Parliament), and
(b) provision requiring any order (within the meaning of the Statutory Orders (Special Procedure) Act 1945 (9 & 10 Geo. 6 c. 18)) made in the exercise of the function to be subject to special parliamentary procedure.

(6) This sub-paragraph applies in any case if the instrument made in the exercise of the function or (if provision specified in sub-paragraph (3)(a) or (b) applied to a draft of an instrument made in the exercise of the function) a draft of an instrument to be so made—

(a) contains subordinate legislation made or to be made by a Minister of the Crown or government department (whether or not jointly with the Welsh Ministers, the First Minister or the Counsel General),
(b) contains (or confirms or approves) subordinate legislation relating to an English border area, or
(c) contains (or confirms or approves) subordinate legislation relating to a cross-border body (and not relating only to the exercise of functions, or the carrying on of activities, by the body in or with respect to Wales or a part of Wales).

(7) This sub-paragraph applies in any case if, immediately before the coming into force of the provisions of the Order in Council relating to the function, a provision of the description specified in sub-paragraph (5)(b) applied to an instrument made in exercise of the function by a Minister of the Crown and the Order in Council provided that—

(a) any order made by the Welsh Ministers, the First Minister or the Counsel General in the exercise of the function, or
(b) any order so made in circumstances including those of the case, is to be subject to special parliamentary procedure.

(8) In this paragraph “make” includes confirm or approve and related expressions (except “made exercisable”) are to be construed accordingly; but an instrument (or draft) does not fall within sub-paragraph (6)(a) just because it contains subordinate legislation made (or to be made) by the Welsh Ministers, the First Minister or the Counsel General with the agreement of a Minister of the Crown or government department.
Commencement

Sch. 3(2) para. 9(1)-(8): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 3(2) para. 9(1)-(8): United Kingdom

Laying of reports and statements

 gjp Law In Force

10

(1) This paragraph applies where—
   (a) a function to make or receive a report or statement (including a function conferred or imposed by or by virtue of an Act passed after this Act) is transferred to, or made exercisable by, the Welsh Ministers, the First Minister or the Counsel General by an Order in Council under section 58, and
   (b) immediately before the coming into force of the provisions of the Order in Council relating to the function, any enactment made provision ("provision for Parliamentary laying") for a report or statement made or received in the exercise of the function to be laid before Parliament or either House of Parliament by the person making or receiving it.

(2) The provision for Parliamentary laying applies to the exercise of the function by the Welsh Ministers, the First Minister or the Counsel General as if it required the report or statement to be laid before the Assembly instead of before Parliament or either House of Parliament.

(3) In this paragraph references to a report or statement include any other document (except one containing subordinate legislation).

Commencement

Sch. 3(2) para. 10(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 3(2) para. 10(1)-(3): United Kingdom
Powers to lend money

(1) This paragraph applies where a power to lend money (including a power conferred by or by virtue of an Act passed after this Act) is transferred to the Welsh Ministers by an Order in Council under section 58; but subject to any provision to the contrary in the Order in Council.

(2) Sub-paragraph (3) applies to any sums which, for the purpose or as a result of the exercise of the power, would be required (apart from that sub-paragraph)—
   (a) to be issued by the Treasury out of the National Loans Fund, or
   (b) to be paid into that Fund.

(3) Those sums are instead—
   (a) to be charged on the Welsh Consolidated Fund, or
   (b) to be paid into that Fund.

(4) The following provisions apply where—
   (a) the power was exercised by a Minister of the Crown before the transfer, and
   (b) the sums required for the exercise of the power were issued by the Treasury out of the National Loans Fund.

(5) Any amount payable by way of repayment of, or of interest on, the loan is to be paid to the Welsh Ministers and into the Welsh Consolidated Fund (instead of to the Minister of the Crown and into the National Loans Fund).

(6) Amounts equal to those which are to be received by the Welsh Ministers in repayment of principal are to be treated as being loans made to the Welsh Ministers by the Secretary of State on the date of the transfer.

(7) Such loans are to be repaid to the Secretary of State at such times and by such methods, and interest is to be paid to the Secretary of State at such rates and at such times, as the Treasury may from time to time determine.

(8) Sums required to be paid to the Secretary of State under sub-paragraph (7) are to be charged on the Welsh Consolidated Fund.

(9) Sums received by the Secretary of State under sub-paragraph (7) are to be paid into the National Loans Fund.

Commencement

Sch. 3(2) para. 11(1)-(9): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 3(2) para. 11(1)-(9): United Kingdom
PART 3
SUPPLEMENTARY

12 References to Minister of the Crown etc.
References in section 58 and this Schedule to a Minister of the Crown include references to—
(a) two or more Ministers of the Crown acting jointly, and
(b) an officer of a Minister of the Crown or of a government department,
and, in relation to functions of such an officer, the references in section 58(1) and this Schedule to the Welsh Ministers include references to a member of the staff of the Welsh Assembly Government.

Commencement
Sch. 3(3) para. 12(a)-(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 3(3) para. 12(a)-(b): United Kingdom

13 Saving
An Order in Council under section 58 which includes provision—
(a) transferring a function exercisable by a Minister of the Crown, or
(b) directing that a function is to be exercisable only with the agreement of, or after consultation with, any of the Welsh Ministers, the First Minister or the Counsel General,
does not affect the validity of anything done by or in relation to the Minister of the Crown before the coming into force of the Order in Council.

Commencement
Sch. 3(3) para. 13(a)-(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 3(3) para. 13(a)-(b): United Kingdom
SCHEDULE 4

TRANSFERS OF MINISTERIAL PROPERTY, RIGHTS AND LIABILITIES

General transfer of property, rights and liabilities

Law In Force

1

(1) The property, rights and liabilities to which, at the coming into force of an Order in Council under section 58, a Minister of the Crown is entitled or subject in connection with any function exercisable by the Minister of the Crown and transferred by the Order in Council are transferred to and vest in the transferee of the function.

(2) In this Schedule “the transferee”, in relation to a function transferred by an Order in Council under section 58, means whichever of the Welsh Ministers, the First Minister or the Counsel General may exercise the function by virtue of the Order in Council.

(3) Anything (including legal proceedings) which relates to–
   (a) any function exercisable by a Minister of the Crown which is transferred by an Order in Council under section 58, or
   (b) any property, rights or liabilities transferred by sub-paragraph (1) as the result of the transfer of any such function by such an Order in Council, and which is in the process of being done by or in relation to the Minister of the Crown immediately before the coming into force of the Order in Council may be continued by or in relation to the transferee of the function.

(4) Anything which was done by a Minister of the Crown for the purpose of or in connection with–
   (a) any function exercisable by the Minister of the Crown which is transferred by an Order in Council under section 58, or
   (b) any property, rights or liabilities transferred by sub-paragraph (1) as the result of the transfer of any such function by such an Order in Council, and which is in effect immediately before the coming into force of the Order in Council has effect as if done by the transferee of the function.

(5) In any instruments, contracts or legal proceedings which relate to–
   (a) any function exercisable by a Minister of the Crown which is transferred by an Order in Council under section 58, or
   (b) any property, rights or liabilities transferred by sub-paragraph (1) as the result of the transfer of any such function by such an Order in Council, and which are made or commenced before the coming into force of the Order in Council, the transferee of the function is substituted for the Minister of the Crown.

Commencement

Sch. 4 para. 1(1)-(5)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller.
and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 4 para. 1(1)-(5)(b): United Kingdom

Law In Force

2

(1) An Order in Council under section 58 may provide that all or any of the provisions of paragraph 1—

(a) do not apply in relation to the transfer of functions by the Order in Council or to the property, rights and liabilities connected with the functions,
(b) are to apply only in relation to the transfer of particular functions by the Order in Council or to particular property, rights or liabilities connected with the functions transferred by the Order in Council,
(c) do not apply in relation to the transfer of particular functions by the Order in Council or to particular property, rights or liabilities connected with the functions transferred by the Order in Council, or
(d) apply with modifications in relation to the transfer of a particular function by the Order in Council or to particular property, rights or liabilities connected with the function transferred by the Order in Council in a case where, by virtue of provision made under section 58(2), there is more than one transferee of that function.

(2) Paragraph 1 does not apply to rights or liabilities relating to the employment of persons in Crown employment (as defined in section 191(3) of the Employment Rights Act 1996 (c. 18)).

Commencement

Sch. 4 para. 2(1)-(2): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 4 para. 2(1)-(2): United Kingdom

Power to make specific transfers etc.

Law In Force

3

(1) The Secretary of State may by order provide for the transfer to the Welsh Ministers, the First Minister or the Counsel General of—

(a) any specified property, rights or liabilities, or
(b) property, rights or liabilities of any specified description,
to which a Minister of the Crown is entitled or subject.

(2) An order under sub-paragraph (1) may provide for the transfer of any property, rights or liabilities to have effect subject to exceptions or reservations specified in or determined under the order.

(3) An order under sub-paragraph (1) may provide—

(a) for the creation in favour of a Minister of the Crown of interests in, or rights over, property transferred to the Welsh Ministers, the First Minister or the Counsel General,

(b) for the creation in favour of the Welsh Ministers, the First Minister or the Counsel General of interests in, or rights over, property retained by a Minister of the Crown, or

(c) for the creation of new rights and liabilities between the Welsh Ministers, the First Minister or the Counsel General on the one hand and a Minister of the Crown on the other.

(4) The Secretary of State may by order make provision for the continuation by or in relation to the Welsh Ministers, the First Minister or the Counsel General of—

(a) any specified thing, or

(b) anything of a specified description,

commenced by or in relation to a Minister of the Crown.

(5) The Secretary of State may by order make provision for—

(a) any specified thing, or

(b) anything of a specified description,

done by a Minister of the Crown to have effect as if done by the Welsh Ministers, the First Minister or the Counsel General.

(6) The Secretary of State may by order make provision for the substitution of the Welsh Ministers, the First Minister or the Counsel General for any Minister of the Crown in—

(a) any specified instrument, contract or legal proceedings, or

(b) any instrument, contract or legal proceedings of a specified description.

(7) An order under this paragraph may be made in consequence of the making of an Order in Council under section 58 or in any other circumstances in which the Secretary of State considers it appropriate to make such an order.

(8) A statutory instrument containing an order under this paragraph is subject to annulment in pursuance of a resolution of either House of Parliament.

Commencement

Sch. 4 para. 3(1)-(8): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 4 para. 3(1)-(8): United Kingdom
Supplementary

Law In Force

4

(1) A certificate issued by the Secretary of State that any property has been transferred by—
   (a) paragraph 1, or
   (b) an order under paragraph 3,
   is conclusive evidence of the transfer.

(2) Paragraph 1, and orders under paragraph 3, have effect in relation to property, rights or liabilities to which they apply in spite of any provision (of whatever nature) which would otherwise prevent or restrict the transfer of the property, rights or liabilities.

Commencement

Sch. 4 para. 4(1)-(2): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 4 para. 4(1)-(2): United Kingdom

SCHEDULE 5

ASSEMBLY MEASURES

Section 94

PART 1

MATTERS

Law In Force

Field 1: agriculture, fisheries, forestry and rural development

[  
Matter 1.1  
The red meat industry, in relation to—
(a) increasing efficiency or productivity in the industry;
(b) improving marketing in the industry;
(c) improving or developing services that the industry provides or could provide to the community;
(d) improving the ways in which the industry contributes to sustainable development.
Interpretation of this field In this field “the red meat industry” means all of the activities comprised in—]
(a) breeding, keeping, processing, marketing and distributing cattle, sheep and pigs (alive or dead), and
(b) producing, processing, marketing, manufacturing and distributing products derived to any substantial extent from those animals (apart from milk and milk products, fleece wool and hides).

For the purposes of this definition—“cattle” means bovine animals, including bison and buffalo; “pigs” means porcine animals, including wild boar and other feral pigs.

Field 2: ancient monuments and historic buildings

[ Matter 2.1
The functions of local authorities in the support, improvement and promotion of the appreciation by the public of archaeological remains, ancient monuments, buildings and places of historical or architectural interest, and historic wrecks.
In this matter “local authorities” means the councils of counties and county boroughs in Wales.
]

Field 3: culture

[ Matter 3.1
The functions of local authorities in the support, improvement and promotion of arts and crafts, museums and galleries, libraries, archives and historical records, and cultural activities and projects.
This matter does not include licensing of sale and supply of alcohol, provision of entertainment and late night refreshment.
In this matter “local authorities” means the councils of counties and county boroughs in Wales.
]

Field 4: economic development

Field 5: education and training

[ Matter 5.1
Provision about the categories of school that may be maintained by [local authorities].
Matter 5.2
Provision about the establishment and discontinuance of schools maintained by [local authorities], their change from one category to another and their alteration in other respects.
Matter 5.2A
Conduct and governance of schools maintained by local authorities, including the allocation of functions, property, rights and liabilities relating to such schools.
Matter 5.2B
Securing collaboration between persons or bodies with functions relating to schools maintained by local authorities.
Matter 5.2C

Government of Wales Act 2006  Page 157
The following activities by persons or bodies with functions relating to schools maintained by local authorities—
(a) establishment of bodies to do all or any of the following—
(ii) exercise education functions on behalf of local authorities;
(b) involvement with bodies mentioned in paragraph (a).]

Matter 5.3
Provision about the admission of pupils to schools maintained by [local authorities].

Matter 5.4
Provision about the curriculum in schools maintained by [local authorities].

Matter 5.4A
The regulation of—
(a) schools that are not maintained by [local authorities];
(b) relevant independent educational institutions.

Matter 5.5
Provision about school attendance, the behaviour of pupils at school, school discipline and the exclusion of pupils from school (including the duties of parents in connection with those matters).

Matter 5.6
Provision about the making of arrangements for the provision of education for persons of compulsory school age who have been excluded from schools or who for any other reason would not otherwise receive suitable education.

Matter 5.7
Provision about entitlement to primary, secondary and further education and to training.

Matter 5.8
Provision about the provision of services that are intended to encourage, enable or assist people—
(a) to participate effectively in education or training,
(b) to take advantage of opportunities for employment, or
(c) to participate effectively in the life of their communities.

Matter 5.9
Provision about food and drink provided on school premises or provided for children at a place where they receive education or childcare.

Matter 5.10
[Arrangements for persons to travel to and from the places where they receive education or training.]

Matter 5.11
Provision for and in connection with securing the provision of facilities for post-16 education or training.

Matter 5.12
Provision for and in connection with the establishment and dissolution of—
(a) institutions concerned with the provision of further education, and 
(b) bodies that conduct such institutions, 
including the circumstances in which an educational institution becomes or ceases to be an 
institution concerned with the provision of further education. 
Provision about— 
(a) the conduct and functions of such institutions and bodies that conduct such 
institutions; 
(b) the property, rights and liabilities of such institutions and bodies that conduct 
such institutions; 
(c) property held by any person for the purposes of such an institution; 
(d) the governance and staff of such institutions. 
Matter 5.13 
Provision for and in connection with securing collaboration— 
(a) between bodies that conduct institutions concerned with the provision of further 
education, or 
(b) between one or more such bodies and other persons or bodies that have functions 
relating to education or training in Wales, 
including, in particular, provision for and in connection with the establishment of bodies 
for the purpose of discharging functions on behalf of one or more persons or bodies that 
are party to arrangements for collaboration. 
Matter 5.14 
The provision of financial resources for and in connection with— 
(a) education or training provided by institutions concerned with the provision of 
进一步教育; or 
(b) post-16 education or training provided otherwise than by such institutions; 
(c) the carrying out of research relating to education or training falling within 
paragraph (a) or (b). 
Matter 5.15 
The inspection of— 
[ (za) schools; 
(zb) relevant independent educational institutions; ] 
(a) education or training provided by institutions concerned with the provision of 
进一步教育; 
[ (b) pre-16 education or training, or post-16 education or training, provided otherwise 
than by institutions within paragraphs (za) to (a); ] 
(c) the training of teachers and specialist teaching assistants for schools; 
(d) services of the kinds mentioned in matter 5.8. 
Matter 5.16 
The provision of advice and information in connection with, and the carrying out of studies 
in relation to [ — 
(a) pre-16 education or training; 
(b) post-16 education or training; 
(c) the training of teachers and specialist teaching assistants for schools; 
(d) services of the kinds mentioned in matter 5.8. 
]
Education and training for—

(a) persons who have a greater difficulty in learning than the majority of persons of the same age as those persons;
(b) persons who have, or have had—
   (i) a physical or mental impairment, or
   (ii) a progressive health condition (such as cancer, multiple sclerosis or HIV infection) where it is at a stage involving no physical or mental impairment.

[...]

[Matter 5.18
The provision of any of the following for children or young persons—

(a) facilities for social or physical training;
(b) educational activities.

In this matter “children” and “young persons” have the same meaning as in field 15.

Interpretation of this field

In this field—

[“nursery education” means education suitable for children who have not attained compulsory school age;]

“post-16 education” means—

(a) education (other than higher education) suitable to the requirements of persons who are above compulsory school age, and
(b) organised leisure-time occupation connected with such education;

“post-16 training” means—

(a) training suitable to the requirements of persons who are above compulsory school age, and
(b) organised leisure-time occupation connected with such training;

[“pre-16 education or training” means education or training suitable to the requirements of persons who are of or below compulsory school age;

“relevant independent educational institution” means an institution other than a school which—

(a) provides part-time education for one or more persons of compulsory school age (“part-time students”) whether or not it also provides full-time education for any person, and
(b) would be an independent school but for the fact that the education provided for the part-time student or students is part-time rather than full-time.

For the purposes of the above definition of “relevant independent educational institution”, an institution provides “part-time” education for a person if—

(a) it provides education for the person, and
(b) the education does not amount to full-time education.

]
Field 6: environment

[**Matter 6.1**]
Preventing, reducing, collecting, managing, treating or disposing of waste.
This matter does not include—
(a) regulation of any activity in the sea;
(b) regulation of the provision of postal services by a person who holds, or is required to hold, a licence from the Postal Services Commission authorising the person to convey letters from one place to another (whether or not the licence relates to the services).
See below for further provision about what this matter does not include.

**Matter 6.2**
Disposal of waste in the sea where the waste has been collected, managed or treated on land.
This matter does not include regulation of the following activities—
(a) depositing any substance or object in the sea or on or under the seabed from any vehicle, vessel, aircraft, marine structure or floating container;
(b) depositing any explosive substance or article in the sea or on or under the seabed;
(c) incinerating any substance or object on any vehicle, vessel, marine structure or floating container.
See below for further provision about what this matter does not include.

**Matter 6.3**
Protecting or improving the environment in relation to pollution.
This matter does not include—
(a) regulating the composition and content of fuel used in—
   (i) a means of transport,
   (ii) non-road mobile machinery, or
   (iii) an agricultural or forestry tractor;
(b) obligations upon persons who supply transport fuel at or for delivery to places in the United Kingdom to produce evidence showing the supply of renewable transport fuel;
(c) making provision regarding the proportion of renewable energy consumed in transport, including the imposition of requirements relating to sustainability that determine whether any particular renewable energy is to be counted towards any renewable energy obligation or target;
(d) provision of financial support in connection with—
   (i) the production of renewable energy for consumption in transport, or
   (ii) the use of that energy in transport,
including the imposition of requirements relating to sustainability that determine whether any particular renewable energy qualifies for financial support.
(e) regulation of oil and gas exploration and exploitation in those parts of the territorial sea that are not relevant territorial waters.
See below for further provision about what this matter does not include.

**Matter 6.4**
Protecting or improving the environment in relation to nuisances.
This matter does not include—
(a) imposition of criminal or civil liability in respect of energy nuisances that consist
of acts, omissions and states of affairs for which there is statutory authority, except
criminal or civil liability which the Welsh Ministers have power to impose;
(b) removal of relevant defences to, or relevant exclusions from, rules of law which
impose civil or criminal liability in respect of energy nuisances, except those defences
and exceptions which the Welsh Ministers have power to remove;
(c) regulation of the emission of smoke, artificial light or noise from military
premises;
(d) regulation of gas activities, oil activities, and infrastructure that is necessary for
carrying out any such activities;
(e) regulation of oil and gas exploration and exploitation in the sea;
(f) regulation of electronic communications and electronic communications networks.

See below for further provision about what this matter does not include.

Not included in matters 6.1, 6.2, 6.3 and 6.4

Matters 6.1, 6.2, 6.3 and 6.4 do not include any of the following—
(a) regulation concerning the control of major accident hazards involving dangerous
substances (this exception is to be interpreted in accordance with Council Directive
96/82/EC and it relates only to activity within the scope of that Directive);
(b) regulation of the decommissioning of offshore energy installations and related
infrastructure.

Not included in matters 6.1 and 6.2

Matters 6.1 and 6.2 do not include any of the following—
(a) regulation of decommissioned explosives that are outside the scope of the Waste
Directive by virtue of [Article 2(1)(e) of the Waste Directive] (i) held on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence, or
(ii) held by or for the purposes of visiting forces;
(b) regulation of radioactive material that is at military premises;
(c) regulation of the capture, conveyance or disposal of carbon dioxide as part of relevant carbon capture and storage.

Not included in matters 6.3 and 6.4

Matters 6.3 and 6.4 do not include any of the following—
(a) regulation of the contained use of genetically modified organisms;
(b) regulation of the following activities in the sea—
(i) depositing any substance or object in the sea or on or under the seabed from any vehicle, vessel, aircraft, marine structure or floating container, or any structure on land constructed or adapted wholly or mainly for the purpose of depositing solids in the sea;
(ii) scuttling any vessel or floating container;
(iii) constructing, altering or improving works in or over the sea or on or under the seabed;
(iv) using any vehicle, vessel, aircraft, marine structure or floating container to remove any substance or object from the seabed;
(v) dredging;
(vi) depositing or using any explosive substance or article in the sea or on or under the seabed;
(vii) incinerating any substance or object on any vehicle, vessel, marine structure or floating container;
(c) marine licensing under Part 4 of the Marine and Coastal Access Act 2009.

Meaning of “pollution”
In this field
“pollution” means pollution of the air, water or land which may give rise to any environmental harm, including (but not limited to) pollution caused by light, noise, heat or vibrations or any other kind of release of energy.
For the purposes of this definition “air” includes (but is not limited to) air within buildings and air within other natural or man-made structures above or below ground.

Meaning of “nuisance”
In this field
“nuisance” means an act or omission affecting any place, or a state of affairs in any place, which may impair, or interfere with, the amenity of the environment or any legitimate use of the environment, apart from an act, omission or state of affairs that constitutes pollution.

Meaning of “relevant defence” and “relevant exclusion”
In matter 6.4, in relation to a rule of law which imposes civil or criminal liability in respect of an energy nuisance (“the unlawful nuisance”)—
“relevant defence” means statutory removal (however expressed, and whether conditional or not) of the civil or criminal liability in respect of an act, omission or state of affairs that is within the scope of the unlawful nuisance;
“relevant exclusion” means statutory exclusion (however expressed, and whether conditional or not) of an act, omission or state of affairs from the scope of the unlawful nuisance.
In those definitions, a reference to the scope of the unlawful nuisance is a reference to the class of acts, omissions and states of affairs that constitutes the unlawful nuisance.

Other interpretation of this field
In this field—
“electricity activity” means any of the following—
(a) generating electricity at a generating station whose construction, extension or operation requires—
   (i) the consent of the Secretary of State, or
   (ii) the authority of an order granting development consent under the Planning Act 2008;
(b) transmitting, distributing or supplying electricity:
and for this purpose, the reference to consent of the Secretary of State is a reference to consent under powers to regulate generation of electricity;
“electronic communication” means a communication transmitted—
(a) by means of an electronic communications network, or
(b) by other means but while in an electronic form;
“electronic communications network” means—
(a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description, and
such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals—

(i) apparatus comprised in the system,
(ii) apparatus used for the switching or routing of the signals, and
(iii) software and stored data;

“energy nuisance” means a nuisance that relates to electricity activities, gas activities, oil activities, or infrastructure that is necessary for carrying out any such activities;

“environmental harm” means any of the following—

(a) harm to the health of humans and other living organisms;
(b) harm to the quality of the environment, including—
   (i) harm to the quality of the environment taken as a whole,
   (ii) harm to the quality of the air, water or land, and
   (iii) other impairment of, or interference with, the ecological systems of which any living organisms form part;
(c) offence to the senses of human beings;
(d) damage to property;
(e) impairment of, or interference with, the amenity of the environment or any legitimate use of the environment;

“gas activity” means storing, conveying or supplying gas, except any such activity that is carried out by an individual for the domestic purposes of the individual;

“marine structure” means a platform or other artificial structure at sea, other than a pipeline;

“military premises” means premises which are—

(a) occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence, or
(b) occupied by or for the purposes of visiting forces;

“offshore energy installation” means any of the following installations that are maintained in the sea or on the foreshore or other land intermittently covered with water, and that are not connected with dry land by a permanent structure providing access at all times and for all purposes—

(a) installations used for oil activities, gas activities or for the exploration or exploitation of gas or oil;
(b) carbon dioxide storage installations;
(c) renewable energy installations;

“oil activity” means storing, conveying or supplying oil, except any such activity that is carried out by an individual for the domestic purposes of the individual;

“relevant carbon capture and storage” means the capture and underground disposal of carbon dioxide by a method in which the carbon dioxide is captured at the place of its production and conveyed for disposal by pipeline directly from the place of production to a place of underground disposal;

“relevant territorial waters” means the waters which extend seaward for three miles from the baselines from which the breadth of the territorial sea adjacent to Wales is measured; but any order made under section 104(4)(a) of the Water Resources Act 1991 for the purposes of Part 3 of that Act in relation to an area of the territorial sea adjacent to Wales also applies for the purposes of determining what are relevant territorial waters for the purposes of this field;
“sea” means (except where the context otherwise requires) the sea adjacent to Wales out as far as the seaward boundary of the territorial sea;
“statutory” means arising by virtue of an Act;
“visiting force” means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952;
An order or an Order in Council made under or by virtue of section 158(3) or (4) for the purposes of that section also applies for the purpose of determining any boundary between the parts of the sea which are to be treated as adjacent to Wales for the purposes of this field and those which are not.

Field 7: fire and rescue services and promotion of fire safety

Field 8: food

Field 9: health and health services

Matter 9.1
Provision for and in connection with the provision of redress without recourse to civil proceedings in circumstances in which, under the law of England and Wales, qualifying liability in tort arises in connection with the provision of services (in Wales or elsewhere) as part of the health service in Wales.

Interpretation of this field
In this field—
“the health service in Wales” means the health service continued under section 1(1) of the National Health Service (Wales) Act 2006;
“illness” has the same meaning as in that Act;
[“mental disorder” means any disorder or disability of the mind, apart from dependence on alcohol or drugs;]
“patient” has the same meaning as in that Act;
“personal injury” includes any disease and any impairment of a person's physical or mental health;
“qualifying liability in tort” means liability in tort owed in respect of or consequent upon personal injury or loss arising out of or in connection with breach of a duty of care owed to any person in connection with the diagnosis of illness or the care or treatment of any patient.

Matter 9.2
Assessment of mental health and treatment of mental disorder.
This matter does not include any of the following—
(a) subjecting patients to—
(i) compulsory attendance at any place for the purposes of assessment or treatment,
(ii) compulsory supervision, or
(iii) guardianship;
(b) consent to assessment or treatment;
(c) restraint;
(d) detention.

For the purposes of this matter, “treatment of mental disorder” means treatment to alleviate, or prevent a worsening of, a mental disorder or one or more of its symptoms or manifestations; and it includes (but is not limited to) nursing, psychological intervention, habilitation, rehabilitation and care.

Field 10: highways and transport

[ ]

Matter 10.1
Provision for and in connection with—
(a) the making, operation and enforcement of schemes for imposing charges in respect of the use or keeping of motor vehicles on Welsh trunk roads;
(b) the application of the proceeds of charges imposed under such schemes towards purposes relating to transport.

[ Matter 10.2
Concessionary travel on the following services—
(a) bus services;
(b) Welsh services provided under a franchise agreement to which the Welsh Ministers are a party.
Any expression which is used in paragraph (b) and the Railways Act 2005 has the meaning given in that Act. ]

Field 11: housing

[ ]

Matter 11.1
The provision of automatic fire suppression systems in new residential premises.
In this matter “new residential premises” means
(a) premises newly constructed for residential use;
(b) premises newly converted to residential use;
(c) premises converted to use as one or more new residences by subdivision of one or more existing residences; and
(d) premises converted to use as one or more new residences by amalgamation of one or more existing residences.

[ Matter 11.2
Social housing providers.
Matter 11.3
Relevant social housing bodies.
Matter 11.4
Tenure of rented social housing and other arrangements under which social housing is provided.
Matter 11.5
Disposals of—
(a) social housing,
(b) land held or used for the purposes of, or in connection with, social housing, and
(c) land to which a provision of any of the following enactments applies—
   (i) Part 2 of the Housing Act 1985;
   (ii) Part 5 of the Housing Act 1985;
   (iii) Chapter 2 of Part 1 of the Housing Act 1996;
   (iv) Chapter 4 of Part 1 of the Housing Act 1996;
   (v) Chapter 4 of Part 2 of the Housing and Regeneration Act 2008
   (insofar as the disposal does not fall within paragraph (a) or (b) of this matter).

Matter 11.6
Provision of advice and non-financial assistance to individuals in respect of their obtaining, and
living in, housing.
This matter includes, in particular, advice and non-financial assistance in respect of skills that are
relevant to the ability to live independently, or more independently, in housing.

Matter 11.7
Provision by local authorities of caravan sites for use by Gypsies and Travellers.

Matter 11.8
Homelessness.

Interpretation of this field
In this field—
“caravan site” means—
   (a) land on which a caravan or other mobile accommodation (apart from a tent) is
       stationed for the purposes of human habitation, and
   (b) land which is used in conjunction with land falling within paragraph (a) of this
definition;
“local authority” means a county council or a county borough council in Wales;
“relevant social housing body” means a person (if, or insofar as, it is not a social housing
provider) which has functions relating to—
   (a) social housing providers, or
   (b) social housing;
   but such a person is a relevant social housing body only insofar as the person has functions
relating to social housing providers or social housing;
“social housing” means any housing provided by a social housing provider;
“social housing provider” means—
   (a) a local authority, and
   (b) a person (other than a local authority) which—
       (i) provides housing to, or
       (ii) has functions relating to allocation of housing to,
        people whose needs are not adequately served by the commercial housing market;
        but a local authority or such other person is a social housing provider only insofar as it
        provides, or has functions relating to allocation of, housing.

Field 12: local government

Matter 12.1
Provision for and in connection with—
   (a) the constitution of new principal areas and the abolition or alteration of existing
       principal areas, and
(b) the establishment of councils for new principal areas and the abolition of existing principal councils.

Matter 12.2
Provision for and in connection with—
(a) the procedure for the making and coming into force of byelaws, and
(b) the enforcement of byelaws.
“Byelaws” means those of a class which may be confirmed by the Welsh Ministers (but the provision which may be made includes provision to remove a requirement of confirmation).

Matter 12.3
Any of the following—
(a) the principles which are to govern the conduct of members of relevant authorities,
(b) codes of conduct for such members,
(c) the conferral on any person of functions relating to the promotion or maintenance of high standards of conduct of such members (including the establishment of bodies to have such functions),
(d) the making or handling of allegations that members (or former members) of relevant authorities have breached standards of conduct, including in particular—
(i) the investigation and adjudication of such allegations and reports on the outcome of investigations,
(ii) the action that may be taken where breaches are found to have occurred,
(c) codes of conduct for employees of relevant authorities.

For the purposes of this matter—
“relevant authority” has the same meaning as in Part 3 of the Local Government Act 2000, except that other than in paragraph (d) it does not include a police authority, “member” includes a co-opted member within the meaning of that Part.

Matter 12.4
Provision for and in connection with strategies of county councils and county borough councils for promoting or improving the economic, social or environmental wellbeing of their areas or contributing to the achievement of sustainable development in the United Kingdom, including provision imposing requirements in connection with such strategies on other persons with functions of a public nature.

Matter 12.5
Provision for and in connection with—
(a) the making of arrangements by relevant Welsh authorities to secure improvement in the way in which their functions are exercised,
(b) the making of arrangements by relevant Welsh authorities for the involvement in the exercise of their functions of people who are likely to be affected by, or interested in, the exercise of the functions, and
(c) the assessment and inspection of the performance of relevant Welsh authorities in exercising their functions.

The following are “relevant Welsh authorities”—
(a) a county council, county borough council or community council in Wales,
(b) a National Park authority for a National Park in Wales,
(c) a fire and rescue authority in Wales constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies,
(d) a levying body within the meaning of section 74(1) of the Local Government Finance Act 1988 in respect of which the county council or charging authority referred to in section 74(1)(b) of that Act was a council or authority for an area in Wales,
(e) a body to which section 75 of that Act applies (special levies) and which as regards the financial year beginning in 1989 had power to levy a rate by reference to property in Wales.

[Matter 12.6]
Arrangements by principal councils with respect to the discharge of their functions, including executive arrangements.
This matter does not include—
(a) direct elections to executives of principal councils, or
(b) the creation of a form of executive requiring direct elections.
For the purposes of this matter—
(a) “executive arrangements” has the same meaning as in Part 2 of the Local Government Act 2000;
(b) […]
(c) “direct elections” means elections by local government electors (within the meaning of section 270(1) of the Local Government Act 1972).

[Matter 12.7]
Committees of principal councils with functions of—
(a) review or scrutiny, or
(b) making reports or recommendations.
This matter does not include committees under section 19 of the Police and Justice Act 2006 (crime and disorder committees).

[Matter 12.8]
Areas of communities and constitution, structure, and procedures of local government institutions for communities.

[Matter 12.9]
Electoral arrangements for elected local government institutions for communities.
In this matter “electoral arrangements” does not include—
(a) the local government franchise;
(b) electoral registration and administration;
(c) the voting system for the return of members in an election.

[Matter 12.10]
Conferral on local government institutions for communities of powers—
(a) to which this matter applies,
(b) that are exercisable in relation to their areas, and
(c) that are powers exercisable by principal councils in relation to principal areas.
This matter applies to powers to do anything which the holder of the power considers likely to promote or improve the economic, social or environmental well-being of an area.

[Matter 12.11]
Grants from the Welsh Ministers to fund local government for communities.
Relations between different communities (and their local government institutions), or
between communities (and their local government institutions) and principal councils.

Matter 12.13
Schemes for the accreditation of quality in local government for communities.

Matter 12.14
Public participation in local government for communities (apart from elections).

Matter 12.15
The provision of information relating to local government to the public.
For the purposes of this matter “local government” means —
(a) local government for communities;
(b) local government for counties and county boroughs.

Matter 12.16
Salaries, allowances, pensions and other payments for members of the following—
(a) local government institutions for communities;
(b) county councils and county borough councils;
(c) National Park authorities;
(d) fire and rescue authorities constituted by schemes under section 2 of the Fire and Rescue
Services Act 2004 or schemes to which section 4 of that Act apply.

Matter 12.17
Promoting and supporting membership of the following—
(a) local government institutions for communities;
(b) county councils and county borough councils.

Matter 12.18
Council tax payable in respect of dwellings that are not the main residence of an
individual. [38]

Interpretation of this field
In this field—
“communities” means separate areas for the administration of local government, each of
which is wholly within a principal area (but does not constitute the whole of a principal
area);
“principal area” means a county borough or a county;
“principal council” means a council for a principal area. [39]

Field 13: National Assembly for Wales

Matter 13.1
Creation of, and conferral of functions on, an office or body for and in connection with
investigating complaints about the conduct of Assembly members and reporting on the
outcome of such investigations to the Assembly.

Matter 13.2
Conferral of functions on the Assembly Commission for and in connection with facilitating
the exercise by the Assembly of its functions (including the provision to the Assembly of
the property, staff and services required for the Assembly’s purposes).

Matter 13.3
 Provision for and in connection with the payment of salaries, allowances, pensions and
gratuities to or in respect of Assembly members, the First Minister, any Welsh Minister
appointed under section 48, the Counsel General and any Deputy Welsh Minister.

Matter 13.4
Provision for and in connection with the creation and maintenance of a register of interests of Assembly members and the Counsel General.

**Matter 13.5**
Provision about the meaning of Welsh words and phrases in—
(a) Assembly Measures,
(b) subordinate legislation made under Assembly Measures, and
(c) subordinate legislation not so made but made by the Welsh Ministers, the First Minister or the Counsel General.

**Matter 13.6**
Provision for and in connection with the procedures for dealing with proposed private Assembly Measures, including, in particular—
(a) procedures for hearing the promoters of, and objectors, to proposed private Assembly Measures,
(b) the persons who may represent such promoters and objectors, and the qualifications that such persons must possess,
(c) the imposition of fees for and in connection with the promotion of proposed private Assembly Measures, and
(d) the assessment of costs incurred in connection with proposed private Assembly Measures.

**Field 14: public administration**

[Matter 14.1]
The following provision relating to the Auditor General—
(a) the following aspects of the Auditor General's terms of appointment—
   (i) the period of the appointment;
   (ii) salary, allowances and superannuation benefits;
   (iii) pensions and gratuities payable after a person has ceased to be Auditor General;
(b) the number of times a person may be appointed as Auditor General;
(c) restrictions on the other offices and positions which may be held by the Auditor General;
(d) activities of a person who has been (but no longer is) Auditor General;
(e) provision requiring the Auditor General—
   (i) to aim to do things efficiently and cost-effectively;
   (ii) to have regard, as the Auditor General considers appropriate, to the standards and principles that an expert professional provider of accounting or auditing services would be expected to follow;
(f) the authorisation of persons to exercise functions of the Auditor General on the Auditor General's behalf (including during a vacancy in the office);
(g) the oversight or supervision of the Auditor General or of the exercise of the Auditor General's functions;
(h) the provision or use of resources for the purposes of the Auditor General's functions including (in particular)—
   (i) the employment and use of staff;
   (ii) the procurement and use of services;
   (iii) the holding of documents or information;
   (iv) the keeping of records;
(i) the charging of fees or other amounts in relation to functions of—
   (i) the Auditor General, or
(ii) auditors appointed by the Auditor General under an enactment;
(j) the restatement of any law relating to the Auditor General.

Field 15: social welfare

Matter 15.1
Charges levied by local authorities for social care services provided or secured by them and payments in respect of individuals with needs relating to their well-being so that they, or any other person, may secure social care services to meet those needs. This matter does not include charges and payments for residential care.

Matter 15.2
Functions of public authorities relating to—
(a) safeguarding children from harm and neglect;
(b) safeguarding and promoting the well-being of vulnerable children;
(c) reducing inequalities in well-being between children or young persons.
This matter applies to the functions of public authorities whose principal functions relate to any one or more of the fields in this Part.

Matter 15.3
Adoption services and special guardianship support services.

Matter 15.4
Fostering.

Matter 15.5
Social care services for any of the following—
(a) children;
(b) persons who care for, or who are about to care for, children;
(c) young persons;
(d) persons formerly looked after—
(i) who have attained the age of 25, and
(ii) who, immediately before attaining that age, have been pursuing, or intending to pursue, education or training.

Matter 15.6
Co-operation and arrangements to safeguard and promote the well-being of children or young persons.
This matter applies to—
(a) public authorities whose principal functions relate to any one or more of the fields in this part;
(b) police authorities and chief officers of police for police areas in Wales;
(c) the British Transport Police Authority;
(d) local probation boards for areas in Wales;
(e) the Secretary of State, in relation to the Secretary of State's functions under sections 2 and 3 of the Offender Management Act 2007, or any provider of probation services under arrangements made under section 3(2) of that Act;
(f) youth offending teams for areas in Wales;
(g) the governors of prisons, young offender institutions or secure training centres in Wales (or, in the case of contracted out prisons, young offender institutions or secure training centres or contracted out parts of such institutions, their directors);
(h) persons other than public authorities who are engaged in activities relating to the well-being of children or young persons.

Matter 15.7
Planning by local authorities for the discharge of their functions relating to the well-being of children or young persons.

Matter 15.8
Continuing, dissolving or creating an office or body concerned with safeguarding and promoting the well-being of children or young persons; the functions of such an office or body, including in particular—
(a) reviewing the effect on children or young persons of the exercise by any person of functions related to their well-being;
(b) reviewing and monitoring—
   (i) advocacy services;
   (ii) arrangements for dealing with complaints and representations made by, or on behalf of, children or young persons in respect of persons with functions related to their well-being or persons providing them with social care services;
(c) examining cases of particular children or young persons;
(d) considering, and making representations about, any matter affecting the well-being of children or young persons.

Matter 15.9
Supporting the provision of care by carers and promoting the well-being of carers. This matter includes (but is not limited to) social care services to help carers. In this matter “carers” means individuals who provide or intend to provide a substantial amount of care on a regular basis for—
(a) a child with a physical or mental impairment, or
(b) an individual aged 18 or over,
but it does not include individuals who provide or intend to provide care—
(a) by virtue of a contract of employment or other contract with any person, or
(b) as a volunteer for a body (whether or not incorporated).

Interpretation of this field
In this field—
[“advocacy services” means services providing assistance (by way of representation or otherwise) in connection with the well-being of any person;] 46 “children” means persons who have not attained the age of 18;
“development” means physical, intellectual, emotional, social or behavioural development;
“health” means physical or mental health;
“local authorities” means the councils of counties or county boroughs in Wales;
“persons formerly looked after” means persons who, at any time before attaining the age of 18—
(a) have been in the care of a public authority, or
(b) have been provided with accommodation by a public authority in order to secure their well-being;
“social care services” means any of the following provided in connection with the well-being of any person: residential or non-residential care services; [
information, 47 advice, counselling or advocacy services; financial or any other assistance;
“vulnerable children” means children—
(a) who are unlikely to achieve or maintain, or have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for them of social care services,
(b) whose health or development is likely to be significantly impaired, or further impaired, without the provision for them of social care services,
(c) who have a physical or mental impairment,
(d) who are in the care of a public authority, or
(e) who are provided with accommodation by a public authority in order to secure their well-being;
“well-being”, in relation to individuals, means well-being so far as relating to any of the following—
(a) health and emotional well-being;
(b) protection from harm and neglect;
(c) education, training and recreation;
(d) the contribution made by them to society;
(e) social and economic well-being;
(f) securing their rights;
“young persons” means persons who have attained the age of 18 but not the age of 25.

Matter 15.10
Social care services connected to mental health.
This matter does not include the independent mental capacity advocacy services established by Part 1 of the Mental Capacity Act 2005.

Field 16: sport and recreation

Matter 16.1
The provision of recreational facilities and activities for children and young persons.
In this matter “children” and “young persons” have the same meaning as in field 15.

Matter 16.2
The establishment and maintenance of a route (or a number of routes) for the coast to enable the public to make recreational journeys.
This matter does not include—
(a) enabling the public to make journeys by mechanically propelled vehicles (except permitted journeys by qualifying invalid carriages);
(b) the creation of new highways (whether under the Highways Act 1980 or otherwise).

Matter 16.3
Securing public access to relevant land for the purposes of open-air recreation.

Land is relevant land if it—

(a) is at the coast,

(b) can be used for the purposes of open-air recreation in association with land within paragraph (a), or

(c) can be used for the purposes of open-air recreation in association with a route within matter 16.2.

In this matter the reference to land at the coast is not limited to coastal land within the meaning of section 3 of the Countryside and Rights of Way Act 2000.

Interpretation of this field
In this field—

“coast” means the coast of Wales adjacent to the sea, including the coast of any island (in the sea) comprised in Wales;

“estuarial waters” means any waters within the limits of transitional waters within the meaning of the Water Framework Directive (that is to say, Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy);

“highway” has the same meaning as in the Highways Act 1980;

“local authorities” means the councils of counties and county boroughs in Wales;

“public foot crossing”, in relation to a river, means a bridge over which, or tunnel through which, there is a public right of way, or a public right of access, by virtue of which the public are able to cross the river on foot;

“qualifying invalid carriage” means an invalid carriage within the meaning of section 20 of the Chronically Sick and Disabled Persons Act 1970 (use of invalid carriages on highways) which complies with the prescribed requirements within the meaning of that section;

“relevant upstream waters”, in relation to a river, means the waters from the seaward limit of the estuarial waters of the river upstream to the first public foot crossing;

“sea” includes the relevant upstream waters of a river;

and a journey by a qualifying invalid carriage is a permitted journey if the carriage is being used in accordance with the prescribed conditions within the meaning of section 20 of the Chronically Sick and Disabled Persons Act 1970.

Field 17: tourism

Field 18: town and country planning

Matter 18.1
Provision for and in connection with—

(a) plans of the Welsh Ministers in relation to the development and use of land in Wales, and

(b) removing requirements for any such plans.

This does not include provision about the status to be given to any such plans in connection with the decision on an application for an order granting development consent under the Planning Act 2008.

Matter 18.2
Provision for and in connection with the review by local planning authorities of matters which may be expected to affect—

(a) the development of the authorities' areas, or

(b) the planning of the development of the authorities' areas.

Matter 18.3

Provision for and in connection with—

(a) plans of local planning authorities in relation to the development and use of land in their areas, and

(b) removing requirements for any such plans.

This does not include provision about the status to be given to any such plans in connection with the decision on an application for an order granting development consent under the Planning Act 2008.

Interpretation of this field

In this field—

“local planning authority” in relation to an area means—

(a) a National Park authority, in relation to a National Park in Wales;

(b) a county council in Wales or a county borough council, in any other case;

“Wales” has the meaning given by Schedule 1 to the Interpretation Act 1978.

Field 19: water and flood defence

Field 20: Welsh language

Matter 20.1

Promoting or facilitating the use of the Welsh language; and the treatment of the Welsh and English languages on the basis of equality.

This matter does not include the use of the Welsh language in courts.

This matter does not include imposing duties on persons other than the following—

(a) public authorities;

(b) persons providing services to the public under an agreement, or in accordance with arrangements, made with a public authority;

(c) persons providing services to the public established by an enactment;

(d) persons established by prerogative instrument—

(i) to advance learning and knowledge by teaching or research or by developing or awarding qualifications;

(ii) to collect, preserve or provide access to recorded knowledge or to objects and things which further understanding;

(iii) to support, improve, promote or provide access to heritage, culture, sport or recreational activities;

(iv) engaged in promoting a wider knowledge and representing the interests of Wales to other countries;

(v) engaged in central banking;

(e) persons upon whom functions of providing services to the public are conferred or imposed by an enactment;
(f) persons providing services to the public who receive public money amounting to £400,000 or more in a financial year;
(g) persons overseeing the regulation of a profession, industry or other similar sphere of activity;
(h) providers of social housing;
(i) persons providing the public with the following kinds of services or with other services which relate to any of those services—
   (i) gas, water or electricity services (including supply or distribution);
   (ii) sewerage services (including disposal of sewage);
   (iii) postal services and post offices;
   (iv) telecommunications services;
   (v) education, training (where the provider receives public money for its provision), or career guidance, and services to encourage, enable or assist participation in education, training or career guidance;
   (vi) bus and railway services;
   (vii) services to develop or award educational or vocational qualifications;
(j) persons opting or agreeing to be subject to the imposition of the duties.

With regard to imposing duties in relation to paragraph (b), this matter only includes duties in respect of services to the public provided under an agreement, or in accordance with arrangements, made with a public authority.

A person who receives public money amounting to £400,000 or more in a financial year does not fall within paragraph (f) unless—
   (a) that person also received public money in a previous financial year, or
   (b) a decision has been made that that person will receive public money in a subsequent financial year.

With regard to imposing duties in relation to paragraph (i)—
   (a) his matter only includes duties in respect of the services and the other related services mentioned, and
   (b) in respect of the related services, this matter does not include the provision of related services in a shop, other than post office counter services and the sale of tickets or provision of timetables for bus and railway services.

This matter does not include imposing duties about broadcasting.

This matter does not include imposing duties on a person (other than on a Welsh language authority) unless there is a means for that person to challenge those duties, as they apply to that person, on grounds of reasonableness and proportionality.

**Matter 20.2**

Provision about or in connection with the freedom of persons wishing to use the Welsh language to do so with one another (including any limitations upon it).

**Interpretation of this field**

In this field—
“broadcasting” means the commissioning, production, scheduling, transmission or distribution of programmes (including advertisements, subtitles, continuity announcements and teletext), access services, interactivity, online content and other output of a similar nature for television, radio, the internet or other online or wireless platforms;
“bus service” means a scheduled service, by public service vehicle (within the meaning of section 1 of the Public Passenger Vehicles Act 1981), for the carriage of passengers at separate fares, other than a service—
(a) for which the whole capacity of the vehicle has been purchased by a charterer for the charterer’s own use or for resale;
(b) which is a journey or trip organised privately by any person acting independently of the vehicle operator; or
(c) on which the passengers travel together on a journey, with or without breaks and whether or not on the same day, from one or more places to one or more places and back;

“enactment” includes any future enactment;

“shop” means any premises where the sale of goods is the principal trade or business carried on;

“postal services” means the service of conveying letters, parcels, packets or other articles from one place to another by post and the incidental services of receiving, collecting, sorting and delivering such articles;

“public authority” means each public authority within the meaning of section 6 of the Human Rights Act 1998;

“public money” means—
(a) moneys made available directly or indirectly by—
(i) the National Assembly for Wales;
(ii) the Welsh Ministers;
(iii) Parliament;
(iv) Ministers of the Crown; or
(v) an institution of the European Communities;
(b) moneys provided by virtue of any enactment;

“telecommunications service” means any service that consists of providing access to, or facilities for making use of, any system which exists (whether wholly or partly in the United Kingdom or elsewhere) for the purpose of facilitating the transmission of communications by any means involving the use of electrical, magnetic or electro-magnetic energy (including the apparatus comprised in the system), but does not include broadcasting, radio, or television;

“Welsh language authority” means a person upon whom an enactment confers or imposes functions of—
(a) imposing or enforcing on other persons duties relating to the Welsh language,
(b) determining the duties relating to the Welsh language that are imposed on other persons, or
(c) deciding challenges to the duties relating to the Welsh language that are imposed on other persons.
Words substituted by Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010/1158 Sch.2(2) para.59(2) (May 5, 2010)

Entry inserted by National Assembly for Wales (Legislative Competence) (Education) Order 2010/1209 art.2(2) (April 13, 2010: insertion has effect subject to transitory provision specified in SI 2010/1209 art.3(1))

Words inserted by Education and Skills Act 2008 c. 25 Pt 5 c.1 s.149(2) (January 26, 2009)

Words substituted by National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008/1036 art.2(2) (April 10, 2008)

Words repealed by National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008/3132 art.6(a) (December 11, 2008)

Entries inserted by Further Education and Training Act 2007 c. 25 Pt 4 s.27(2) (December 23, 2007)

Words inserted by Education and Skills Act 2008 c. 25 Pt 5 c.1 s.149(3) (January 26, 2009)

Words substituted by Education and Skills Act 2008 c. 25 Pt 5 c.1 s.149(4) (January 26, 2009)

Words substituted by Education and Skills Act 2008 c. 25 Pt 5 c.1 s.149(5) (January 26, 2009)

Entry inserted by National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008/1036 art.2(3) (April 10, 2008)

Words repealed by National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008/3132 art.6(b) (December 11, 2008)

Entry inserted by National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008/3132 art.2 (December 11, 2008)

Words inserted by Further Education and Training Act 2007 c. 25 Pt 4 s.27(3) (December 23, 2007)

Definition inserted by National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008/1036 art.2(4) (April 10, 2008)

Definitions inserted by Education and Skills Act 2008 c. 25 Pt 5 c.1 s.149(6) (January 26, 2009)

Entries inserted by National Assembly for Wales (Legislative Competence) (Environment) Order 2010/248 art.2 (February 11, 2010)


Amended by Waste (England and Wales) Regulations 2011/988 Sch.4(1) para.7(2) (March 29, 2011)

2008 c. 29. See Part 4 for the requirement for development consent.

Entries inserted by National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007/910 art.3(3) (May 25, 2007 immediately after the end of the initial period as specified in 2006 c.32 s.161(5))

Definition inserted by National Assembly for Wales (Legislative Competence) (Health and Health Services and Social Welfare) Order 2010/236 art.2(3) (February 11, 2010)

Entry inserted by National Assembly for Wales (Legislative Competence) (Health and Health Services and Social Welfare) Order 2010/236 art.2(2) (February 11, 2010)

Words inserted by Local Transport Act 2008 c. 26 Pt 7 s.122 (January 26, 2009)

Entry inserted by National Assembly for Wales (Legislative Competence) (Transport) Order 2010/1208 art.2(2) (April 13, 2010)

Words repealed by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(7)(a) (November 19, 2009)

Entry inserted by National Assembly for Wales (Legislative Competence) (Housing) (Fire Safety) Order 2010/1210 art.2(2) (April 13, 2010)

Entries inserted by National Assembly for Wales (Legislative Competence) (Housing and Local Government) Order 2010/1838 art.2(2) (July 22, 2010)

Words inserted by Local Government and Public Involvement in Health Act 2007 c. 28 Sch.17 para.2 (December 30, 2007)

Words repealed by National Assembly for Wales (Legislative Competence) (Local Government) Order 2010/1211 art.2(2) (April 13, 2010)
Commencement

Sch. 5(1) para. 1: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent

Sch. 5(1) para. 1(a)-(fff): United Kingdom
PART 2

[ EXCEPTIONS TO MATTERS AND GENERAL RESTRICTIONS ]

Notes
1 Words substituted by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(8) (November 19, 2009)

Functions of Ministers of the Crown

Law In Force

1 [ Existing Sch.5 paras 1–6 are not repealed but have been moved under a new heading entitled “General restrictions” as part of the amendment inserting Sch.5 para.A1. ]

Notes
1 Sch.5 para.A1 is inserted and existing Sch.5 paras 1-6 are moved under a new heading entitled "General restrictions" by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(9) (November 19, 2009)

Commencement
Sch. 5(2) para. 1(1)-(2): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 5(2) para. 1(1)-(2): United Kingdom

Criminal offences

Law In Force

2 [ Existing Sch.5 paras 1–6 are not repealed but have been moved under a new heading entitled “General restrictions” as part of the amendment inserting Sch.5 para.A1. ]

Notes
1 Sch.5 para.A1 is inserted and existing Sch.5 paras 1-6 are moved under a new heading entitled "General restrictions" by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(9) (November 19, 2009)

Commencement
Sch. 5(2) para. 2(1)-(2)(b): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))
[Police areas]¹

Notes
¹ Added by Local Government and Public Involvement in Health Act 2007 c. 28 Sch.17 para.3 (December 30, 2007)

[2A
[Existing Sch.5 paras 1–6 are not repealed but have been moved under a new heading entitled “General restrictions” as part of the amendment inserting Sch.5 para.A1.]²¹

Notes
¹ Added by Local Government and Public Involvement in Health Act 2007 c. 28 Sch.17 para.3 (December 30, 2007)
² Sch.5 para.A1 is inserted and existing Sch.5 paras 1-6 are moved under a new heading entitled "General restrictions" by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(9) (November 19, 2009)

Extent
Sch. 5(2) para. 2A: United Kingdom

Enactments other than this Act

Law In Force

3
[Existing Sch.5 paras 1–6 are not repealed but have been moved under a new heading entitled “General restrictions” as part of the amendment inserting Sch.5 para.A1.]¹

Notes
¹ Sch.5 para.A1 is inserted and existing Sch.5 paras 1-6 are moved under a new heading entitled "General restrictions" by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(9) (November 19, 2009)

Commencement
Sch. 5(2) para. 3: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 5(2) para. 3: United Kingdom
4
[Existing Sch.5 paras 1–6 are not repealed but have been moved under a new heading entitled “General restrictions” as part of the amendment inserting Sch.5 para.A1.]¹

Notes
¹ Sch.5 para.A1 is inserted and existing Sch.5 paras 1-6 are moved under a new heading entitled "General restrictions" by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(9) (November 19, 2009)

Commencement
Sch. 5(2) para. 4: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 5(2) para. 4: United Kingdom

5
[Existing Sch.5 paras 1–6 are not repealed but have been moved under a new heading entitled “General restrictions” as part of the amendment inserting Sch.5 para.A1.]¹

Notes
¹ Sch.5 para.A1 is inserted and existing Sch.5 paras 1-6 are moved under a new heading entitled "General restrictions" by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(9) (November 19, 2009)

Commencement
Sch. 5(2) para. 5: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 5(2) para. 5: United Kingdom

This Act
[Exceptions to matters]¹

¹ Sch. 5 para. A1 is inserted and existing Sch. 5 paras 1-6 are moved under a new heading entitled "General restrictions" by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(9) (November 19, 2009)

[ A1.]
These are the exceptions mentioned in section 94(4)(a) and (7)—

[ Economic development (field 4 of Part 1) ]

(1) Generation of electricity at generating stations whose construction, extension or operation requires—
   (a) the consent of the Secretary of State, or
   (b) the authority of an order granting development consent under the Planning Act 2008, and for this purpose, the reference to consent of the Secretary of State is a reference to consent under powers to regulate generation of electricity.

(2) Transmitting, distributing or supplying electricity.

(3) Energy conservation, apart from the encouragement of energy efficiency otherwise than by prohibition or regulation.

(4) Nuclear energy and nuclear installations, including—
   (a) nuclear safety, and
   (b) liability for nuclear occurrences,
but this paragraph does not include disposal of very low level radioactive waste moved from a site whose use requires a nuclear site licence under the Nuclear Installations Act 1965³.

[ Highways and transport (field 10 of Part 1) ]

(1) Registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to those services.

[(1A) Road freight transport services, including goods vehicles operating licensing.]²

[(2) Regulation of the use of relevant vehicles on roads, the construction and use of relevant vehicles, and conditions under which relevant vehicles may be so used, apart from—
   (a) regulation of use of relevant vehicles carrying animals for the purposes of protecting human, animal, fish or plant health or the environment, [...]⁴
   (b) regulation relating to matter 10.1 [, and]²]
(c) regulation of the description of vehicle which may be used pursuant to learner transport arrangements (including description by reference to a vehicle's construction or equipment), but not including the setting of technical standards for construction or equipment which differ from the standards that would or might otherwise apply to that vehicle.]

For the purpose of this paragraph, “relevant vehicles” means motor vehicles, mobile machinery and agricultural and forestry tractors.

2

(3) Road traffic offences.

(4) Driver licensing.

(5) Driving instruction.

(6) Insurance of motor vehicles.

(7) Drivers' hours.

(8) Traffic regulation on special roads (apart from regulation relating to matter 10.1).

(9) Pedestrian crossings.

(10) Traffic signs (apart from the placing and maintenance of traffic signs within the meaning of section 177 of the Transport Act 2000 for purposes relating to matter 10.1).

(11) Speed limits.

(12) Public service vehicle operator licensing.

(13) Provision and regulation of railway services, apart from financial assistance which—
   (a) does not relate to the carriage of goods,
   (b) is not made in connection with a railway administration order, and
   (c) is not made in connection with [Regulation (EC) No 1370/2007 of the European Parliament and of the Council on public passenger transport services by rail and by road].

(14) Transport security [ (apart from regulation relating to the carriage of supervising adults on vehicles used pursuant to learner transport arrangements)].

(14A) Aviation, air transport, airports and aerodromes, apart from—
   (a) financial assistance to providers or proposed providers of air transport services or airport facilities or services,
   (b) strategies by the Welsh Ministers or local or other public authorities about provision of air services, and
   (c) regulation of the use of aircraft carrying animals for the purpose of protecting—
      (i) human health, apart from the health of persons in aircraft,
      (ii) animal, fish or plant health, or
      (iii) the environment.

2

(15) Shipping, apart from—
   (a) financial assistance for shipping services to, from or within Wales, and
   (b) regulation of the use of vessels carrying animals for the purposes of protecting—
      (i) human health, apart from the health of persons on vessels,
      (ii) animal, fish or plant health, or
(iii) the environment.

2.

(16) Navigational rights and freedoms, apart from regulation of works which may obstruct or endanger navigation.

(17) Technical and safety standards of vessels.

[(18) Harbours, docks, piers and boatslips, apart from—

(a) those used or required wholly or mainly for the fishing industry, for recreation, or for communications between places in Wales (or for two or more of those purposes), and

(b) regulation for the purposes of protecting human, animal, fish or plant health or the environment.

(19) Carriage of dangerous goods, including transport of radioactive material.] 2

[In paragraphs (2) and (14) “learner transport arrangements” means arrangements of the kind described in matter 5.10 which consist of the provision of motor vehicles and are made by—

(a) public authorities (within the meaning of field 15) exercising functions relating to education or training, or

(b) institutions or other bodies concerned with the provision of education or training.

] 8

Social welfare (field 15 of Part 1)

(1) Child support.

(2) Child trust funds, apart from subscriptions to such funds by—

(a) a county council or county borough council in Wales, or

(b) the Welsh Ministers.

(3) Tax credits.

(4) Child benefit and guardian's allowance.

(5) Social security.

(6) Independent living funds.

(7) Motability.

(8) Vaccine damage payments.

(9) Intercountry adoption, apart from adoption agencies and their functions, and functions of the “Central Authority” under the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption.

(10) The Children's Commissioner established under the Children Act 2004.

(11) Family law and proceedings apart from—

(a) welfare advice to courts, representation and provision of information, advice and other support to children ordinarily resident in Wales and their families, and

(b) Welsh family proceedings officers.

(12) Welfare foods.

[ Sport and recreation (field 16 of Part 1)

(1) Betting, gaming and lotteries. ] 9

[ Water and flood defence (field 19 of Part 1)
(1) Appointment and regulation of any water undertaker whose area is not wholly or mainly in Wales.

(2) Licensing and regulation of any licensed water supplier within the meaning of the Water Industry Act 1991\(^\text{10}\), apart from regulation in relation to licensed activities using the supply system of a water undertaker whose area is wholly or mainly in Wales.\(^1\)

Notes

1 Sch.5 para.A1 is inserted and existing Sch.5 paras 1-6 are moved under a new heading entitled "General restrictions" by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(9) (November 19, 2009)

2 Amended by National Assembly for Wales (Legislative Competence) (Environment) Order 2010/248 art.3 (February 11, 2010)

3 1965 c.57. There have been amendments to section 1 of this Act, which restricts certain nuclear installations to licensed sites.

4 Word repealed by National Assembly for Wales (Legislative Competence) (Transport) Order 2010/1208 art.3(2)(a) (April 13, 2010)

5 Added by National Assembly for Wales (Legislative Competence) (Transport) Order 2010/1208 art.3(2)(b) (April 13, 2010)

6 Words substituted by National Assembly for Wales (Legislative Competence) (Transport) Order 2010/1208 art.4(2) (April 13, 2010)

7 Words inserted by National Assembly for Wales (Legislative Competence) (Transport) Order 2010/1208 art.3(3) (April 13, 2010)

8 Words and (a) and (b) inserted by National Assembly for Wales (Legislative Competence) (Transport) Order 2010/1208 art.3(4) (April 13, 2010)

9 Entry inserted by National Assembly for Wales (Legislative Competence) (Culture and Other Fields) Order 2010/1212 art.3(3) (April 13, 2010)

10 1991 c.56. Amendments to provide for the licensing of water suppliers other than water undertakers were made by the Water Act 2003 (c. 37), section 56 and Schedule 4, paragraphs 1–3.

Extent

Sch. 5(2)(1) para. A1(1B)-(2C): United Kingdom

[General restrictions]\(^1\)

Notes

1 Sch.5 para.A1 is inserted and existing Sch.5 paras 1-6 are moved under a new heading entitled "General restrictions" by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(9) (November 19, 2009)
[Functions of Ministers of the Crown]¹

Notes
¹ Sch.5 para. A1 is inserted and existing Sch.5 paras 1-6 are moved under a new heading entitled "General restrictions" by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(9) (November 19, 2009)

Law In Force

[1]

(1) A provision of an Assembly Measure cannot remove or modify, or confer power by subordinate legislation to remove or modify, any function of a Minister of the Crown.

(2) A provision of an Assembly Measure cannot confer or impose, or confer power by subordinate legislation to confer or impose, any function on a Minister of the Crown.

¹

Notes
¹ Sch.5 para. A1 is inserted and existing Sch.5 paras 1-6 are moved under a new heading entitled "General restrictions" by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(9) (November 19, 2009)

Extent
Sch. 5(2)(2) para. 1(1)-(2): United Kingdom

[Criminal offences]¹

Notes
¹ Sch.5 para. A1 is inserted and existing Sch.5 paras 1-6 are moved under a new heading entitled "General restrictions" by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(9) (November 19, 2009)

Law In Force

[2]

(1) A provision of an Assembly Measure cannot create, or confer power by subordinate legislation to create, any criminal offence punishable—
   (a) on summary conviction, with imprisonment for a period exceeding the prescribed term or with a fine exceeding the amount specified as level 5 on the standard scale, or
   (b) on conviction on indictment, with a period of imprisonment exceeding two years.

(2) In sub-paragraph (1) “the prescribed term” means—
   (a) where the offence is a summary offence, 51 weeks, and
   (b) where the offence is triable either way, twelve months.

¹
Notes
1 Sch.5 para. A1 is inserted and existing Sch.5 paras 1-6 are moved under a new heading entitled "General restrictions" by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(9) (November 19, 2009)

Extent
Sch. 5(2)(2) para. 2(1)-(2)(b): United Kingdom

[ *Police areas* ]\(^1\)

Notes
1 Sch.5 para. A1 is inserted and existing Sch.5 paras 1-6 are moved under a new heading entitled "General restrictions" by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(9) (November 19, 2009)

[2A
A provision of an Assembly Measure cannot make any alteration in police areas.
]\(^1\)

Notes
1 Sch.5 para. A1 is inserted and existing Sch.5 paras 1-6 are moved under a new heading entitled "General restrictions" by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(9) (November 19, 2009)

Extent
Sch. 5(2)(2) para. 2A: United Kingdom

[ *Enactments other than this Act* ]\(^1\)

Notes
1 Sch.5 para. A1 is inserted and existing Sch.5 paras 1-6 are moved under a new heading entitled "General restrictions" by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(9) (November 19, 2009)

[3
[(1) A provision of an Assembly Measure cannot make modifications of, or confer power by subordinate legislation to make modifications of, any of the provisions listed in the Table below—
]
### TABLE

<table>
<thead>
<tr>
<th>Enactment</th>
<th>Provisions protected from modification</th>
</tr>
</thead>
<tbody>
<tr>
<td>European Communities Act 1972 (c. 68)</td>
<td>The whole Act</td>
</tr>
<tr>
<td>Data Protection Act 1998 (c. 29)</td>
<td>The whole Act</td>
</tr>
<tr>
<td>Government of Wales Act 1998 (c. 38)</td>
<td>Sections 144(7), 145, 145A and 146A(1)</td>
</tr>
<tr>
<td>Human Rights Act 1998 (c. 42)</td>
<td>The whole Act</td>
</tr>
<tr>
<td>Civil Contingencies Act 2004 (c. 36)</td>
<td>The whole Act</td>
</tr>
<tr>
<td>Re-Use of Public Sector Information Regulations 2005 (S.I. 2005/1505)</td>
<td>The whole set of Regulations</td>
</tr>
</tbody>
</table>

(2) Sub-paragraph (1), so far as it applies in relation to sections 145, 145A and 146A(1) of the Government of Wales Act 1998, does not apply to a provision to which sub-paragraph (3) applies.

(3) This sub-paragraph applies to a provision of an Assembly Measure which—

- (a) is a provision relating to matter 14.1,
- (b) provides for the enforcement of a provision relating to matter 14.1 or is otherwise appropriate for making such a provision effective, or
- (c) is otherwise incidental to, or consequential on, such a provision.

### Notes

1. Sch.5 para.A1 is inserted and existing Sch.5 paras 1-6 are moved under a new heading entitled "General restrictions" by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(9) (November 19, 2009)

2. Sch.5 Part 2 para.3 renumbered as Sch.5 Part 2 para.3(1) and Sch.5 Part 2 para.3(2) and (3) inserted by Budget Responsibility and National Audit Act 2011 c. 4 Sch.6 para.4(2) (May 22, 2011)

### Extent

Sch. 5(2)(2) para. 3(1)-(3)(c): United Kingdom

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1. Law In Force

[4]

A provision of an Assembly Measure cannot make modifications of, or confer power by subordinate legislation to make modifications of, any provision of an Act of Parliament other than this Act which requires sums required for the repayment of, or the payment of interest on, amounts borrowed by the Welsh Ministers to be charged on the Welsh Consolidated Fund.

### Notes

1. Sch.5 para.A1 is inserted and existing Sch.5 paras 1-6 are moved under a new heading entitled "General restrictions" by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(9) (November 19, 2009)
A provision of an Assembly Measure cannot make modifications of, or confer power by subordinate legislation to make modifications of, any functions of the Comptroller and Auditor General [ or the National Audit Office ] \(^2\).

1 Sch.5 para.A1 is inserted and existing Sch.5 paras 1-6 are moved under a new heading entitled "General restrictions" by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(9) (November 19, 2009)  
2 Words inserted by Budget Responsibility and National Audit Act 2011 c. 4 Sch.5(2) para.27(1) (April 1, 2012)
(5) But, subject to sub-paragraph (6), a provision to which paragraph 3(3) applies cannot modify, or confer power by subordinate legislation to modify, paragraph 3 of Schedule 8.

(6) Sub-paragraph (5) does not prevent the conferral of functions on a committee of the Assembly that—

(a) does not consist of or include any of the following persons—

(i) the First Minister or any person designated to exercise functions of the First Minister,

(ii) a Welsh Minister appointed under section 48,

(iii) the Counsel General or any person designated to exercise the functions of the Counsel General, or

(iv) a Deputy Welsh Minister, and

(b) is not chaired by an Assembly member who is a member of a political group with an executive role.

Notes

1 Sch.5 para.A1 is inserted and existing Sch.5 paras 1-6 are moved under a new heading entitled "General restrictions" by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(9) (November 19, 2009)

2 Substituted by National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2010/245 art.4(2) (February 11, 2010)

3 Added by Budget Responsibility and National Audit Act 2011 c. 4 Sch.6 para.4(3) (May 22, 2011)

Extent

Sch. 5(2)(2) para. 6(1)-(6)(b): United Kingdom

PART 3

[ EXCEPTIONS FROM GENERAL RESTRICTIONS IN PART 2 ]

Notes

1 Words substituted by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(10) (November 19, 2009)

Law In Force

[ 6Z Interpretation
In this Part “general restrictions in Part 2” means paragraphs 1 to 6 of Part 2.

Notes

1 Added by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(11) (November 19, 2009)
7 Functions of Ministers of the Crown

(1) The general restrictions in Part 2 do not prevent a provision of an Assembly Measure removing or modifying, or conferring power by subordinate legislation to remove or modify, any function of a Minister of the Crown if the Secretary of State consents to the provision.

(2) Part 2 does not prevent a provision of an Assembly Measure relating to matter 20.1 or 20.2 of Part 1, conferring or imposing, or conferring power by subordinate legislation to confer or impose, any function on a Minister of the Crown if the Secretary of State consents to the provision, but functions so conferred or imposed may not be made enforceable against Ministers of the Crown by means of criminal offences. ¹

Notes

¹ Existing Sch.5 para.7 renumbered as Sch.5 para.7(1) and Sch.5 para.7(2) inserted by National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2010/245 art.5(2) (February 11, 2010)

Commencement

Sch. 5(3) para. 7: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

7A Police areas

The general restrictions in Part 2 do not ² prevent a provision of an Assembly Measure making an alteration to the boundary of a police area in Wales if the Secretary of State consents to the provision.

Notes

¹ Added by Local Government and Public Involvement in Health Act 2007 c. 28 Sch.17 para.4 (December 30, 2007)
² Words substituted by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(12) (November 19, 2009)

Extent

Sch. 5(3) para. 7A: United Kingdom
8 [ Comptroller and Auditor General and National Audit Office ]
[ The general restrictions in Part 2 do not ]
prevent a provision of an Assembly Measure modifying, or conferring power by subordinate legislation to modify, any enactment relating to the Comptroller and Auditor General [ or the National Audit Office ] if the Secretary of State consents to the provision.

Notes
1 Words substituted by Budget Responsibility and National Audit Act 2011 c. 4 Sch.5(2) para.27(2) (April 1, 2012)
2 Words substituted by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(12) (November 19, 2009)
3 Words inserted by Budget Responsibility and National Audit Act 2011 c. 4 Sch.5(2) para.27(1) (April 1, 2012)

Commencement
Sch. 5(3) para. 8: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 5(3) para. 8: United Kingdom

9 Restatement
[ The general restrictions in Part 2 do not ]
prevent a provision of an Assembly Measure—
(a) restating the law (or restating it with such modifications as are not prevented by that Part), or
(b) repealing or revoking any spent enactment, or conferring power by subordinate legislation to do so.

Notes
1 Words substituted by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(12) (November 19, 2009)

Commencement
Sch. 5(3) para. 9(a)-(b): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 5(3) para. 9(a)-(b): United Kingdom

10 Subordinate legislation
[ The general restrictions in Part 2 do not ]
prevent an Assembly Measure making modifications of, or conferring power by subordinate legislation to make modifications of, an enactment for or in connection with any of the following purposes—
(a) making different provision about the document by which a power to make, confirm or approve subordinate legislation is to be exercised,
(b) making provision (or no provision) for the procedure, in relation to the Assembly, to which legislation made in the exercise of such a power (or the instrument or other document in which it is contained) is to be subject, and
(c) applying any enactment comprised in or made under an Assembly Measure relating to the documents by which such powers may be exercised.

Notes

1 Words substituted by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(12) (November 19, 2009)

Commencement

Sch. 5(3) para. 10(a)-(c): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent

Sch. 5(3) para. 10(a)-(c): United Kingdom


[The general restrictions in Part 2 do not ] ² prevent an Assembly Measure making modifications of, or conferring power by subordinate legislation to make modifications of, section 31(6) of the Data Protection Act 1998 so that it applies to complaints under any Assembly Measure relating to matter 9.1 in Part 1.

1

Notes

1 Added by National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007/910 art.4 (May 25, 2007 immediately after the end of the initial period as specified in 2006 c.32 s.161(5))

2 Words substituted by National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009/3006 art.2(12) (November 19, 2009)

Extent

Sch. 5(3) para. 11: United Kingdom
SCHEDULE 6
REFERENDUMS ON COMMENCEMENT OF ASSEMBLY ACT PROVISIONS

Section 103

Entitlement to vote

Law In Force

1

(1) The persons entitled to vote in a referendum held by virtue of section 103(1) are those who would be entitled to vote in a general election of Assembly members if one were held on the date of the poll at the referendum (as to which see section 12).

(2) But an Order in Council under section 103(1) may include provision for disregarding alterations made in a register of electors after a specified date.

Commencement

Sch. 6 para. 1(1)-(2): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 6 para. 1(1)-(2): United Kingdom

Conduct etc. of referendum

Law In Force

2

(1) An Order in Council under section 103(1) may make provision for and in connection with the referendum which it causes to be held.

(2) Such an Order in Council may, in particular, apply or incorporate, with or without modification, any enactment relating to referendums, elections or donations.

(3) In sub-paragraph (2) “donations” means anything which is or corresponds to a donation within the meaning of Part 4 of the Political Parties, Elections and Referendums Act 2000 (c. 41).

Commencement

Sch. 6 para. 2(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and
Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 6 para. 2(1)-(3): United Kingdom

Referendum question and statement

☐ Law In Force

3

(1) An Order in Council under section 103(1)—
   (a) must specify the question to be included on the ballot paper at the referendum which it
       causes to be held, and
   (b) may specify a statement to precede the question on that ballot paper.

(2) A question or statement specified by virtue of sub-paragraph (1) must be specified in both
    English and Welsh.

(3) The Secretary of State must, no later than the time at which paragraph (b) of section 104(4) of
    the Political Parties, Elections and Referendums Act 2000 (report stating views as to intelligibility
    of referendum question expressed by Electoral Commission) is complied with, send to the First
    Minister a copy of the report laid before Parliament under that paragraph.

(4) As soon as is reasonably practicable after the First Minister receives a copy of a report under
    sub-paragraph (3) the First Minister must lay a copy of the report before the Assembly.

Commencement
Sch. 6 para. 3(1)-(4): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 6 para. 3(1)-(4): United Kingdom

Date of referendum

☐ Law In Force

4

(1) An Order in Council under section 103(1) must specify the date of the poll at the referendum
    which it causes to be held.
(2) The Secretary of State may by order vary the date of the poll specified in such an Order in Council (including a date previously set by virtue of this sub-paragraph) if it appears inappropriate for it to be held on that date.

(3) No order may be made under sub-paragraph (2) without the consent of the Welsh Ministers.

(4) A statutory instrument containing an order under sub-paragraph (2) is subject to annulment in pursuance of a resolution of either House of Parliament.

**Comencement**

Sch. 6 para. 4(1)-(4): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

**Extent**

Sch. 6 para. 4(1)-(4): United Kingdom

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**Referendum period**

**Law In Force**

5

An Order in Council under section 103(1) must determine the referendum period for the purposes of Part 7 of the Political Parties, Elections and Referendums Act 2000 in the case of the referendum which it causes to be held.

**Comencement**

Sch. 6 para. 5: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

**Extent**

Sch. 6 para. 5: United Kingdom

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**Combination of polls**

**Law In Force**

6

An Order in Council under section 103(1) may make provision for and in connection with the combination of the poll at the referendum which it causes to be held with that at an election or at another referendum (or both).
**Encouraging voting**

- Law In Force

7

An Order in Council under section 103(1) may authorise or require the Electoral Commission to do things for the purpose of encouraging voting in the referendum which it causes to be held (including imposing obligations or conferring powers on counting officers or other persons).

**Provision of information to voters**

- Law In Force

8

(1) This paragraph applies in relation to a referendum held by virtue of section 103(1) if the Electoral Commission have not, before the appropriate day, designated an organisation under section 108 of the Political Parties, Elections and Referendums Act 2000 (c. 41) (organisations to whom assistance is available under section 110 of that Act) in relation to each possible outcome of the referendum.

(2) The Electoral Commission may take such steps as they think appropriate to provide such information for persons entitled to vote in the referendum as the Commission think is likely to promote awareness among those persons about the arguments for each answer to the referendum question.

(3) Information provided in pursuance of sub-paragraph (2) must be provided by whatever means the Electoral Commission think is most likely to secure (in the most cost-effective way) that the information comes to the notice of everyone entitled to vote in the referendum.
(4) In this paragraph “the appropriate day” means—

(a) if an order is made under section 109(6) of the Political Parties, Elections and Referendums Act 2000 (variation of period for applications for designation under section 108 or period for determination of applications or both) in the case of the referendum, such day as that order specifies as the appropriate day,

(b) if no such order is made and one or more applications are made in relation to each possible outcome of the referendum before the 29th day of the referendum period, the 43rd day of the referendum period, and

(c) in any other case in which no such order is made, the 29th day of the referendum period.

**Commencement**

Sch. 6 para. 8(1)-(4)(c): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

**Extent**

Sch. 6 para. 8(1)-(4)(c): United Kingdom

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**Referendum material**

☐ Law In Force

9

Section 126 of the Political Parties, Elections and Referendums Act 2000 (details to appear on referendum material) does not apply to any material published for the purposes of a referendum held by virtue of section 103(1) if the publication is required under or by virtue of the Order in Council that causes the referendum to be held.

**Commencement**

Sch. 6 para. 9: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

**Extent**

Sch. 6 para. 9: United Kingdom
Funding and accounts

An Order in Council under section 103(1) must include provision for the funding of costs of the referendum which it causes to be held (and may, in particular, include provision for the costs to be charged on, or payable out of, the Welsh Consolidated Fund).

Commencement

Sch. 6 para. 10: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 6 para. 10: United Kingdom

An Order in Council under section 103(1) must include provision as to the preparation and audit of accounts relating to payments made by virtue of provision included in the Order in Council under paragraph 10.

Commencement

Sch. 6 para. 11: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 6 para. 11: United Kingdom

No legal challenge to referendum result

(1) No court may entertain any proceedings for questioning the number of ballot papers counted or votes cast in a referendum held by virtue of section 103(1) as certified by the Chief Counting Officer or a counting officer unless—
   (a) the proceedings are brought by a claim for judicial review, and
   (b) the claim form is filed before the end of the permitted period.

(2) In sub-paragraph (1) “the permitted period” means the period of six weeks beginning with—
(a) the date on which the Chief Counting Officer or counting officer gives a certificate as to the number of ballot papers counted and votes cast in the referendum, or
(b) if the Chief Counting Officer or counting officer gives more than one such certificate, the date on which the last is given.

Commencement
Sch. 6 para. 12(1)-(2)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 6 para. 12(1)-(2)(b): United Kingdom

Supplementary

Law In Force

13
An Order in Council under section 103(1) may include provision creating criminal offences.

Commencement
Sch. 6 para. 13: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 6 para. 13: United Kingdom

Interpretation

Law In Force

14
Expressions used in this Schedule and in Part 7 of the Political Parties, Elections and Referendums Act 2000 (c. 41) have the same meaning in this Schedule as in that Part.

Commencement
Sch. 6 para. 14: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the
Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 6 para. 14: United Kingdom

SCHEDULE 7

ACTS OF THE ASSEMBLY

Section 108

PART 1

SUBJECTS

Law In Force

1 [Agriculture, forestry, animals, plants and rural development]¹

[Agriculture, Horticulture, Forestry, Fisheries and fishing, Animal health and welfare, Plant health, Plant varieties and seeds, Rural development.]

In this Part of this Schedule “animal” means—

(a) all mammals apart from humans, and
(b) all animals other than mammals;

and related expressions are to be construed accordingly. ]²

Exceptions—

Hunting with dogs.

Regulation of scientific or other experimental procedures on animals.

Import and export control, and regulation of movement, of animals, plants and other things, apart from (but subject to provision made by or by virtue of any Act of Parliament relating to the control of imports or exports)—

(a) the movement into and out of, and within, Wales of animals, animal products, […]³ plants, plant products and other things related to them for the purposes of protecting human, animal [or plant]⁴ health, animal welfare or the environment or observing or implementing obligations under the Common Agricultural Policy, and

(b) the movement into and out of, and within, Wales of animal feedstuff […]⁵ [ , ]⁶ fertilisers and pesticides (or things treated by virtue of any enactment as pesticides) for the purposes of protecting human, animal [or plant]⁷ health or the environment.

Authorisations of veterinary medicines and medicinal products.

Notes

¹ Heading substituted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010/2968 art.3(1) (December 16, 2010)

² Substituted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010/2968 art.3(2) (December 16, 2010)


5 Words repealed by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010/2968 art.3(3)(b)(i) (December 16, 2010)

6 Words inserted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2007/2143 art.3(b)(i) (July 26, 2007)


Commencement
Sch. 7(1) para. 1: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 7(1) para. 1(a)-(b): United Kingdom

2 Ancient monuments and historic buildings

Commencement
Sch. 7(1) para. 2: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 7(1) para. 2: United Kingdom

3 Culture

Exceptions–
- Public lending right.
- Broadcasting.
- Classification of films, and video recordings.
- Government indemnities for objects on loan.
- Payments to Her Majesty's Revenue and Customs in respect of property accepted in satisfaction of tax, apart from property in which there is a Welsh national interest.
4 Economic development

Economic regeneration and development, including social development of communities, reclamation of derelict land and improvement of the environment. Promotion of business and competitiveness.

Exceptions—

- Fiscal, economic and monetary policy and regulation of international trade.
- Regulation of anti-competitive practices and agreements, abuse of dominant position and monopolies and mergers.
- Intellectual property, apart from plant varieties.
- Creation, operation, regulation and dissolution of types of business association.
- Insolvency.
- Product standards, safety and liability, apart from in relation to food (including packaging and other materials which come into contact with food), agricultural and horticultural products, animals and animal products, seeds, fertilisers and pesticides (and things treated by virtue of any enactment as pesticides).
- Consumer protection, including the sale and supply of goods to consumers, consumer guarantees, hire purchase, trade descriptions, advertising and price indications, apart from in relation to food (including packaging and other materials which come into contact with food), agricultural and horticultural products, animals and animal products, seeds, fertilisers and pesticides (and things treated by virtue of any enactment as pesticides).
- Financial services, including investment business, banking and deposit-taking, collective investment schemes and insurance.
- Occupational and personal pension schemes (including schemes which make provision for compensation for loss of office or employment, compensation for loss or diminution of emoluments, or benefits in respect of death or incapacity resulting from injury or disease), apart from schemes for or in respect of Assembly members, the First Minister, Welsh Ministers appointed under section 48, the Counsel General or Deputy Welsh Ministers and schemes for or in respect of members of local authorities.
- Financial markets, including listing and public offers of securities and investments, transfers of securities, insider dealing and money laundering.
- Telecommunications, wireless telegraphy (including electromagnetic disturbance), internet services and electronic encryption.
- Postal services, post offices and the Post Office, apart from financial assistance for the provision of services (other than postal services and services relating to money or postal orders) to be provided from public post offices.
- Generation, transmission and supply of electricity.
- Energy conservation, apart from the encouragement of energy efficiency otherwise than by prohibition or regulation.
Coal, including mining and subsidence, apart from land restoration and other environmental matters.

Oil and gas […]

Nuclear energy and nuclear installations [—
(a) including nuclear safety and liability for nuclear occurrences;
(b) but not including disposal of very low level radioactive waste moved from a site requiring a nuclear site licence.]

Units and standards of weights and measurement and the regulation of trade so far as involving weighing, measuring and quantities.

Industrial Development Advisory Board.

Notes


3 Words inserted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2007/2143 art.4(a) (July 26, 2007)

4 Words inserted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010/2968 art.4(3) (December 16, 2010)


6 Words repealed by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2007/2143 art.4(b) (July 26, 2007)

7 Words inserted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2007/2143 art.4(c) (July 26, 2007)


Commencement

Sch. 7(1) para. 4: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent

Sch. 7(1) para. 4: United Kingdom

Law In Force

5 Education and training

Education, vocational, social and physical training and the careers service. Promotion of advancement and application of knowledge.

Exception—

Research Councils.
6 Environment

Notes
1 Words substituted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010/2968 art.5 (December 16, 2010)
2 Words inserted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2007/2143 art.5 (July 26, 2007)

7 [Fire and rescue services and fire safety]¹
Fire and rescue services. [ Provision of automatic fire suppression systems in newly constructed and newly converted residential premises. ]² Promotion of fire safety otherwise than by prohibition or regulation.

Notes
1 Heading substituted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010/2968 art.6(1) (December 16, 2010)
2 Words inserted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010/2968 art.6(2) (December 16, 2010)
8 Food
Food and food products. Food safety (including packaging and other materials which come into contact with food). Protection of interests of consumers in relation to food.

“Food” includes drink.

Commencement
Sch. 7(1) para. 8: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

9 Health and health services

Exceptions—
Abortion.
Human genetics, human fertilisation, human embryology, surrogacy arrangements.
Xenotransplantation.
Regulation of health professionals (including persons dispensing hearing aids).
Poisons.
Misuse of and dealing in drugs.
Human medicines and medicinal products, including authorisations for use and regulation of prices.
Standards for, and testing of, biological substances (that is, substances the purity or potency of which cannot be adequately tested by chemical means).
Vaccine damage payments.
Welfare foods.
[…]\(^1\) Health and Safety Executive and Employment Medical Advisory Service and provision made by health and safety regulations.

Notes
\(^1\) Words repealed subject to transitional provisions as specified in SI 2008/960 Sch.2 para.11 by Legislative Reform (Health and Safety Executive) Order 2008/960 Sch.3 para.1 (April 1, 2008: repeal has effect subject to transitional provisions as specified in SI 2008/960 Sch.2 para.11)

Commencement
Sch. 7(1) para. 9: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))
Extent
Sch. 7(1) para. 9: United Kingdom

Law In Force

10 Highways and transport
Highways, including bridges and tunnels. Streetworks. Traffic management and regulation. Transport facilities and services.

Exceptions—
[ Registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to those services. ]¹
Road freight transport services, including goods vehicles operating licensing.
[ Regulation of the construction and equipment of motor vehicles and trailers, and regulation of the use of motor vehicles and trailers on roads, apart from—
(a) any such regulation which—
(i) relates to schemes for imposing charges in respect of the use or keeping of vehicles on Welsh trunk roads (“trunk road charging schemes”), or
(ii) relates to the descriptions of motor vehicles and trailers which may be used under arrangements for persons to travel to and from the places where they receive education or training, unless the regulation is the setting of technical standards for construction or equipment of motor vehicles or trailers which differ from the standards that would or might otherwise apply to them; and
(b) regulation of the use of motor vehicles and trailers carrying animals for the purpose of protecting human, animal or plant health, animal welfare or the environment.
]²
Road traffic offences.
Driver licensing.
Driving instruction.
Insurance of motor vehicles.
Drivers' hours.
[ Traffic regulation on special roads, apart from regulation relating to trunk road charging schemes.
Pedestrian crossings.
Traffic signs, apart from the placing and maintenance of traffic signs relating to trunk road charging schemes.
Speed limits. ]³
International road transport services for passengers.
Public service vehicle operator licensing.
Documents relating to vehicles and drivers for purposes of travel abroad and vehicles brought temporarily into Wales by persons resident outside the United Kingdom.
Vehicle excise duty and vehicle registration.
Provision and regulation of railway services, apart from financial assistance which—
(a) does not relate to the carriage of goods,
(b) is not made in connection with a railway administration order, and
(c) is not made in connection with Regulation (EC) No 1370/2007 of the European Parliament and of the Council on public passenger transport services by rail and by road.

[Transport] security, apart from regulation relating to the carriage of adults who supervise persons travelling to and from the places where they receive education or training.

Railway heritage.

Aviation, air transport, airports and aerodromes, apart from—

(a) financial assistance to providers or proposed providers of air transport services or airport facilities or services,
(b) strategies by the Welsh Ministers or local or other public authorities about provision of air services, and
(c) regulation of use of aircraft carrying animals for [the purposes of protecting human, animal or plant] health, animal welfare or the environment.

Shipping, apart from—

(a) financial assistance for shipping services to, from or within Wales, and
(b) regulation of use of vessels carrying animals for [the purposes of protecting human, animal or plant] health, animal welfare or the environment.

Navigational rights and freedoms, apart from regulation of works which may obstruct or endanger navigation.

Technical and safety standards of vessels.

[Harbours, docks, piers and boatslips, apart from—

(a) those used or required wholly or mainly for the fishing industry, for recreation, or for communication between places in Wales (or for two or more of those purposes), and
(b) regulation for the purposes of protecting human, animal or plant health, animal welfare or the environment.

Carriage of dangerous goods (including transport of radioactive material).

[Technical specifications for fuel for use in internal combustion engines.]

Notes

1 Words inserted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2007/2143 art.6(a) (July 26, 2007)
2 Words substituted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010/2968 art.7(2) (December 16, 2010)
3 Words substituted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010/2968 art.7(3) (December 16, 2010)
4 Words substituted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010/2968 art.7(4) (December 16, 2010)
5 Words substituted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2007/2143 art.6(d) (July 26, 2007)
6 Words inserted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010/2968 art.7(5) (December 16, 2010)
7 Words substituted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2007/2143 art.6(e) (July 26, 2007)
8 Words substituted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010/2968 art.7(6)(a) (December 16, 2010)
9 Words substituted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010/2968 art.7(6)(b) (December 16, 2010)

10 Words substituted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2007/2143 art.6(f) (July 26, 2007)

11 Words substituted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010/2968 art.7(6)(c) (December 16, 2010)

12 Words inserted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010/2968 art.7(7) (December 16, 2010)

Commencement
Sch. 7(1) para. 10: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 7(1) para. 10: United Kingdom

Law In Force

11 Housing
Housing. Housing finance except schemes supported from central or local funds which provide assistance for social security purposes to or in respect of individuals by way of benefits. Encouragement of home energy efficiency and conservation, otherwise than by prohibition or regulation. Regulation of rent. Homelessness. Residential caravans and mobile homes.

Notes
1 Words substituted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2007/2143 art.7 (July 26, 2007)

Commencement
Sch. 7(1) para. 11: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 7(1) para. 11: United Kingdom

Law In Force

12 Local government
Constitution, structure and areas of local authorities. Electoral arrangements for local authorities. Powers and duties of local authorities and their members and officers. Local government finance. “Local authorities” does not include police authorities.

Exceptions—
Local government franchise.
Electoral registration and administration.
Registration of births, marriages, civil partnerships and deaths.
Licensing of sale and supply of alcohol, provision of entertainment and late night refreshment.
Anti-social behaviour orders.
Local land charges, apart from fees.
Sunday trading.
Provision of advice and assistance overseas by local authorities in connection with carrying on there of local government activities.

Amendments Pending
Sch. 7(1) para. 12: words substituted by Police Reform and Social Responsibility Act 2011 c. 13, Sch. 16(3) para. 353 (date to be appointed)

Commencement
Sch. 7(1) para. 12: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 7(1) para. 12: United Kingdom

Law In Force

13 National Assembly for Wales
Complaints about Assembly members (including provision for and about an office or body for investigating such complaints and reporting outcome of investigations). Assembly Commission. Salaries, allowances, pensions and gratuities for and in respect of Assembly members, the First Minister, Welsh Ministers appointed under section 48, the Counsel General and Deputy Welsh Ministers. Register of interests of Assembly members and the Counsel General. Meaning of Welsh words and phrases in Assembly Measures and Acts of the Assembly, in subordinate legislation made under Assembly Measures and Acts of the Assembly and in other subordinate legislation if made by the Welsh Ministers, the First Minister or the Counsel General. The Welsh Seal. Arrangements for the printing of Acts of the Assembly, of subordinate legislation made under Assembly Measures and Acts of the Assembly and of other subordinate legislation if made by the Welsh Ministers, the First Minister or the Counsel General.

Commencement
Sch. 7(1) para. 13: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 7(1) para. 13: United Kingdom

Law In Force

14 Public administration
Public Services Ombudsman for Wales. [ Auditor General for Wales. ]¹ Audit, examination, regulation and inspection of auditable public authorities. Inquiries [ in respect of matters in relation to which the Welsh Ministers, the First Minister or the Counsel General exercise functions ]² . Equal opportunities in relation to equal opportunity public authorities. Access to information held by open access public authorities.

The following are “auditable public authorities” and “equal opportunity public authorities”—
(a) the Assembly,
(b) the Assembly Commission,
(c) the Welsh Assembly Government,
(d) persons who exercise functions of a public nature and in respect of whom the
Welsh Ministers exercise functions,
(e) persons who exercise functions of a public nature and at least half of the cost of
whose functions in relation to Wales are funded (directly or indirectly) by the Welsh
Ministers, and
(f) persons established by enactment and having power to issue a precept or levy.

The following are “open access public authorities”—
(a) the Assembly,
(b) the Assembly Commission,
(c) the Welsh Assembly Government, and
(d) authorities which are Welsh public authorities, within the meaning of the Freedom
of Information Act 2000 (c. 36).

Exception—
Regulation of the profession of auditor.

Notes

1 Words inserted by Budget Responsibility and National Audit Act 2011 c. 4 Sch.6 para.6 (May 22, 2011)
2 Words inserted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the

Commencement

Sch. 7(1) para. 14: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent

Sch. 7(1) para. 14: United Kingdom

Law In Force

15 Social welfare
Social welfare including social services. Protection and well-being of children (including adoption
and fostering) [ and of young adults ]¹. Care of [ children, ]² young adults, vulnerable persons
and older persons, including care standards. Badges for display on motor vehicles used by disabled
persons.

Exceptions—

Child support.
[ Child trust funds, apart from subscriptions to such funds by—
(a) a county council or county borough council in Wales, or
(b) the Welsh Ministers.
]³

Tax credits.
Child benefit and guardian's allowance.
Social security.
[ Independent Living Funds.
Motability. ]⁴
Intercountry adoption, apart from adoption agencies and their functions, and functions of “the Central Authority” under the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption.

The Children’s Commissioner (established under the Children Act 2004 (c. 31)).

Family law and proceedings, apart from—

(a) [welfare advice] to courts, representation and provision of information, advice and other support to children ordinarily resident in Wales and their families, and

(b) Welsh family proceedings officers.

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Notes

1 Words inserted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010/2968 art.8(1)(a) (December 16, 2010)

2 Word inserted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010/2968 art.8(1)(b) (December 16, 2010)

3 Words substituted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010/2968 art.8(3) (December 16, 2010)

4 Words inserted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2007/2143 art.9 (July 26, 2007)

5 Words substituted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010/2968 art.8(4) (December 16, 2010)

Commencement

Sch. 7(1) para. 15: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent

Sch. 7(1) para. 15: United Kingdom

16 Sport and recreation

Sport and recreational activities.

Exception—

Betting, gaming and lotteries.

Commencement

Sch. 7(1) para. 16: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent

Sch. 7(1) para. 16: United Kingdom

17 Tourism

Tourism.
18 Town and country planning
[Exception—
[Development consent under the Planning Act 2008]².
]

Notes
1 Words substituted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2007/2143 art.10 (July 26, 2007)
2 Words inserted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010/2968 art.9 (December 16, 2010)
3 Words substituted by Localism Act 2011 c. 20 Sch.13(2) para.79 (April 1, 2012)

Commencement
Sch. 7(1) para. 18: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 7(1) para. 18: United Kingdom

19 Water and flood defence
[Water supply, water resources management (including reservoirs), water quality and representation of consumers of water and sewerage services. Flood risk management and coastal protection.
 Exceptions—
Appointment and regulation of any water undertaker whose area is not wholly or mainly in Wales.
Licensing and regulation of any licensed water supplier within the meaning of the Water Industry Act 1991 (c. 56), apart from regulation in relation to licensed activities using the supply system of a water undertaker whose area is wholly or mainly in Wales.
]

Notes
1 Words substituted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2007/2143 art.11 (July 26, 2007)
**PART 2**

**GENERAL RESTRICTIONS**

*Functions of a Minister of the Crown*

1

(1) A provision of an Act of the Assembly cannot remove or modify, or confer power by subordinate legislation to remove or modify, any pre-commencement function of a Minister of the Crown.

(2) A provision of an Act of the Assembly cannot confer or impose, or confer power by subordinate legislation to confer or impose, any function on a Minister of the Crown.

(3) In this Schedule “pre-commencement function” means a function which is exercisable by a Minister of the Crown before the day on which the Assembly Act provisions come into force.
Enactments other than this Act

Law In Force

2

[ (1) A provision of an Act of the Assembly cannot make modifications of, or confer power by subordinate legislation to make modifications of, any of the provisions listed in the Table below—

**TABLE**

<table>
<thead>
<tr>
<th>Enactment</th>
<th>Provisions protected from modification</th>
</tr>
</thead>
<tbody>
<tr>
<td>European Communities Act 1972 (c. 68)</td>
<td>The whole Act</td>
</tr>
<tr>
<td>Data Protection Act 1998 (c. 29)</td>
<td>The whole Act</td>
</tr>
<tr>
<td>Government of Wales Act 1998 (c. 38)</td>
<td>Sections 144(7), 145, 145A and 146A(1)</td>
</tr>
<tr>
<td>Human Rights Act 1998 (c. 42)</td>
<td>The whole Act</td>
</tr>
<tr>
<td>Civil Contingencies Act 2004 (c. 36)</td>
<td>The whole Act</td>
</tr>
<tr>
<td>Re-Use of Public Sector Information Regulations 2005 (S.I. 2005/1505)</td>
<td>The whole set of Regulations</td>
</tr>
</tbody>
</table>

(2) Sub-paragraph (1) does not apply to any provision making modifications, or conferring power by subordinate legislation to make modifications, of section 31(6) of the Data Protection Act 1998\(^2\) so that it applies to complaints under an enactment relating to the provision of redress for negligence in connection with the diagnosis of illness or the care or treatment of any patient (in Wales or elsewhere) as part of the health service in Wales.]\(^1\)

[ (3) Sub-paragraph (1), so far as it applies in relation to sections 145, 145A and 146A(1) of the Government of Wales Act 1998, does not apply to a provision to which sub-paragraph (4) applies.

(4) This sub-paragraph applies to a provision of an Act of the Assembly which—

(a) is a provision relating to the oversight or supervision of the Auditor General or of the exercise of the Auditor General’s functions,

(b) provides for the enforcement of a provision falling within paragraph (a) or is otherwise appropriate for making such a provision effective, or

(c) is otherwise incidental to, or consequential on, such a provision.

\(^1\) Existing Sch.7 para.2 renumbered as Sch.7 para.2(1) and Sch.7 para.2(2) inserted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010/2968 art.10 (December 16, 2010)

\(^2\) Subsection (6) was inserted into section 31 by section 119 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), and has been subject to amendments which are not relevant to this Order.

\(^3\) Added by Budget Responsibility and National Audit Act 2011 c. 4 Sch.6 para.7(2) (May 22, 2011)

Commencement

Sch. 7(2) para. 2: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))
A provision of an Act of the Assembly cannot make modifications of, or confer power by subordinate legislation to make modifications of, any provision of an Act of Parliament other than this Act which requires sums required for the repayment of, or the payment of interest on, amounts borrowed by the Welsh Ministers to be charged on the Welsh Consolidated Fund.

Commencement
Sch. 7(2) para. 3: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 7(2) para. 3: United Kingdom

A provision of an Act of the Assembly cannot make modifications of, or confer power by subordinate legislation to make modifications of, any functions of the Comptroller and Auditor General [ or the National Audit Office ]

Notes
1 Words inserted by Budget Responsibility and National Audit Act 2011 c. 4 Sch.5(2) para.28(1) (April 1, 2012)

Commencement
Sch. 7(2) para. 4: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 7(2) para. 4: United Kingdom

This Act

(1) A provision of an Act of the Assembly cannot make modifications of, or confer power by subordinate legislation to make modifications of, provisions contained in this Act.

(2) Sub-paragraph (1) does not apply to the following provisions—
(a) sections 20, 22, 24, 35(1), 36(1) to (5) and (7) to (11), 53, 54, 78, 146, 147, 148 and 156(2) to (5);
(b) paragraph 8(3) of Schedule 2.
(3) Sub-paragraph (1) does not apply to any provision—
(a) making modifications of so much of any enactment as is modified by this Act, or
(b) repealing so much of any provision of this Act as amends any enactment, if the provision ceases to have effect in consequence of any provision of, or made under, an Act of the Assembly [.] ²
(c) any provision of Schedule 8, other than paragraphs 1(1) to (3), 2(2) to (4) and 3. ]³

(4) Sub-paragraph (1) does not apply in relation to a provision to which paragraph 2(4) applies.

(5) But, subject to sub-paragraph (6), a provision to which paragraph 2(4) applies cannot modify, or confer power by subordinate legislation to modify, paragraph 3 of Schedule 8.

(6) Sub-paragraph (5) does not prevent the conferral of functions on a committee of the Assembly that—
(a) does not consist of or include any of the following persons—
(i) the First Minister or any person designated to exercise functions of the First Minister,
(ii) a Welsh Minister appointed under section 48,
(iii) the Counsel General or any person designated to exercise the functions of the Counsel General, or
(iv) a Deputy Welsh Minister, and
(b) is not chaired by an Assembly member who is a member of a political group with an executive role.

Notes

1 Substituted by National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010/2968 art.11 (December 16, 2010)
2 Added by Budget Responsibility and National Audit Act 2011 c. 4 Sch.6 para.7(3)(a) (May 22, 2011)
3 Added by Budget Responsibility and National Audit Act 2011 c. 4 Sch.6 para.7(3)(b) (May 22, 2011)

Commencement
Sch. 7(2) para. 5(1)-(3)(b): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 7(2) para. 5(1)-(6)(b): United Kingdom
PART 3
EXCEPTIONS FROM PART 2

6 Functions of Ministers of the Crown

(1) Part 2 does not prevent a provision of an Act of the Assembly removing or modifying, or conferring power by subordinate legislation to remove or modify, any pre-commencement function of a Minister of the Crown if—
   (a) the Secretary of State consents to the provision, or
   (b) the provision is incidental to, or consequential on, any other provision contained in the Act of the Assembly.

(2) Part 2 does not prevent a provision of an Act of the Assembly conferring or imposing, or conferring power by subordinate legislation to confer or impose, any function on a Minister of the Crown if the Secretary of State consents to the provision.

Commencement
Sch. 7(3) para. 6(1)-(2): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 7(3) para. 6(1)-(2): United Kingdom

7 [ Comptroller and Auditor General and National Audit Office ]

Part 2 does not prevent a provision of an Act of the Assembly modifying, or conferring power by subordinate legislation to modify, any enactment relating to the Comptroller and Auditor General [ or the National Audit Office ] if the Secretary of State consents to the provision.

Notes
1 Words inserted by Budget Responsibility and National Audit Act 2011 c. 4 Sch.5(2) para.28(1) (April 1, 2012)
2 Words substituted by Budget Responsibility and National Audit Act 2011 c. 4 Sch.5(2) para.28(2) (April 1, 2012)

Commencement
Sch. 7(3) para. 7: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 7(3) para. 7: United Kingdom
(a) restating the law (or restating it with such modifications as are not prevented by that Part), or
(b) repealing or revoking any spent enactment, or conferring power by subordinate legislation to do so.

Commencement
Sch. 7(3) para. 8(a)-(b): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 7(3) para. 8(a)-(b): United Kingdom

9 Subordinate legislation
Part 2 does not prevent an Act of the Assembly making modifications of, or conferring power by subordinate legislation to make modifications of, an enactment for or in connection with any of the following purposes—
(a) making different provision about the document by which a power to make, confirm or approve subordinate legislation is to be exercised,
(b) making provision (or no provision) for the procedure, in relation to the Assembly, to which legislation made in the exercise of such a power (or the instrument or other document in which it is contained) is to be subject, and
(c) applying any enactment comprised in or made under an Act of the Assembly relating to the documents by which such powers may be exercised.

Commencement
Sch. 7(3) para. 9(a)-(c): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 7(3) para. 9(a)-(c): United Kingdom

SCHEDULE 8
AUDITOR GENERAL FOR WALES

Section 145

1 Appointment
(1) The Auditor General is to be appointed by Her Majesty on the nomination of the Assembly.
(2) No nomination is to be made until the Assembly is satisfied that reasonable consultation has been undertaken with such bodies as appear to the Assembly to represent the interests of local government bodies in Wales.
(3) For the purposes of sub-paragraph (2) a body is a local government body in Wales at any time if at that time it is specified in section 12(1) of the Public Audit (Wales) Act 2004 (c. 23).

(4) The validity of any act of a person appointed as Auditor General is not affected by any defect in the person's nomination by the Assembly.

### Commencement

Sch. 8 para. 1(1)-(4): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

### Extent

Sch. 8 para. 1(1)-(4): United Kingdom

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### 2 Tenure

(1) Subject as follows, a person appointed as Auditor General holds office until the end of the period for which the person was appointed.

(2) Her Majesty may relieve a person from office as Auditor General before the end of the period for which the person was appointed—
   (a) at the person's request, or
   (b) on Her Majesty being satisfied that the person is incapable for medical reasons of performing the duties of the office and of requesting to be relieved of it.

(3) Her Majesty may remove a person from office as Auditor General before the end of the period for which the person was appointed on the making of a recommendation, on the ground of the person's misbehaviour, that Her Majesty should do so.

(4) A recommendation for the removal of a person from office as Auditor General may not be made unless—
   (a) the Assembly has resolved that the recommendation should be made, and
   (b) the resolution of the Assembly is passed on a vote in which the number of Assembly members voting in favour of it is not less than two-thirds of the total number of Assembly seats.

### Commencement

Sch. 8 para. 2(1)-(4)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

### Extent

Sch. 8 para. 2(1)-(4)(b): United Kingdom
3 Independence and status

(1) The Auditor General is not, in the exercise of any functions, subject to the direction or control of the Assembly or the Welsh Assembly Government.

(2) The Auditor General is not to be regarded as holding office under Her Majesty or as exercising any functions on behalf of the Crown; but the Auditor General is to be taken to be a Crown servant for the purposes of the Official Secrets Act 1989 (c. 6).

Commencement
Sch. 8 para. 3(1)-(2): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 8 para. 3(1)-(2): United Kingdom

4 Corporation sole

The person for the time being holding the office of Auditor General shall by the name of that office be a corporation sole.

Commencement
Sch. 8 para. 4: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 8 para. 4: United Kingdom

5 Documents

(1) The application of the seal of the Auditor General is to be authenticated by the signature of—
   (a) the Auditor General, or
   (b) any member of the Auditor General's staff authorised by the Auditor General (generally or specially) for that purpose.

(2) A document purporting to be duly executed under the seal of the Auditor General or to be signed on the Auditor General's behalf may be received in evidence and, unless the contrary is proved, is to be taken to be so executed or signed.
6 Remuneration

(1) The Assembly must—
   (a) pay the Auditor General such salary and any such allowances, and
   (b) make any such payments towards the provision of superannuation benefits for or in respect of the Auditor General,
as may be provided for by or under the terms of the Auditor General's appointment.

(2) The Assembly must pay to or in respect of a person who has ceased to hold office as Auditor General such amounts (if any) by way of—
   (a) pension or gratuities, or
   (b) provision for those benefits,
as may have been provided for by or under the terms of the Auditor General's appointment.

(3) Schedule 1 to the Superannuation Act 1972 (c. 11) (offices to which section 1 of that Act applies) is to continue to have effect with the insertion in the list of “Offices” of the entry relating to the Auditor General (originally made by section 91(3) of the Government of Wales Act 1998 (c. 38)).

(4) The Assembly must make payments to the Minister for the Civil Service, at such times as the Minister for the Civil Service may determine, of such amounts as may be so determined in respect of—
   (a) the provision of pensions, allowances or gratuities by virtue of section 1 of the Superannuation Act 1972 to or in respect of any person who holds or has ceased to hold office as Auditor General, and
   (b) the expenses incurred in administering those pensions, allowances and gratuities.

(5) Sums required for the making of payments under sub-paragraphs (1), (2) and (4) are to be charged on the Welsh Consolidated Fund.
7 Staff

(1) The Auditor General may appoint such staff or secure the provision of such services as the Auditor General considers necessary for assisting in the exercise of the Auditor General's functions.

(2) The staff of the Auditor General are to be appointed on such terms and conditions as the Auditor General may determine.

(3) The Auditor General must pay the staff such remuneration as may be provided for by or under the terms of their appointment.

(4) Schedule 1 to the Superannuation Act 1972 (offices to which section 1 of that Act applies) is to continue to have effect with the insertion in the list of “Other bodies” of the entry relating to Employment as a member of the staff of the Auditor General (originally made by section 92(5) of the Government of Wales Act 1998).

(5) The Auditor General must make payments to the Minister for the Civil Service, at such times as the Minister for the Civil Service may determine, of such amounts as may be so determined in respect of--

   (a) the provision of pensions, allowances or gratuities by virtue of section 1 of the Superannuation Act 1972 to or in respect of any persons who are or have been members of the staff of the Auditor General, and

   (b) the expenses incurred in administering those pensions, allowances and gratuities.

(6) No member of the staff of the Auditor General is to be regarded as holding office under Her Majesty or as exercising any functions on behalf of the Crown; but each member of the staff of the Auditor General is to be taken to be a Crown servant for the purposes of the Official Secrets Act 1989 (c. 6)
8 Exercise of functions by staff etc.

(1) Any function of the Auditor General may be exercised by—
   (a) a member of the Auditor General's staff, or
   (b) a person providing services to the Auditor General,
who is authorised by the Auditor General for that purpose.

(2) Any function of the Auditor General may be exercised jointly by the Auditor General and a
person providing services to the Auditor General who is authorised by the Auditor General for that
purpose.

(3) Any provision made under sub-paragraph (1) for the exercise of any function does not affect
the responsibility of the Auditor General on whose behalf the function is exercised.

(4) An authority under sub-paragraph (1) to certify or report on accounts (or statements of accounts)
within sub-paragraph (5)—
   (a) extends only to accounts (or statements) which the Presiding Officer has certified to
the Assembly are accounts (or statements) which the Auditor General is unable to certify,
or on which the Auditor General is unable to report, in person, and
   (b) ceases when the office of Auditor General becomes vacant.

(5) Accounts (or statements of accounts) are within this sub-paragraph if, in accordance with
provision made by or under this or any other Act, they—
   (a) fall to be examined by the Auditor General, and
   (b) are required to be laid before the Assembly.

Commencement

Sch. 8 para. 8(1)-(5)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May
25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First
Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller
and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s.
161(5))

Extent

Sch. 8 para. 8(1)-(5)(b): United Kingdom

9 Special finance provisions

(1) Any sums payable by the Auditor General in consequence of a breach, in the performance of
any of the Auditor General's functions, of any contractual or other duty are to be charged on the
Welsh Consolidated Fund.

(2) And sub-paragraph (1) applies whether the breach occurs by reason of an act or omission of—
   (a) the Auditor General,
   (b) a member of the Auditor General's staff, or
   (c) any other person assisting the Auditor General in the exercise of the Auditor General's
functions.
3) The Auditor General may retain income within sub-paragraph (4) (rather than pay it into the Welsh Consolidated Fund) for use in connection with the exercise of the functions conferred or imposed by—

(a) Part 1 of the Local Government Act 1999 (c. 27) (best value audits and inspections). \[\ldots\]^1
(b) Part 2 of the Public Audit (Wales) Act 2004 (c. 23) (local government audit) \[ or, so far as the functions relate to local government bodies in Wales, Part 3A of that Act (data matching) \[^2\] \[ or \]^1
(c) Part 1 of the Local Government (Wales) Measure 2009. \[^1\]

4) The following income is within this sub-paragraph—

(a) fees charged by the Auditor General by virtue of Part 1 of the Local Government Act 1999 (c. 27),
(b) grants made to the Auditor General under section 33(3)(b) of that Act, \[\ldots\]^1
(c) fees charged by the Auditor General by virtue of the following provisions of the Public Audit (Wales) Act 2004 (c. 23)—

(i) Part 2 (including those charged as a result of paragraph 11(3)(c)),
(ii) Part 3A (but only those charged to a local government body in Wales) \[^1\] \[ and \]^1
(d) fees charged by the Auditor General by virtue of Part 1 of the Local Government (Wales) Measure 2009. \[^1\]

Notes

1 Amended by Local Government (Wales) Measure 2009 (Consequential Modifications) Order 2010/212 art.2(2) (April 1, 2010)
2 Words inserted by Serious Crime Act 2007 c. 27 Sch.7(2) para.5(2) (April 6, 2008)
3 Sch.8 para.9(4)(c)(i)(ii) and words substituted for words by Serious Crime Act 2007 c. 27 Sch.7(2) para.5(3) (April 6, 2008)

Commencement

Sch. 8 para. 9(1)-(4)(c): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 8 para. 9(1)-(4)(d): United Kingdom

10 Borrowing

The Auditor General may borrow sums in sterling (by way of overdraft or otherwise) to be applied for the purpose of meeting a temporary excess of expenditure over sums otherwise available to meet it.
11 Fees

(1) The Auditor General may charge a fee for auditing a person's accounts.

(2) Where the Auditor General—
   (a) provides services under paragraph 18(3)(b) by carrying out an examination in relation to a person, or
   (b) provides services under section 145A of the Government of Wales Act 1998 (studies for improving economy etc. in services) at the request of a person,
the Auditor General may charge the person a fee not exceeding the full cost of providing those services.

(3) Where the Auditor General—
   (a) provides services to a body under paragraph 20,
   (b) provides services at the request of a body under section 145B of the Government of Wales Act 1998 (studies at request of educational bodies), or
   (c) provides services at the request of a body under section 44 of the Public Audit (Wales) Act 2004 (studies at request of local government bodies in Wales),
the Auditor General must charge that body a fee which covers the full cost of providing those services.

Commencement
Sch. 8 para. 10: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 8 para. 10: United Kingdom
(b) submit the estimate to the Audit Committee.

(2) Each estimate must be submitted to the Audit Committee at least five months before the beginning of the financial year to which it relates.

(3) The Audit Committee must—
   (a) examine each estimate submitted to it, and
   (b) (having done so) lay the estimate before the Assembly with any modifications which the Audit Committee considers appropriate.

(4) Before laying an estimate before the Assembly with modifications the Audit Committee must—
   (a) consult the Auditor General, and
   (b) take into account any representations which the Auditor General may make.

(5) Nothing in this paragraph authorises the Audit Committee—
   (a) to examine that part of any estimate which relates to estimated income or expenses of the office of Auditor General to which sub-paragraph (6) applies, or
   (b) to lay an estimate before the Assembly with modifications relating to such estimated income or expenses.

(6) This sub-paragraph applies to estimated income or expenses relating to—
   (a) Part 1 of the Local Government Act 1999 (c. 27) (best value audits and inspections),
   (b) section 33(3)(b) of that Act (grants to the Auditor General), [...]¹
   (c) Part 2 of the Public Audit (Wales) Act 2004 (c. 23) (local government audit), apart from section 44 [, or]¹
   [ (d) Part 1 of the Local Government (Wales) Measure 2009.]¹

Notes
¹ Amended by Local Government (Wales) Measure 2009 (Consequential Modifications) Order 2010/212 art.2(3) (April 1, 2010)

Commencement
Sch. 8 para. 12(1)-(6)(c): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 8 para. 12(1)-(6)(d): United Kingdom

Law In Force

13 Accounts
(1) The Auditor General must, for each financial year, prepare accounts in accordance with directions given to the Auditor General by the Treasury.

[(1A) The directions which the Treasury may give under sub-paragraph (1) include directions to prepare accounts relating to financial affairs and transactions of persons other than the Auditor General.]¹
(2) The directions which the Treasury may give under sub-paragraph (1) include, in particular, directions as to–

(a) the information to be contained in the accounts and the manner in which it is to be presented,
(b) the methods and principles in accordance with which the accounts are to be prepared, and
(c) the additional information (if any) that is to accompany the accounts.

Notes

1 Added by Constitutional Reform and Governance Act 2010 c. 25 Pt 5 s.44(4) (November 11, 2010)

Commencement

Sch. 8 para. 13(1)-(2)(c): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 8 para. 13(1)-(2)(c): United Kingdom

14 Auditor

(1) The Assembly must appoint an auditor of the accounts of the Auditor General.

(2) A person is eligible for appointment under this paragraph only if the person–

(a) is eligible for appointment as [statutory auditor under Part 42 of the Companies Act 2006 ]¹, or
(b) is a member of an approved European body of accountants.

(3) An “approved European body of accountants” is a body of accountants which–

(a) is established in the United Kingdom or another state which is either a member State or a non-member EEA State, and
(b) is for the time being approved by the Welsh Ministers by order.

(4) “Non-member EEA State” means any State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as adjusted by the Protocol signed at Brussels on 17th March 1993) but which is not a member State.

(5) If a person appointed as the auditor ceases to be a person who could be so appointed–

(a) the person’s appointment is ended, and
(b) the person ceases to be the auditor.

(6) The auditor is to be appointed on such terms and conditions as the Assembly may determine.

(7) The Auditor General must pay the auditor such remuneration as may be provided for by or under the terms of the auditor's appointment.

(8) A statutory instrument containing an order under sub-paragraph (3)(b) is subject to annulment in pursuance of a resolution of the Assembly.
15 Audit of accounts

(1) The accounts which the Auditor General is required to prepare under paragraph 13 for a financial year must be submitted by the Auditor General (after having signed them) to the auditor appointed under paragraph 14 no later than five months after the end of that financial year.

(2) The auditor must carry out an audit of any accounts submitted to the auditor under sub-paragraph (1).

(3) On completing the audit the auditor must—
   (a) certify the accounts, and
   (b) lay the accounts and the auditor’s report on them before the Assembly.

(4) The auditor has a right of access at all reasonable times to every document which appears to the auditor to be necessary for the purposes of the audit of the accounts.

(5) The auditor may—
   (a) require any person holding or accountable for any of those documents to provide any assistance, information or explanation which the auditor reasonably thinks necessary for those purposes, and
   (b) require [a relevant person]¹ to provide the auditor, at times specified by the auditor, with accounts of such of the transactions of [the relevant person]² as the auditor may specify.

[ (5A) In sub-paragraph (5)(b) “relevant person” means—
   (a) the Auditor General, or
   (b) any person to whose financial affairs and transactions the accounts are to relate by virtue of paragraph 13(1A).]

(6) The auditor—
   (a) may carry out examinations into the economy, efficiency and effectiveness with which the Auditor General has used resources in discharging the Auditor General’s functions, and
   (b) may lay before the Assembly a report of the results of any such examinations.
(7) For the purposes of carrying out such examinations, the auditor—
(a) has a right of access at all reasonable times to every document in the possession, or under the control, of the Auditor General which the auditor reasonably requires for that purpose, and
(b) may require any person holding or accountable for any of those documents to provide any assistance, information or explanation which the auditor reasonably thinks necessary for that purpose.

Notes
1 Words substituted by Constitutional Reform and Governance Act 2010 c. 25 Pt 5 s.44(5)(a)(i) (November 11, 2010)
2 Words substituted by Constitutional Reform and Governance Act 2010 c. 25 Pt 5 s.44(5)(a)(ii) (November 11, 2010)
3 Added by Constitutional Reform and Governance Act 2010 c. 25 Pt 5 s.44(5)(b) (November 11, 2010)

Commencement
Sch. 8 para. 15(1)-(7)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 8 para. 15(1)-(7)(b): United Kingdom

16 Accounting officer

(1) The accounting officer for the Wales Audit Office is the Auditor General.

[(1A) The directions which the Treasury may give under sub-paragraph (1)(b) include directions to prepare accounts relating to financial affairs and transactions of persons other than the Ombudsman.]\(^1\)

(2) “The Wales Audit Office” means the Auditor General and the members of the staff of the Auditor General.

(3) But the Audit Committee may designate a member of the staff of the Auditor General to be the accounting officer if and for so long as—
(a) the Auditor General is incapable of discharging the responsibilities of the accounting officer, or
(b) the office of Auditor General is vacant.

(4) The accounting officer for the Wales Audit Office has, in relation to the accounts of the Auditor General and the finances of the Wales Audit Office, the responsibilities which are from time to time specified by the Audit Committee.

(5) If requested to do so by the House of Commons Committee of Public Accounts, the Audit Committee may—
(a) on behalf of the Committee of Public Accounts take evidence from the accounting officer for the Wales Audit Office, and
(b) report to the Committee of Public Accounts and transmit to that Committee any evidence so taken.

Notes
1 Added by Constitutional Reform and Governance Act 2010 c. 25 Pt 5 s.44(7) (November 11, 2010)

Commencement
Sch. 8 para. 16(1)-(5)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 8 para. 16(1)-(5)(b): United Kingdom

Access to documents

17 Access to documents

(1) The Auditor General has a right of access at all reasonable times to every document relating to a relevant person which appears to the Auditor General necessary—
(a) for the purposes of the Auditor General's examination of any auditable accounts,
(b) for the purposes of undertaking studies under section 145A (studies for improving economy etc. in services provided by relevant bodies) or 145C (studies relating to registered social landlords) of the Government of Wales Act 1998 (c. 38), or
(c) for the purposes of carrying out, in accordance with any provision made by or by virtue of this or any other Act, other examinations or studies into the economy, efficiency and effectiveness with which a person has used resources in discharging the person's functions.

(2) The documents relating to a relevant person to which the right conferred by sub-paragraph (1) applies include (in particular)—
(a) a document which is in the possession, or under the control, of a person who has received financial assistance from the relevant person by means of a grant, loan or guarantee or as a result of the taking of an interest in any property or body corporate,
(b) a document which is in the possession, or under the control, of a person who has supplied goods or services to the relevant person in pursuance of a contract to which the relevant person was party or has supplied goods or services in pursuance of a relevant subcontract, and
(c) a document of a description specified in an order made by the Welsh Ministers.

(3) The Auditor General may require a person whom the Auditor General thinks has information of the kind mentioned in sub-paragraph (4)—
(a) to give the Auditor General any assistance, information and explanation which the Auditor General thinks necessary for any of the purposes mentioned in sub-paragraph (1),
(b) to attend before the Auditor General in person to give the assistance, information or
explanation, or to produce any document which is in the possession, or under the control,
of the person and to which the right conferred by that sub-paragraph applies, or
(c) to provide any facility which the Auditor General may reasonably require for any of
the purposes mentioned in that sub-paragraph.

(4) The information referred to in sub-paragraph (3) is information which relates to—
(a) a relevant person,
(b) a document to which the right conferred by sub-paragraph (1) applies, or
(c) a person who possesses or controls such a document.

(5) The Auditor General may, for the purposes of an examination of any auditable accounts, require
a relevant person to provide the Auditor General, at times specified by the Auditor General, with
accounts of such of the person's transactions as the Auditor General may specify.

(6) For the purposes of sub-paragraph (2)(b), a contract is a relevant subcontract if its performance
fulfils, or contributes to the fulfilment of, an obligation to supply goods or services to the relevant
person in another contract.

(7) In this paragraph “auditable accounts” means any accounts or statement of accounts falling to
be examined by the Auditor General in accordance with any provision made by or by virtue of this
or any other Act.

(8) In this paragraph “relevant person” means—
(a) in a case within paragraph (a) of sub-paragraph (1) relating to any accounts which the
Welsh Ministers are directed to prepare under section 131, the Welsh Ministers, the Counsel
General and any person to whose financial affairs and transactions the accounts are to relate
by virtue of subsection (3) of that section,
(b) in a case within that paragraph relating to any accounts which the Assembly Commission
is directed to prepare under section 137, the Assembly Commission and any person to whose
financial affairs and transactions the accounts are to relate by virtue of subsection (2) of
that section,
[ (ba) in a case within that paragraph relating to any accounts which the Public Services
Ombudsman for Wales is directed to prepare under paragraph 16 of Schedule 1 to the Public
Services Ombudsman (Wales) Act 2005, the Ombudsman and any person to whose financial
affairs and transactions the accounts are to relate by virtue of sub-paragraph (1A) of that
paragraph,]\n1
(c) in a case within that paragraph relating to any other auditable accounts, the person by
whom the accounts are prepared, and
(d) in any other case, a person to whom the study or examination relates.

(9) No order may be made under sub-paragraph (2)(c) unless the Welsh Ministers have consulted—
(a) the Treasury, and
(b) the Auditor General.

(10) A statutory instrument containing an order under sub-paragraph (2)(c) is subject to annulment
in pursuance of a resolution of the Assembly.

Notes

1 Added by Constitutional Reform and Governance Act 2010 c. 25 Pt 5 s.44(6) (November 11, 2010)
Commencement
Sch. 8 para. 17(1)-(10): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 8 para. 17(1)-(10): United Kingdom

18 Other powers

(1) Where–
   (a) the Welsh Ministers are entitled to appoint the auditor of the accounts of any person (other than the Auditor General), and
   (b) the Auditor General would not otherwise be eligible to be appointed as auditor of those accounts,

   the Welsh Ministers may appoint the Auditor General to be auditor of those accounts.

(2) If in such a case the auditor is to be appointed annually, the Welsh Ministers may appoint the Auditor General–
   (a) for a year,
   (b) for two or more years, or
   (c) indefinitely until further exercise of the power of appointment.

(3) The Auditor General may–
   (a) examine, certify or report on a person's accounts, or
   (b) carry out examinations into the economy, efficiency and effectiveness with which a person has used resources in discharging the person's functions,

   if provision is made for the Auditor General to do so by an agreement entered into by the person with either the Welsh Ministers or a Minister of the Crown.

(4) In determining how to exercise functions under paragraph (b) of sub-paragraph (3) the Auditor General must take into account the Audit Committee's views as to the examinations which the Auditor General should carry out under that paragraph.

(5) If an Order in Council under section 58 transfers a function of preparing accounts to the Welsh Ministers, the Secretary of State may by order provide for the transfer to the Auditor General of any function of the Comptroller and Auditor General in relation to those accounts.

(6) An order under sub-paragraph (5) may make such modifications of–
   (a) any enactment (including any enactment comprised in or made under this Act) or prerogative instrument, or
   (b) any other instrument or document,

   as the Secretary of State considers appropriate in connection with the provision made by the order.

(7) An Order in Council under section 58 may include any provision that may be included in an order under sub-paragraph (5).
(8) If the Treasury designate the Welsh Ministers in respect of a financial year for the purposes of section 10 of the Government Resources and Accounts Act 2000 (c. 20) (whole of government accounts), the Auditor General must carry out the audit required by subsection (2)(c) of that section.

(9) Where the Treasury make arrangements with the Welsh Ministers under subsection (8) of that section, the Auditor General must carry out the audit required by paragraph (c) of that subsection.

(10) No order under sub-paragraph (5) which contains provisions in the form of amendments or repeals of enactments contained in an Act is to be made unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.

(11) A statutory instrument containing an order under sub-paragraph (5) is (unless a draft of the statutory instrument has been approved by a resolution of each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament.

Commencement
Sch. 8 para. 18(1)-(11): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 8 para. 18(1)-(11): United Kingdom

Law In Force

19 Reports in public interest

(1) If the Auditor General thinks that it would be in the public interest to bring to the public’s attention a matter coming to the Auditor General’s notice in the course of an examination or study to which sub-paragraph (2) applies, the Auditor General may prepare a report on that matter.

(2) This sub-paragraph applies to—

(a) an examination of auditable accounts (other than accounts falling to be examined under paragraph 18(3)(a)), and

(b) an examination or study under section 135 or 140 of this Act, section 145 of the Government of Wales Act 1998 (c. 38) (examinations into use of resources by body specified in Schedule 17 to that Act) or section 145A of that Act (studies for improving economy etc. in services provided by relevant bodies), except one undertaken at the request of the body or bodies to which it relates.

(3) The Auditor General must, as soon as practicable after preparing a report under sub-paragraph (1), lay the report before the Assembly.

(4) In this paragraph “auditable accounts” has the same meaning as in paragraph 17.

Commencement
Sch. 8 para. 19(1)-(4): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller
20 Certification of claims, returns etc.

(1) The Auditor General must, if so required by a relevant body, make arrangements for—
   (a) certifying any claim or return in respect of a grant made or subsidy paid to that body by the Welsh Ministers, any Minister of the Crown or any public authority,
   (b) certifying any account submitted by that body to the Welsh Ministers, any Minister of the Crown or any public authority with a view to obtaining payment under a contract between that body and the Welsh Ministers, the Minister of the Crown or the public authority,
   (c) certifying that body's calculation under paragraph 5(6)(a) of Schedule 8 to the Local Government Finance Act 1988 (c. 41) of the amount of its non-domestic rating contribution for a financial year, and for certifying the amount calculated, or
   (d) certifying any return by that body which, by or under any enactment, is required or authorised to be certified by the body's auditor or under arrangements made by the Auditor General.

(2) In this paragraph—
   “public authority” means a body established by or under the Community Treaties or any enactment, and
   “relevant body” means at any time—
   (a) a body whose accounts, or statements of accounts, are auditable accounts within the meaning of paragraph 17(7), or
   (b) a body which at that time is a local government body in Wales (within the meaning given in section 12(1) of the Public Audit (Wales) Act 2004 (c. 23)).

21 Ancillary powers

(1) Arrangements may be made between the Auditor General and a relevant authority—
   (a) for any function of the authority to be exercised by, or by a member of the staff of, the Auditor General, or
(b) for administrative, professional or technical services to be provided by the Auditor General to the authority or by the authority to the Auditor General.

(2) Any arrangements under sub-paragraph (1)(a) for the exercise of any function of a relevant authority do not affect the responsibility of the relevant authority on whose behalf the function is exercised.

(3) If the condition in sub-paragraph (4) is met, the Auditor General and—
   (a) a relevant authority,
   (b) a qualified auditor, or
   (c) an accountancy body,
may make arrangements to co-operate with, and give assistance to, each other.

(4) The condition is that—
   (a) the Auditor General considers that to do so would facilitate, or be conducive to, the exercise of the Auditor General’s functions, and
   (b) the relevant authority, qualified auditor or accountancy body in question considers that to do so would facilitate, or be conducive to, the exercise of the functions of that authority, person or body.

(5) The Auditor General may make arrangements under this paragraph on such terms and conditions, including conditions as to payment, as the Auditor General thinks fit.

(6) In this paragraph—
   “accountancy body” means—
   (a) a body which is a recognised supervisory body for the purposes of [Part 42 of the Companies Act 2006]¹, or
   (b) an approved European body of accountants,
   “approved European body of accountants” means a body of accountants which—
   (a) is established in the United Kingdom or another state which is either a member State or a non-member EEA State, and
   (b) is for the time being approved by the Welsh Ministers by order,
   “non-member EEA State” means any State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as adjusted by the Protocol signed at Brussels on 17th March 1993) but which is not a member State,
   “qualified auditor” means a person eligible to be appointed as an auditor under section 14 of the Public Audit (Wales) Act 2004 (c. 23) (auditor appointed in respect of local government bodies in Wales), and
   “relevant authority” means any Minister of the Crown or government department, any public authority (including any local authority) or the holder of any public office.

(7) A statutory instrument containing an order under sub-paragraph (6) is subject to annulment in pursuance of a resolution of the Assembly.

Notes

¹ Words substituted subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(1) para.34 (April 6, 2008)

Commencement

Sch. 8 para. 21(1)-(7): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First
SCHEDULE 9
DEVOLUTION ISSUES

Section 149

PART 1
PRELIMINARY

1

(1) In this Schedule “devolution issue” means—
(a) a question whether an Assembly Measure or Act of the Assembly, or any provision of an Assembly Measure or Act of the Assembly, is within the Assembly's legislative competence,
(b) a question whether any function (being a function which any person has purported, or is proposing, to exercise) is exercisable by the Welsh Ministers, the First Minister or the Counsel General,
(c) a question whether the purported or proposed exercise of a function by the Welsh Ministers, the First Minister or the Counsel General is, or would be, within the powers of the Welsh Ministers, the First Minister or the Counsel General (including a question whether a purported or proposed exercise of a function is, or would be, outside those powers by virtue of section 80(8) or 81(1)),
(d) a question whether there has been any failure to comply with a duty imposed on the Welsh Ministers, the First Minister or the Counsel General (including any obligation imposed by virtue of section 80(1) or (7)), or
(e) a question of whether a failure to act by the Welsh Ministers, the First Minister or the Counsel General is incompatible with any of the Convention rights.

(2) In this Schedule “civil proceedings” means proceedings other than criminal proceedings.

Commencement

Sch. 9(1) para. 1(1)-(2): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller
2 A devolution issue is not to be taken to arise in any proceedings merely because of any contention of a party to the proceedings which appears to the court or tribunal before which the proceedings take place to be frivolous or vexatious.

PART 2

PROCEEDINGS IN ENGLAND AND WALES

Application of Part 2

3 This Part applies in relation to devolution issues in proceedings in England and Wales.
**Institution of proceedings**

4

(1) Proceedings for the determination of a devolution issue may be instituted by the Attorney General or the Counsel General.

(2) The Counsel General may defend any such proceedings instituted by the Attorney General.

(3) This paragraph does not limit any power to institute or defend proceedings exercisable apart from this paragraph by any person.

**Commencement**

Sch. 9(2) para. 4(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

**Extent**

Sch. 9(2) para. 4(1)-(3): United Kingdom

**Notice of devolution issue**

5

(1) A court or tribunal must order notice of any devolution issue which arises in any proceedings before it to be given to the Attorney General and the Counsel General (unless a party to the proceedings).

(2) A person to whom notice is given in pursuance of sub-paragraph (1) may take part as a party in the proceedings, so far as they relate to a devolution issue.

**Commencement**

Sch. 9(2) para. 5(1)-(2): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

**Extent**

Sch. 9(2) para. 5(1)-(2): United Kingdom
**Reference of devolution issue to High Court or Court of Appeal**

6 A magistrates’ court may refer any devolution issue which arises in civil proceedings before it to the High Court.

**Commencement**
Sch. 9(2) para. 6: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

**Extent**
Sch. 9(2) para. 6: United Kingdom

7 (1) A court may refer any devolution issue which arises in civil proceedings before it to the Court of Appeal.

(2) Sub-paragraph (1) does not apply—
(a) to a magistrates' court, the Court of Appeal or the Supreme Court, or
(b) to the High Court if the devolution issue arises in proceedings on a reference under paragraph 6.

**Commencement**
Sch. 9(2) para. 7(1)-(2)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

**Extent**
Sch. 9(2) para. 7(1)-(2)(b): United Kingdom

8 A tribunal from which there is no appeal must refer any devolution issue which arises in proceedings before it to the Court of Appeal; and any other tribunal may make such a reference.

**Commencement**
Sch. 9(2) para. 8: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister,
the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

**Extent**

Sch. 9(2) para. 8: United Kingdom

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**Law In Force**

**9**

A court, other than the Court of Appeal or the Supreme Court, may refer any devolution issue which arises in criminal proceedings before it to—

(a) the High Court if the proceedings are summary proceedings, or

(b) the Court of Appeal if the proceedings are proceedings on indictment.

**Commencement**

Sch. 9(2) para. 9(a)-(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

**Extent**

Sch. 9(2) para. 9(a)-(b): United Kingdom

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**References from Court of Appeal to Supreme Court**

**Law In Force**

**10**

The Court of Appeal may refer any devolution issue which arises in proceedings before it (otherwise than on a reference under paragraph 7, 8 or 9) to the Supreme Court.

**Commencement**

Sch. 9(2) para. 10: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

**Extent**

Sch. 9(2) para. 10: United Kingdom
Appeals from superior courts to Supreme Court

11
An appeal against a determination of a devolution issue by the High Court or the Court of Appeal on a reference under paragraph 6, 7, 8 or 9 lies to the Supreme Court but only—
(a) with permission of the court from which the appeal lies, or
(b) failing such permission, with permission of the Supreme Court.

Commencement
Sch. 9(2) para. 11(a)-(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 9(2) para. 11(a)-(b): United Kingdom

PART 3
PROCEEDINGS IN SCOTLAND

Application of Part 3

12
This Part applies in relation to devolution issues in proceedings in Scotland.

Commencement
Sch. 9(3) para. 12: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 9(3) para. 12: United Kingdom
Institution of proceedings

13
(1) Proceedings for the determination of a devolution issue may be instituted by the Advocate General for Scotland.
(2) The Counsel General may defend any such proceedings instituted by the Advocate General for Scotland.
(3) This paragraph does not limit any power to institute or defend proceedings exercisable apart from this paragraph by any person.

Commencement
Sch. 9(3) para. 13(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 9(3) para. 13(1)-(3): United Kingdom

Intimation of devolution issue

14
(1) A court or tribunal must order intimation of any devolution issue which arises in any proceedings before it to be given to the Advocate General for Scotland and the Counsel General (unless a party to the proceedings).
(2) A person to whom notice is given in pursuance of sub-paragraph (1) may take part as a party in the proceedings, so far as they relate to a devolution issue.

Commencement
Sch. 9(3) para. 14(1)-(2): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 9(3) para. 14(1)-(2): United Kingdom
Reference of devolution issue to higher court

15
A court, other than any court consisting of three or more judges of the Court of Session or the
Supreme Court, may refer any devolution issue which arises in civil proceedings before it to the
Inner House of the Court of Session.

Commencement
Sch. 9(3) para. 15: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25,
2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister,
the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and
Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s.
161(5))

Extent
Sch. 9(3) para. 15: United Kingdom

16
A tribunal from which there is no appeal must refer any devolution issue which arises in proceedings
before it to the Inner House of the Court of Session; and any other tribunal may make such a
reference.

Commencement
Sch. 9(3) para. 16: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25,
2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister,
the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and
Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s.
161(5))

Extent
Sch. 9(3) para. 16: United Kingdom

17
A court, other than any court consisting of two or more judges of the High Court of Justiciary, may
refer any devolution issue which arises in criminal proceedings before it to the High Court of
Justiciary.

Commencement
Sch. 9(3) para. 17: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25,
2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister,
the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and
Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 9(3) para. 17: United Kingdom

References from superior courts to Supreme Court

Law In Force

18
Any court consisting of three or more judges of the Court of Session may refer any devolution issue which arises in proceedings before it (otherwise than on a reference under paragraph 15 or 16) to the Supreme Court.

Commencement
Sch. 9(3) para. 18: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 9(3) para. 18: United Kingdom

Law In Force

19
Any court consisting of two or more judges of the High Court of Justiciary may refer any devolution issue which arises in proceedings before it (otherwise than on a reference under paragraph 17) to the Supreme Court.

Commencement
Sch. 9(3) para. 19: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 9(3) para. 19: United Kingdom
Appeals from superior courts to Supreme Court

20
An appeal against a determination of a devolution issue by the Inner House of the Court of Session on a reference under paragraph 15 or 16 lies to the Supreme Court.

Commencement
Sch. 9(3) para. 20: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 9(3) para. 20: United Kingdom

21
An appeal against a determination of a devolution issue by--
   (a) a court consisting of two or more judges of the High Court of Justiciary (whether in the ordinary course of proceedings or on a reference under paragraph 17), or
   (b) a court consisting of three or more judges of the Court of Session from which there is no appeal to the Supreme Court apart from this paragraph,
lies to the Supreme Court, but only with permission of the court from which the appeal lies or, failing such permission, with permission of the Supreme Court.

Commencement
Sch. 9(3) para. 21(a)-(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 9(3) para. 21(a)-(b): United Kingdom
PART 4
PROCEEDINGS IN NORTHERN IRELAND

Application of Part 4

22
This Part applies in relation to devolution issues in proceedings in Northern Ireland.

Commencement
Sch. 9(4) para. 22: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 9(4) para. 22: United Kingdom

Institution of proceedings

23
(1) Proceedings for the determination of a devolution issue may be instituted by the Advocate General for Northern Ireland.

(2) The Counsel General may defend any such proceedings instituted by the Advocate General for Northern Ireland.

(3) This paragraph does not limit any power to institute or defend proceedings exercisable apart from this paragraph by any person.

Commencement
Sch. 9(4) para. 23(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 9(4) para. 23(1)-(3): United Kingdom
**Notice of devolution issue**

(1) A court or tribunal must order notice of any devolution issue which arises in any proceedings before it to be given to the Advocate General for Northern Ireland and the Counsel General (unless a party to the proceedings).

(2) A person to whom notice is given in pursuance of sub-paragraph (1) may take part as a party in the proceedings, so far as they relate to a devolution issue.

**Commencement**

Sch. 9(4) para. 24(1)-(2): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

**Extent**

Sch. 9(4) para. 24(1)-(2): United Kingdom

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**Reference of devolution issue to Court of Appeal**

A court, other than the Court of Appeal in Northern Ireland or the Supreme Court, may refer any devolution issue which arises in any proceedings before it to the Court of Appeal in Northern Ireland.

**Commencement**

Sch. 9(4) para. 25: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

**Extent**

Sch. 9(4) para. 25: United Kingdom

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A tribunal from which there is no appeal must refer any devolution issue which arises in proceedings before it to the Court of Appeal in Northern Ireland; and any other tribunal may make such a reference.
Commencement

Sch. 9(4) para. 26: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 9(4) para. 26: United Kingdom

References from Court of Appeal to Supreme Court

Law In Force

27
The Court of Appeal in Northern Ireland may refer any devolution issue which arises in proceedings before it (otherwise than on a reference under paragraph 25 or 26) to the Supreme Court.

Commencement

Sch. 9(4) para. 27: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 9(4) para. 27: United Kingdom

Appeals from Court of Appeal to Supreme Court

Law In Force

28
An appeal against a determination of a devolution issue by the Court of Appeal in Northern Ireland on a reference under paragraph 25 or 26 lies to the Supreme Court but only—

(a) with permission of the Court of Appeal in Northern Ireland, or
(b) failing such permission, with permission of the Supreme Court.

Commencement

Sch. 9(4) para. 28(a)-(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller
and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 9(4) para. 28(a)-(b): United Kingdom

PART 5
GENERAL

Direct references to Supreme Court

Law In Force
29
(1) The relevant officer may require any court or tribunal to refer to the Supreme Court any devolution issue which has arisen in any proceedings before it to which that person is a party.

(2) In sub-paragraph (1) “the relevant officer” means—
   (a) in relation to proceedings in England and Wales, the Attorney General or the Counsel General,
   (b) in relation to proceedings in Scotland, the Advocate General for Scotland, and
   (c) in relation to proceedings in Northern Ireland, the Advocate General for Northern Ireland.

Commencement
Sch. 9(5) para. 29(1)-(2)(c): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 9(5) para. 29(1)-(2)(c): United Kingdom

Law In Force
30
(1) The Attorney General or the Counsel General may refer to the Supreme Court any devolution issue which is not the subject of proceedings.

(2) Where a reference is made under sub-paragraph (1) by the Attorney General in relation to a devolution issue which relates to the proposed exercise of a function by the Welsh Ministers, the First Minister or the Counsel General—
   (a) the Attorney General must notify the Counsel General of that fact, and
(b) the function must not be exercised by the Welsh Ministers, the First Minister or the Counsel General in the manner proposed during the period beginning with the receipt of the notification and ending with the reference being decided or otherwise disposed of.

Commencement
Sch. 9(5) para. 30(1)-(2)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 9(5) para. 30(1)-(2)(b): United Kingdom

Costs

Law In Force

31

(1) A court or tribunal before which any proceedings take place may take account of any additional expense of the kind mentioned in sub-paragraph (3) in deciding any question as to costs or expenses.

(2) In deciding any such question the court or tribunal may award the whole or part of the additional expense as costs or expenses to the party who incurred it (whatever the decision on the devolution issue).

(3) The additional expense is any additional expense which the court or tribunal considers that any party to the proceedings has incurred as a result of the participation of any person in pursuance of paragraph 5, 14 or 24.

Commencement
Sch. 9(5) para. 31(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 9(5) para. 31(1)-(3): United Kingdom
Procedure of courts and tribunals

Law In Force

32
Any power to make provision for regulating the procedure before any court or tribunal includes power to make provision for the purposes of this Schedule including, in particular, provision—
(a) for prescribing the stage in the proceedings at which a devolution issue is to be raised or referred,
(b) for the staying or sisting of proceedings for the purpose of any proceedings under this Schedule, and
(c) for determining the manner in which and the time within which any notice or intimation is to be given.

Commencement
Sch. 9(5) para. 32(a)-(c): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 9(5) para. 32(a)-(c): United Kingdom

References to be for decision

Law In Force

33
Any function conferred by this Schedule to refer a devolution issue to a court is to be construed as a function of referring the issue to the court for decision.

Commencement
Sch. 9(5) para. 33: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 9(5) para. 33: United Kingdom
SCHEDULE 10

MINOR AND CONSEQUENTIAL AMENDMENTS

Section 160

Statutory Instruments Act 1946 (c. 36)

1

The Statutory Instruments Act 1946 is amended as follows.

Commencement

Sch. 10 para. 1: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 10 para. 1: United Kingdom

2

In section 1 (definition of “statutory instrument”), for subsection (1A) substitute–

“(1A) Where by any Act power to make, confirm or approve orders, rules, regulations or other subordinate legislation is conferred on the Welsh Ministers and the power is expressed to be exercisable by statutory instrument, any document by which that power is exercised shall be known as a “statutory instrument” and the provisions of this Act shall apply to it accordingly.”

Commencement

Sch. 10 para. 2: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 10 para. 2: United Kingdom

3

After section 11 insert–
“11A Application in relation to Wales

(1) References in this Act to any Act include references to any Measure or Act of the National Assembly for Wales.

(2) Sections 4 to 7 and 8(1)(b) apply as if the references in them to—
   (a) Parliament,
   (b) either or each House of Parliament, or
   (c) both Houses of Parliament,
include references to the National Assembly for Wales.

(3) In the application of subsection (1) of section 4 by virtue of subsection (2), the reference to the Speaker of the House of Commons and the Speaker of the House of Lords is to the Presiding Officer of the National Assembly for Wales.

(4) Where—
   (a) by any Act it is provided that any statutory instrument shall be subject to annulment in pursuance of a resolution of the National Assembly for Wales, and
   (b) a copy of the instrument is not laid before that Assembly at least 21 days before the instrument comes into operation,
notification shall be sent to the Presiding Officer of that Assembly when a copy of the instrument is laid before that Assembly drawing attention to the fact that a copy of it has not been laid before that Assembly at least 21 days before it comes into operation and explaining why.

(5) In the application of section 5 by virtue of subsection (2)—
   (a) the reference in subsection (1) of that section to a resolution that an Address be presented praying that the instrument be annulled is to a resolution that the instrument be annulled,
   (b) in a case where the instrument was made by the Welsh Ministers alone, the power in that subsection of Her Majesty to revoke the instrument by Order in Council is a power of the Welsh Ministers to revoke it by order made by statutory instrument which is to be laid before the National Assembly for Wales after being made, and
   (c) the reference in subsection (2) of that section to an Act containing provisions of the kind mentioned in that subsection is to an Act which contains a power in relation to which such provisions apply by virtue of the Government of Wales Act 2006.

(6) In the application of section 6 by virtue of subsection (2) the reference in subsection (2) of that section to an Act which contains provisions of the kind mentioned in that subsection is to an Act which contains a power in relation to which such provisions apply by virtue of the Government of Wales Act 2006.

(7) In the application of section 7 by virtue of subsection (2) the reference in subsection (1) of that section to any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days is to any time during which the National Assembly for Wales is dissolved or is in recess for more than four days.

(8) References in this Act to the Welsh Ministers, other than the second reference in subsection (5)(b), include the First Minister for Wales and the Counsel General to the Welsh Assembly Government.”
Commencement

Sch. 10 para. 3: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 10 para. 3: United Kingdom

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**Laying of Documents before Parliament (Interpretation) Act 1948 (c. 59)**

4

In section 1 of the Laying of Documents before Parliament (Interpretation) Act 1948 (meaning of references to laying before Parliament), after subsection (1) insert—

“(1A) A reference in any enactment to laying any document before the National Assembly for Wales is (unless the contrary intention appears) to be construed as a reference to the taking, during any time when that Assembly is not dissolved, of such action as is specified in the standing orders of that Assembly as constituting the laying of a document before that Assembly, even if the action so specified consists (wholly or partly) of action capable of being taken when that Assembly is in recess.”

Commencement

Sch. 10 para. 4: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 10 para. 4: United Kingdom

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**Defamation Act 1952 (c. 66)**

5

In section 10 of the Defamation Act 1952 (limitation on privilege at elections), after “local government authority” insert “, to the National Assembly for Wales,”.

Commencement

Sch. 10 para. 5: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the
Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 5: United Kingdom

**Defamation Act (Northern Ireland) 1955 (c. 11 (N.I.))**

Law In Force

6
In section 10(1) of the Defamation Act (Northern Ireland) 1955 (limitation on privilege at elections), after “Scottish Parliament” insert “or to the National Assembly for Wales”.

Commencement
Sch. 10 para. 6: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 6: United Kingdom

**Public Records Act 1958 (c. 51)**

Law In Force

7
In the First Schedule to the Public Records Act 1958 (definition of “public records”), in the following provisions, for “the Government of Wales Act 1998” substitute “the Government of Wales Act 2006”–

(a) paragraph 2(2)(e),
(b) paragraph 5,
(c) paragraph 6, and
(d) paragraph 7(1).

Commencement
Sch. 10 para. 7(a)-(d): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 7(a)-(d): United Kingdom
Parliamentary Commissioner Act 1967 (c. 13)

8
In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc. subject to investigation), in the Note relating to the Environment Agency and the Note relating to the Forestry Commission, for “the Government of Wales Act 1998” substitute “the Government of Wales Act 2006”.

Commencement
Sch. 10 para. 8: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 8: United Kingdom

Pensions (Increase) Act 1971 (c. 56)

9

Commencement
Sch. 10 para. 9: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 9: United Kingdom

Local Government Act 1974 (c. 7)

10
In section 27(1) of the Local Government Act 1974 (provisions relating to complaints)—
(a) in paragraph (a), after “including” insert “the Welsh Ministers, the National Assembly for Wales Commission or the”, and
(b) in paragraph (b), for “National Assembly for Wales” (in both places) substitute “Welsh Ministers”.

Commencement

Sch. 10 para. 10(a)-(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 10 para. 10(a)-(b): United Kingdom

Interpretation Act 1978 (c. 30)

11 In the Interpretation Act 1978, after section 23A insert—

"23B Measures and Acts of the National Assembly for Wales etc.

(1) Subject as follows, the provisions of this Act—

(a) apply to a Measure or Act of the National Assembly for Wales as they apply to an Act, and

(b) apply to an instrument made under a Measure or Act of the National Assembly for Wales as they apply to other subordinate legislation.

(2) Sections 1 to 3 do not apply to a Measure or Act of the National Assembly for Wales.

(3) In this Act references to an enactment include an enactment comprised in, or in an instrument made under, a Measure or Act of the National Assembly for Wales.

(4) In the application of this Act to a Measure or Act of the National Assembly for Wales, references to the passing of an Act or an enactment are to be read as references to the enactment of the Measure or Act.

(5) Section 4(b) does not apply to a Measure of the National Assembly for Wales; but where such a Measure makes no provision for the coming into force of a provision contained in it, that provision comes into force at the beginning of the day on which the Measure is approved by Her Majesty in Council."

Commencement

Sch. 10 para. 11: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the
Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 11: United Kingdom

Local Government, Planning and Land Act 1980 (c. 65)

Law In Force

12
In paragraph 5 of Schedule 31 to the Local Government, Planning and Land Act 1980 (financial provisions relating to urban development corporations: guarantees), for sub-paragraph (3) substitute—

“(3) Any sums required for fulfilling a guarantee under this paragraph shall be charged on and issued out of—

(a) the Consolidated Fund, if required by the Treasury, or

(b) the Welsh Consolidated Fund, if required by the Welsh Ministers.”

Commencement
Sch. 10 para. 12: April 1, 2007 (2006 c. 32 Pt 6 s. 161(3))

Extent
Sch. 10 para. 12: United Kingdom

Mental Health Act 1983 (c. 20)

Law In Force

13
In section 141(9)(b) of the Mental Health Act 1983 (application to the National Assembly for Wales), after “National Assembly for Wales” insert “Commission”.

Commencement
Sch. 10 para. 13: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 13: United Kingdom
National Audit Act 1983 (c. 44)

14
The National Audit Act 1983 is amended as follows.

Commencement
Sch. 10 para. 14: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 14: United Kingdom

Law In Force
15
(1) Section 6 (departments, authorities and bodies subject to examinations by the Comptroller and Auditor General) is amended as follows.

(2) In subsection (3), for paragraph (aa) substitute—

“(aa) the Welsh Ministers;
(ab) the National Assembly for Wales Commission;”.

(3) After that subsection insert—

“(3A) Before carrying out an examination under this section in respect of the Welsh Ministers or the National Assembly for Wales Commission, the Comptroller and Auditor General shall—

(a) consult the Auditor General for Wales, and
(b) take into account any relevant work done or being done by the Auditor General for Wales.”

Commencement
Sch. 10 para. 15(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 15(1)-(3): United Kingdom
16

(1) Section 8 (right to obtain documents and information) is amended as follows.

(2) In subsection (1), after “below” insert “and except in relation to an examination under section 6 above in respect of the Welsh Ministers or the National Assembly for Wales Commission”.

(3) After subsection (2) insert—

“(3) For the purpose of enabling an examination under section 6 above to be carried out in respect of the Welsh Ministers or the National Assembly for Wales Commission the Comptroller and Auditor General—

(a) shall have a right of access at all reasonable times to all such documents in the custody or under the control of any of the persons mentioned in subsection (4) below as may be reasonably required for that purpose, and

(b) shall be entitled to require from any person holding or accountable for any of those documents such information and explanation as are reasonably necessary for that purpose.

(4) The persons referred to in subsection (3)(a) above are—

(a) the Welsh Ministers,

(b) the National Assembly for Wales Commission,

(c) any other person audited by the Auditor General for Wales other than a Welsh NHS body (within the meaning given in section 60 of the Public Audit (Wales) Act 2004 (c. 23)), and

(d) the Auditor General for Wales.

(5) Before acting in reliance on subsection (3) above the Comptroller and Auditor General shall—

(a) consult the Auditor General for Wales, and

(b) take into account any relevant work done or being done by the Auditor General for Wales.”

Commencement

Sch. 10 para. 16(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 10 para. 16(1)-(3): United Kingdom

17

(1) Section 9 (reports to House of Commons) is amended as follows.

(2) The existing provision is re-numbered as subsection (1).
(3) After that subsection insert—

“(2) If the Comptroller and Auditor General reports the results of an examination carried out under section 6 above in respect of the Welsh Ministers or the National Assembly for Wales Commission to the House of Commons, the Comptroller and Auditor General shall at the same time lay a report of the results of the examination before the National Assembly for Wales.”

Commencement
Sch. 10 para. 17(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 17(1)-(3): United Kingdom

Insolvency Act 1986 (c. 45)

18
In section 427(6B)(b) of the Insolvency Act 1986 (application to the National Assembly for Wales), for “section 12(2) of the Government of Wales Act 1998” substitute “section 16(2) of the Government of Wales Act 2006”.

Commencement
Sch. 10 para. 18: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 18: United Kingdom

Public Order Act 1986 (c. 64)

19
In section 26(1) of the Public Order Act 1986 (saving for reports of parliamentary proceedings), after “Scottish Parliament” insert “or in the National Assembly for Wales”.

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Commencement

Sch. 10 para. 19: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 10 para. 19: United Kingdom

Finance Act 1987 (c. 16)

Law In Force

20

In section 55(1)(c) of the Finance Act 1987 (exemption from stamp duty for the National Assembly for Wales), for “National Assembly for Wales” substitute “Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Assembly Government or the National Assembly for Wales Commission”.

Commencement

Sch. 10 para. 20: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 10 para. 20: United Kingdom

Local Government Finance Act 1988 (c. 41)

Law In Force

21

In Schedule 8 to the Local Government Finance Act 1988 (non-domestic rating: pooling), after paragraph 15 insert–

“16 Source of payments by Welsh Ministers
Sums required for the making of payments by the Welsh Ministers under this Part of this Schedule are to be charged on the Welsh Consolidated Fund.”
Copyright, Designs and Patents Act 1988 (c. 48)

22
The Copyright, Designs and Patents Act 1988 is amended as follows.

Commencement
Sch. 10 para. 21: April 1, 2007 (2006 c. 32 Pt 6 s. 161(3))

Extent
Sch. 10 para. 21: United Kingdom

23
In section 12(9) (duration of copyright in literary, dramatic, musical or artistic works), for “166B” substitute “166D”.

Commencement
Sch. 10 para. 22: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 22: United Kingdom

24
In section 49 (public records), for “the Government of Wales Act 1998” substitute “the Government of Wales Act 2006”.

Commencement
Sch. 10 para. 23: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 23: United Kingdom
Commencement

Sch. 10 para. 24: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 10 para. 24: United Kingdom

☐ Law In Force

25
In section 153(2) (qualification for copyright protection), for “166B” substitute “166D”.

Commencement

Sch. 10 para. 25: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 10 para. 25: United Kingdom

☐ Law In Force

26

(1) Section 163 (Crown copyright) is amended as follows.

(2) Omit subsection (1A).

(3) In subsection (6), for “166B” substitute “166D”.

Commencement

Sch. 10 para. 26(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 10 para. 26(1)-(3): United Kingdom

☐ Law In Force

27

(1) Section 164 (copyright in Acts and Measures) is amended as follows.
(2) In subsection (1), after “Scottish Parliament,” insert “Measure of the National Assembly for Wales, Act of the National Assembly for Wales,”.

(3) In subsection (2), for the words after “subsists” substitute–

“(a) in the case of an Act or a Measure of the General Synod of the Church of England, until the end of the period of 50 years from the end of the calendar year in which Royal Assent was given, and
(b) in the case of a Measure of the National Assembly for Wales, until the end of the period of 50 years from the end of the calendar year in which the Measure was approved by Her Majesty in Council.”

Commencement
Sch. 10 para. 27(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 27(1)-(3): United Kingdom

28
After section 166B insert–

“166C Copyright in proposed Measures of the National Assembly for Wales

(1) Copyright in every proposed Assembly Measure introduced into the National Assembly for Wales belongs to the National Assembly for Wales Commission.

(2) Copyright under this section subsists from the time when the text of the proposed Assembly Measure is handed in to the Assembly for introduction–

(a) until the proposed Assembly Measure is approved by Her Majesty in Council, or
(b) if the proposed Assembly Measure is not approved by Her Majesty in Council, until it is withdrawn or rejected or no further proceedings of the Assembly may be taken in respect of it.

(3) References in this Part to Parliamentary copyright (except in section 165) include copyright under this section; and, except as mentioned above, the provisions of this Part apply in relation to copyright under this section as to other Parliamentary copyright.

(4) No other copyright, or right in the nature of copyright, subsists in a proposed Assembly Measure after copyright has once subsisted under this section; but without prejudice to the subsequent operation of this section in relation to a proposed Assembly Measure which, not having been approved by Her Majesty in Council, is later reintroduced into the Assembly.
166D  Copyright in Bills of the National Assembly for Wales

(1) Copyright in every Bill introduced into the National Assembly for Wales belongs to the National Assembly for Wales Commission.

(2) Copyright under this section subsists from the time when the text of the Bill is handed in to the Assembly for introduction—
   (a) until the Bill receives Royal Assent, or
   (b) if the Bill does not receive Royal Assent, until it is withdrawn or rejected or no further proceedings of the Assembly may be taken in respect of it.

(3) References in this Part to Parliamentary copyright (except in section 165) include copyright under this section; and, except as mentioned above, the provisions of this Part apply in relation to copyright under this section as to other Parliamentary copyright.

(4) No other copyright, or right in the nature of copyright, subsists in a Bill after copyright has once subsisted under this section; but without prejudice to the subsequent operation of this section in relation to a Bill which, not having received Royal Assent, is later reintroduced into the Assembly.”
30
In section 179 (index of defined expressions), in column 2 of the entry for “Parliamentary copyright”, for “and 166B(3)” substitute “166B(3) 166C(3) and 166D(3)”.

Commencement
Sch. 10 para. 30: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 30: United Kingdom

31
(1) Section 263(1) (Part 3: minor definitions) is amended as follows.
(2) In the definition of “the Crown”, insert at the end “and the Crown in right of the Welsh Assembly Government”.
(3) In the definition of “government department”, insert at the end “and any part of the Welsh Assembly Government”.

Commencement
Sch. 10 para. 31(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 31(1)-(3): United Kingdom

32
In paragraph 10(1) of Schedule 2 (public records), for “the Government of Wales Act 1998” substitute “the Government of Wales Act 2006”.

Commencement
Sch. 10 para. 32: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the
In paragraph 5 of Schedule 8 to the Housing Act 1988 (financial provisions relating to housing action trusts: guarantees), for sub-paragraph (3) substitute—

“(3) Any sums required for fulfilling a guarantee under this paragraph shall be charged on and issued out of—

(a) the Consolidated Fund, if required by the Treasury, or
(b) the Welsh Consolidated Fund, if required by the Welsh Ministers.”

Commencement
Sch. 10 para. 33: April 1, 2007 (2006 c. 32 Pt 6 s. 161(3))

Extent
Sch. 10 para. 33: United Kingdom

In section 12 of the Official Secrets Act 1989 (meaning of “Crown servant” and “government contractor”)—

(a) in subsection (1), after paragraph (aa) insert—

“(ab) the First Minister for Wales, a Welsh Minister appointed under section 48 of the Government of Wales Act 2006, the Counsel General to the Welsh Assembly Government or a Deputy Welsh Minister;”

, and

(b) in subsection (2), in paragraph (a), after “(a)” insert “, (ab)” and omit paragraph (aa).

Commencement
Sch. 10 para. 34(a)-(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller
and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

**Extent**

Sch. 10 para. 34(a)-(b): United Kingdom

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**Town and Country Planning Act 1990 (c. 8)**

**Law In Force**

35

In section 321B of the Town and Country Planning Act 1990 (planning inquiries relating to Wales: national security)—

(a) in subsection (2), for “National Assembly for Wales” substitute “Welsh Assembly Government”, and

(b) omit subsection (5).

**Commencement**

Sch. 10 para. 35(a)-(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

**Extent**

Sch. 10 para. 35(a)-(b): United Kingdom

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**Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9)**

**Law In Force**

36

In paragraph 8 of Schedule 3 to the Planning (Listed Buildings and Conservation Areas) Act 1990 (local inquiries relating to Wales: national security)—

(a) in sub-paragraph (2), for “National Assembly for Wales” substitute “Welsh Assembly Government”, and

(b) omit sub-paragraph (5).

**Commencement**

Sch. 10 para. 36(a)-(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller...
and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 36(a)-(b): United Kingdom

Planning (Hazardous Substances) Act 1990 (c. 10)

Law In Force

37
In paragraph 8 of the Schedule to the Planning (Hazardous Substances) Act 1990 (local inquiries relating to Wales: national security)—
(a) in sub-paragraph (2), for “National Assembly for Wales” substitute “Welsh Assembly Government”, and
(b) omit sub-paragraph (5).

Commencement
Sch. 10 para. 37(a)-(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 37(a)-(b): United Kingdom

Tribunals and Inquiries Act 1992 (c. 53)

Law In Force

38
In section 16(1) of the Tribunals and Inquiries Act 1992 (interpretation), in the definition of “Minister”, for “National Assembly for Wales” substitute “Welsh Ministers”.

Commencement
Sch. 10 para. 38: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 38: United Kingdom
Value Added Tax Act 1994 (c. 23)

Law In Force

39
In section 41(6) of the Value Added Tax Act 1994 (meaning of “Government department”), for “National Assembly for Wales” substitute “Welsh Assembly Government”.

Commencement
Sch. 10 para. 39: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 39: United Kingdom

Defamation Act 1996 (c. 31)

Law In Force

40
In paragraph 11(1)(c) of Schedule 1 to the Defamation Act 1996 (qualified privilege: accurate reports of proceedings of inquiries etc.), after “Scottish Executive” insert “, the Welsh Ministers or the Counsel General to the Welsh Assembly Government”.

Commencement
Sch. 10 para. 40: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 40: United Kingdom

Government of Wales Act 1998 (c. 38)

Law In Force

41
The Government of Wales Act 1998 is amended as follows.
Commencement
Sch. 10 para. 41: May 25, 2007 immediately after the end of the initial period as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(4)(c), Pt 6 s. 161(5))

Extent
Sch. 10 para. 41: United Kingdom

Law In Force

(1) Section 28 (reform of other Welsh public bodies) is amended as follows.
(2) For “Assembly” (in each place) substitute “Welsh Ministers”.
(3) In subsection (2), for “considers” substitute “consider”.
(4) After subsection (7) insert—

“(7A) A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of the Assembly.”

Commencement
Sch. 10 para. 42(1)-(4): May 25, 2007 immediately after the end of the initial period as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(4)(c), Pt 6 s. 161(5))

Extent
Sch. 10 para. 42(1)-(4): United Kingdom

Law In Force

(1) Section 104 (Her Majesty's Chief Inspector of Education and Training in Wales) is amended as follows.
(2) For “Assembly” (in each place) substitute “Welsh Ministers”.
(3) In subsection (2)—

(a) for “it”, in the first place, substitute “they”, and
(b) for “it considers” substitute “they consider”.

(4) In subsection (3), for “it considers” (in both places) substitute “they consider”.
(5) In subsection (4), for “it is” substitute “they are”.
(6) In subsection (4A)—

(a) for “it”, in the first and third places, substitute “them”, and
(b) for “it is” substitute “they are”.

(7) In subsection (4B), for “it gives its” substitute “they give their”.

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(8) Omit subsection (5).

Commencement

Sch. 10 para. 43(1)-(8): May 25, 2007 immediately after the end of the initial period as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(4)(c), Pt 6 s. 161(5))

Extent

Sch. 10 para. 43(1)-(8): United Kingdom

Law In Force

44

(1) Section 105 (Forestry Commissioners) is amended as follows.
(2) For “Assembly” (in each place) substitute “Welsh Ministers”.
(3) In subsection (2)–
   (a) for “it”, in the first place, substitute “they”, and
   (b) for “considers” substitute “consider”.
(4) In subsection (3), for “it considers” (in both places) substitute “they consider”.
(5) In subsection (4), for “it is” substitute “they are”.

Commencement

Sch. 10 para. 44(1)-(5): May 25, 2007 immediately after the end of the initial period as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(4)(c), Pt 6 s. 161(5))

Extent

Sch. 10 para. 44(1)-(5): United Kingdom

Law In Force

45

(1) Section 144 (power of Secretary of State by order to make provision about accounts etc. of bodies specified in Schedule 17) is amended as follows.
(2) In subsection (1), for “Secretary of State” substitute “Welsh Ministers”.
(3) In subsection (3)–
   (a) for paragraph (a) substitute–
      “(a) the Permanent Secretary to the Welsh Assembly Government to designate accounting officers and to specify their responsibilities,”
   , and
   (b) in paragraph (d), for “Assembly (or, before the first ordinary election, by the Secretary of State)” substitute “Welsh Ministers”.
(4) For subsection (4) substitute–
“(4) The Welsh Ministers may by order make provision for the Permanent Secretary to the Welsh Assembly Government to designate accounting officers of any body specified in Part 3 of Schedule 17 and to specify their responsibilities.

(4A) An order under subsection (1) or (4) may not remove or restrict any function of the Comptroller and Auditor General.”

(5) After subsection (5) insert—

“(5A) A statutory instrument containing an order under subsection (1) or (4), other than an order to which subsection (5B) applies, is subject to annulment in pursuance of a resolution of the Assembly.

(5B) No order to which this subsection applies may be made unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Assembly.

(5C) Subsection (5B) applies to an order under subsection (1) or (4) which contains provisions in the form of amendments or repeals of enactments contained in an Act of Parliament, Assembly Measure or Act of the Assembly.”

(6) Omit subsection (6).

(7) In subsection (8)—
(a) for “Secretary of State” substitute “Welsh Ministers”, and
(b) in paragraph (a), after “other than” insert “the National Assembly for Wales Commission,”.

(8) After that subsection insert—

“(8ZA) No order under subsection (8) may be made unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Assembly.”

(9) Omit subsection (8A).

(10) In subsection (9), before the word “and” at the end of paragraph (b) insert—

“(ba) “Permanent Secretary to the Welsh Assembly Government” means the person appointed in accordance with section 52 of the Government of Wales Act 2006 to be the head of the staff of the Welsh Assembly Government (whether or not that person is known by the title of Permanent Secretary to the Welsh Assembly Government).”.

Commencement

Sch. 10 para. 45(1)-(10): May 25, 2007 immediately after the end of the initial period as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(4)(c), Pt 6 s. 161(5))

Extent

Sch. 10 para. 45(1)-(10): United Kingdom
(1) Section 145 (examinations by Auditor General into discharge of functions by bodies and offices specified in Schedule 17) is amended as follows.

(2) In subsection (3), omit “(or, before the first ordinary election, the views of the Secretary of State)”.

(3) In subsection (7), for “section 96(3)(b)” substitute “paragraph 18(3)(b) of Schedule 8 to the Government of Wales Act 2006 (agreement between a person and the Welsh Ministers etc. to permit the Auditor General to carry out an examination into the discharge of functions by that person)”.

Commencement
Sch. 10 para. 46(1)-(3): May 25, 2007 immediately after the end of the initial period as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(4)(c), Pt 6 s. 161(5))

Extent
Sch. 10 para. 46(1)-(3): United Kingdom

(1) Section 145A (studies by Auditor General into discharge of functions by relevant bodies: meaning of “relevant body”), for paragraph (a) substitute—

“(a) a person who prepares accounts or statements of accounts falling to be examined by the Auditor General for Wales in accordance with any provision made by or under this or any other Act;”.

Commencement
Sch. 10 para. 47: May 25, 2007 immediately after the end of the initial period as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(4)(c), Pt 6 s. 161(5))

Extent
Sch. 10 para. 47: United Kingdom

(1) Section 145C (studies by Auditor General into discharge of functions by registered social landlords) is amended as follows.

(2) In subsection (1), for “Assembly” substitute “Welsh Ministers”.

(3) In subsection (3), for “Assembly” substitute “Welsh Ministers”.

Commencement
Sch. 10 para. 48(1)-(3): May 25, 2007 immediately after the end of the initial period as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(4)(c), Pt 6 s. 161(5))

Extent
Sch. 10 para. 48(1)-(3): United Kingdom
(4) In subsection (6), for “section 95(3)(a) or (b)” substitute “paragraph 17(3)(a) or (b) of Schedule 8 to the Government of Wales Act 2006 (requirement to give assistance, information or explanation to the Auditor General for Wales)”.

(5) In subsection (8), for “Assembly” substitute “Welsh Ministers”.

Commencement
Sch. 10 para. 48(1)-(5): May 25, 2007 immediately after the end of the initial period as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(4)(c), Pt 6 s. 161(5))

Extent
Sch. 10 para. 48(1)-(5): United Kingdom

Law In Force
49
In section 146(4) (power of Secretary of State by order to transfer etc. functions from the Comptroller and Auditor General to the Auditor General), for “22” substitute “58 of the Government of Wales Act 2006”.

Commencement
Sch. 10 para. 49: May 25, 2007 immediately after the end of the initial period as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(4)(c), Pt 6 s. 161(5))

Extent
Sch. 10 para. 49: United Kingdom

Law In Force
50
(1) Section 146A (transfer etc. of supervisory functions from the Assembly to the Auditor General) is amended as follows.

(2) In subsection (1)–
   (a) for “Assembly” substitute “Welsh Ministers”, and
   (b) for “its” (in both places) substitute “their”.

(3) In subsection (3), for “Assembly” substitute “Welsh Ministers”.

(4) After subsection (5) insert–

   “(6) No order under subsection (1) may be made unless a draft of the statutory instrument containing it has been laid before, and approved by resolution of, the Assembly.”

(5) In the heading, for “Assembly” substitute “Welsh Ministers”.

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Commencement
Sch. 10 para. 50(1)-(5): May 25, 2007 immediately after the end of the initial period as specified in 2006 c.32 s.161(4)-(5) (2006 c.32 Pt 6 s. 161(4)(c), Pt 6 s. 161(5))

Extent
Sch. 10 para. 50(1)-(5): United Kingdom

Law In Force

51
(1) Section 147 (power of Secretary of State by order to make provision about Environment Agency's Welsh functions) is amended as follows.
(2) In subsection (1)(a), for “Assembly” substitute “Welsh Ministers”.
(3) In subsection (3), for “22” substitute “58 of the Government of Wales Act 2006”.
(4) In subsection (4), for “Assembly” (in each place) substitute “Welsh Ministers”.

Commencement
Sch. 10 para. 51(1)-(4): May 25, 2007 immediately after the end of the initial period as specified in 2006 c.32 s.161(4)-(5) (2006 c.32 Pt 6 s. 161(4)(c), Pt 6 s. 161(5))

Extent
Sch. 10 para. 51(1)-(4): United Kingdom

Law In Force

52
In section 151(2) (power to make consequential amendments), for “22” substitute “58 of the Government of Wales Act 2006”.

Commencement
Sch. 10 para. 52: May 25, 2007 immediately after the end of the initial period as specified in 2006 c.32 s.161(4)-(5) (2006 c.32 Pt 6 s. 161(4)(c), Pt 6 s. 161(5))

Extent
Sch. 10 para. 52: United Kingdom

Law In Force

53
(1) Section 154 (orders and directions) is amended as follows.
(2) In subsection (1), for “Assembly” substitute “Welsh Ministers”.
(3) In subsection (3)–
(a) omit paragraph (a), and
(b) in paragraph (b)–
   (i) omit “96(5), 117,”, and
   (ii) omit “144(1) or (4),”.

(4) Omit subsection (4).

(5) In subsection (6)–
   (a) in paragraph (a)–
      (i) omit from “3” to “118(1)(f),”,
      (ii) omit “144(1) or (4),”,
      (iii) omit “or paragraph 17(9) of Schedule 9”, and
   (b) omit paragraph (b).

(6) Omit subsection (7).

Commencement
Sch. 10 para. 53(1)-(6): May 25, 2007 immediately after the end of the initial period as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(4)(c), Pt 6 s. 161(5))

Extent
Sch. 10 para. 53(1)-(6): United Kingdom

Law In Force

54

(1) Section 155 (interpretation) is amended as follows.

(2) In subsection (1), insert the following definitions in the appropriate places–

   “‘the Assembly’ means the National Assembly for Wales,”,
   “‘Audit Committee’ has the meaning given by section 30 of the Government of Wales Act 2006,”,
   “‘cross-border body’ means any body (including a government department) or undertaker exercising functions, or carrying on activities, in or with respect to Wales (or any part of Wales) and anywhere else,”, and
   “‘English border area’ means a part of England adjoining Wales (but not the whole of England).”.

(3) In that subsection, omit the definitions of “ [ EU ]¹ law” and “delegate”.

(4) In that subsection, for the definition of “Wales” substitute–

   “‘Wales’ has the same meaning as in the Government of Wales Act 2006;”.

(5) Omit subsection (2).

(6) In subsection (3), omit the words from “; and the” to the end.

Notes
¹ Word substituted by Treaty of Lisbon (Changes in Terminology) Order 2011/1043 Pt 2 art.6(2)(a) (April 22, 2011)
(1) Schedule 7 (Forestry Commissioners) is amended as follows.

(2) In paragraph 2 (functions of making subordinate legislation), for sub-paragraphs (2) to (8) substitute—

“(2) No provision—
(a) requiring the statutory instrument, or a draft of the statutory instrument, to be laid before Parliament or either House of Parliament,
(b) for the annulment or approval of the statutory instrument, or a draft of the statutory instrument, by or in pursuance of a resolution of either House of Parliament or of both Houses, or
(c) prohibiting the making of the statutory instrument without such approval, has effect in relation to the function.

(3) But the subordinate legislation may not be made without the consent of the Welsh Ministers.”

(3) In paragraph 4(3) (receipts)—

(a) for “The Assembly” substitute “The Welsh Ministers”, and
(b) for “the Assembly” substitute “them”.

(4) In paragraph 10(1) (reports), for “Assembly directs” (in both places) substitute “Welsh Ministers direct”.

Human Rights Act 1998 (c. 42)

(1) Section 21(1) of the Human Rights Act 1998 (interpretation) is amended as follows.
(2) In the definition of “primary legislation”, for “National Assembly for Wales” substitute “Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Assembly Government.”.

(3) In the definition of “subordinate legislation”, after paragraph (b) insert–

“(ba) Measure of the National Assembly for Wales;
(bb) Act of the National Assembly for Wales;”.

(4) In paragraph (h) of that definition, after “Executive” insert “, Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Assembly Government,”.

Commencement
Sch. 10 para. 56(1)-(4): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 56(1)-(4): United Kingdom

**Government Resources and Accounts Act 2000 (c. 20)**

57
In section 10 of the Government Resources and Accounts Act 2000 (designation of body by Treasury for purposes of preparing whole of government accounts), in–

(a) subsection (7) (duty to consult with Assembly), and

(b) subsection (8) (power to make arrangements with Assembly),
for “National Assembly for Wales” substitute “Welsh Ministers”.

Commencement
Sch. 10 para. 57(a)-(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 57(a)-(b): United Kingdom
The Political Parties, Elections and Referendums Act 2000 is amended as follows.

Commencement
Sch. 10 para. 58: May 3, 2007 immediately after the ordinary election as specified in 2006 c. 32 s. 161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c. 32 s. 161(4)-(5)

Extent
Sch. 10 para. 58: United Kingdom


Commencement
Sch. 10 para. 59: May 3, 2007 immediately after the ordinary election as specified in 2006 c. 32 s. 161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c. 32 s. 161(4)-(5)

Extent
Sch. 10 para. 59: United Kingdom

In section 10(6) (bodies to which Electoral Commission may give advice and assistance), after paragraph (c) insert—

“(ca) the National Assembly for Wales Commission;”.

Commencement
Sch. 10 para. 60: May 3, 2007 immediately after the ordinary election as specified in 2006 c. 32 s. 161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c. 32 s. 161(4)-(5)

Extent
Sch. 10 para. 60: United Kingdom
61
In section 13 (power of Electoral Commission to promote public awareness of electoral and democratic systems), after subsection (11) insert—

“(12) Subsection (6) shall not apply to the expenditure incurred by the Commission to the extent that it is, or is to be, met under paragraph 6 of Schedule 2 to the Government of Wales Act 2006.”

Commencement
Sch. 10 para. 61: July 25, 2006 for amendment specified in 2006 c.32 s.161(2); May 3, 2007 otherwise (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 10 para. 61: United Kingdom

Finance Act 2003 (c. 14)

62
The Finance Act 2003 is amended as follows.

Commencement
Sch. 10 para. 62: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 62: United Kingdom

63
In section 61(3) (stamp duty land tax: compliance with planning obligations), for the entry relating to the National Assembly for Wales substitute—

“The Welsh Ministers, the First Minister for Wales and the Counsel General to the Welsh Assembly Government”.

Commencement
Sch. 10 para. 63: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the
Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

**Extent**

Sch. 10 para. 63: United Kingdom

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**Law In Force**

**64**

In section 66(4) (stamp duty land tax: transfers involving public bodies)—

(a) for the entry relating to the National Assembly for Wales substitute—

“The Welsh Ministers, the First Minister for Wales and the Counsel General to the Welsh Assembly Government”

, and

(b) after the entry relating to the Northern Ireland Assembly Commission insert—

“The National Assembly for Wales Commission”.

**Commencement**

Sch. 10 para. 64(a)-(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

**Extent**

Sch. 10 para. 64(a)-(b): United Kingdom

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**Law In Force**

**65**

In section 107(2) (stamp duty land tax: Crown application)—

(a) after the entry relating to a Northern Ireland department insert—

“The Welsh Ministers, the First Minister for Wales and the Counsel General to the Welsh Assembly Government”

, and

(b) for the entry relating to the National Assembly for Wales substitute—

“The National Assembly for Wales Commission”.

**Commencement**

Sch. 10 para. 65(a)-(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller
and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 65(a)-(b): United Kingdom

Planning and Compulsory Purchase Act 2004 (c. 5)

Law In Force

66

(1) Section 60 of the Planning and Compulsory Purchase Act 2004 (Wales Spatial Plan) is amended as follows.

(2) In subsection (2)–
   (a) for “National Assembly for Wales” substitute “Welsh Ministers”, and
   (b) for “it thinks” substitute “they think”.

(3) In subsection (3), for “Assembly” substitute “Welsh Ministers”.

(4) In subsection (4), for the words from “Assembly” to “appropriate)” substitute “Welsh Ministers revise the Plan, they must publish (as they consider appropriate)”.

(5) In subsection (5)–
   (a) for “Assembly” substitute “Welsh Ministers”, and
   (b) for “it considers” substitute “they consider”.

(6) For subsection (6) substitute–

“(6) The Welsh Ministers may not publish the Plan as revised or the revised parts of the Plan unless the Plan or the revised parts have been laid before, and approved by a resolution of, the National Assembly for Wales.”

(7) Omit subsection (7).

Commencement
Sch. 10 para. 66(1)-(7): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 66(1)-(7): United Kingdom
The Public Services Ombudsman (Wales) Act 2005 is amended as follows.

Commencement

Sch. 10 para. 67: May 3, 2007 immediately after the ordinary election as specified in 2006 c. 32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 10 para. 67: United Kingdom

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In section 7(3)(b) (relevant action: Welsh health service bodies), for “Assembly” substitute “Welsh Ministers”.

Commencement

Sch. 10 para. 68: May 3, 2007 immediately after the ordinary election as specified in 2006 c. 32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 10 para. 68: United Kingdom

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In section 8(2) (exclusion from investigation for matters not relating to Wales: exception for Assembly), for “Assembly” substitute “Welsh Assembly Government”.

Commencement

Sch. 10 para. 69: May 3, 2007 immediately after the ordinary election as specified in 2006 c. 32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 10 para. 69: United Kingdom
70
In section 9(1)(b) (exclusion from investigation of matters: right of appeal to Assembly), for “or the Assembly” substitute “, the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government”.

Commencement
Sch. 10 para. 70: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 70: United Kingdom

71

(1) Section 10 (other excluded matters) is amended as follows.

(2) For “Assembly” (in both places) substitute “Welsh Ministers”.

(3) After subsection (3) insert—

“(3A) No order is to be made under subsection (2) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Assembly.”

Commencement
Sch. 10 para. 71(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 71(1)-(3): United Kingdom

72
In section 12 (decisions not to investigate etc.), omit subsection (9).

Commencement
Sch. 10 para. 72: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the
Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 72: United Kingdom

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Law In Force

73

(1) Section 16 (reports of investigations) is amended as follows.

(2) In subsection (2)(f)–
   (a) for “Assembly First Secretary” substitute “First Minister for Wales”, and
   (b) for “Assembly” substitute “Welsh Assembly Government”.

(3) Omit subsection (9).

Commencement
Sch. 10 para. 73(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 73(1)-(3): United Kingdom

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Law In Force

74

In section 21 (reports: alternative procedure), omit subsection (11).

Commencement
Sch. 10 para. 74: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 74: United Kingdom

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Law In Force

75

In section 23 (special reports: supplementary), omit subsection (6).
Commencement

Sch. 10 para. 75: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 10 para. 75: United Kingdom

Law In Force

76

(1) Section 24 (special reports relating to the Assembly) is amended as follows.

(2) In subsection (1), for “Assembly” substitute “Welsh Assembly Government or the National Assembly for Wales Commission”.

(3) In subsection (2)—
   (a) for “Assembly First Secretary” substitute “relevant person”, and
   (b) omit paragraph (b).

(4) After that subsection insert—

“(2A) In subsection (2) “the relevant person” means—
   (a) if the complaint was made in respect of the Welsh Assembly Government, the First Minister for Wales, and
   (b) if the complaint was made in respect of the National Assembly for Wales Commission, a member of that Commission.”

(5) Omit subsection (3).

(6) In the side-note, for “Assembly” substitute “Welsh Assembly Government etc.”.

Commencement

Sch. 10 para. 76(1)-(6): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 10 para. 76(1)-(6): United Kingdom

Law In Force

77

(1) Section 25 (consultation and co-operation with other ombudsmen) is amended as follows.

(2) In subsections (8) and (9), for “Assembly” substitute “Welsh Ministers”.

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(3) After subsection (9) insert—

“(10) No order is to be made under subsection (8) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Assembly.”

Commencement

Sch. 10 para. 77(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 10 para. 77(1)-(3): United Kingdom

Law In Force

78

(1) Section 28 (listed authorities) is amended as follows.

(2) In subsections (2) and (4), for “Assembly” substitute “Welsh Ministers”.

(3) After subsection (4) insert—

“(4A) No order is to be made under subsection (2) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Assembly.”

Commencement

Sch. 10 para. 78(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 10 para. 78(1)-(3): United Kingdom

Law In Force

79

(1) Section 29 (restrictions on power to amend Schedule 3) is amended as follows.

(2) In subsection (1), for “Assembly” substitute “Welsh Assembly Government or the National Assembly for Wales Commission”.

(3) In subsection (2)(b), for “Assembly has” substitute “Welsh Ministers have, or the First Minister for Wales or the Counsel General to the Welsh Assembly Government has,”.

(4) In subsection (3)–
(a) in paragraphs (a) and (b), for “Assembly” substitute “Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Assembly Government”, and
(b) in paragraph (c), for “directly from payments made by the Assembly or other listed authorities” substitute “out of the Welsh Consolidated Fund or is met directly from payments made by other listed authorities”.

(5) In subsection (5)–
(a) in paragraph (a), for “Assembly” substitute “Welsh Ministers”, and
(b) in paragraph (b), for “directly or indirectly from payments made by the Assembly or other listed authorities” substitute “out of the Welsh Consolidated Fund or directly or indirectly from payments made by other listed authorities”.

Commencement
Sch. 10 para. 79(1)-(5)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 79(1)-(5)(b): United Kingdom

Law In Force
80

(1) Section 30 (provisions in orders adding persons to Schedule 3) is amended as follows.

(2) In subsection (1)–
(a) for “Assembly proposes” substitute “Welsh Ministers propose”, and
(b) for “it must” substitute “they must”.

(3) In subsection (2), for “Assembly has” substitute “Welsh Ministers have, or the First Minister for Wales or the Counsel General to the Welsh Assembly Government has,”.

(4) In subsection (3)–
(a) in paragraph (a), for “Assembly has” substitute “Welsh Ministers have, or the First Minister for Wales or the Counsel General to the Welsh Assembly Government has,”, and
(b) in paragraph (b), for “Assembly” substitute “Welsh Ministers”.

Commencement
Sch. 10 para. 80(1)-(4)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 80(1)-(4)(b): United Kingdom
81
In section 40 (commencement), for “Assembly” substitute “Welsh Ministers”.

Commencement
Sch. 10 para. 81: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 81: United Kingdom

82
(1) Section 41 (interpretation) is amended as follows.
(2) In subsection (1)–
   (a) omit the definition of “Assembly Cabinet”,
   (b) in the definition of “relevant tribunal”, for “Assembly” substitute “Welsh Ministers”,
   (c) in the definition of “social landlord in Wales”–
      (i) in paragraph (a), for “Assembly” substitute “Welsh Ministers” and after “section
          by” insert “the Assembly constituted by the Government of Wales Act 1998,”, and
      (ii) in paragraph (b), for “or the Assembly” substitute “, the Assembly constituted
          by the Government of Wales Act 1998 or the Welsh Ministers”, and
   (d) in the definition of “Welsh health service body”, for “Assembly” substitute “Welsh
       Ministers”.
(3) In subsection (2), for “Assembly” (in both places) substitute “Welsh Ministers”.
(4) After that subsection insert–

   “(2A) A statutory instrument containing an order under subsection (1) is subject to annulment
   in pursuance of a resolution of the Assembly.”
(5) In subsection (3), for “Assembly” substitute “Welsh Ministers”.
(6) In subsection (4)–
   (a) for “Assembly” substitute “Welsh Ministers”, and
   (b) for “it thinks” substitute “they think”.
(7) After that subsection insert–

   “(4A) No order is to be made under subsection (3) unless a draft of the statutory instrument
   containing it has been laid before, and approved by a resolution of, the Assembly.”

Commencement
Sch. 10 para. 82(1)-(7): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First
Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 82(1)-(7): United Kingdom

Law In Force

83

(1) Section 42 (former health care providers and social landlords) is amended as follows.

(2) In subsection (1), for “Assembly” substitute “Welsh Ministers”.

(3) In subsection (4)(a)–

(a) in sub-paragraph (i), for “Assembly” substitute “Welsh Ministers” and after “section by” insert “the Assembly constituted by the Government of Wales Act 1998,”, and

(b) in sub-paragraph (ii), for “or the Assembly” substitute “, the Assembly constituted by the Government of Wales Act 1998 or the Welsh Ministers”.

(4) After subsection (5) insert–

“(6) No regulations are to be made under this section unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.”

Commencement
Sch. 10 para. 83(1)-(4): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 83(1)-(4): United Kingdom

Law In Force

84

(1) Section 43 (consequential and transitional provision) is amended as follows.

(2) In subsection (1)–

(a) for “Assembly” substitute “Welsh Ministers”, and

(b) for “it thinks” substitute “they think”.

(3) After subsection (3) insert–

“(4) No order is to be made under subsection (1) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Assembly.”
Commencement
Sch. 10 para. 84(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 84(1)-(3): United Kingdom

Law In Force
85
(1) Section 44 (orders, regulations and directions) is amended as follows.
(2) In subsections (1) and (2), for “Assembly” substitute “Welsh Ministers”.
(3) Omit subsection (3).

Commencement
Sch. 10 para. 85(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 85(1)-(3): United Kingdom

Law In Force
86
(1) Schedule 1 (Public Service Ombudsman for Wales: appointment etc.) is amended as follows.
(2) For paragraph 1 (appointment) substitute–

“1
The Ombudsman is to be appointed by Her Majesty on the nomination of the Assembly.”

(3) In paragraph 3 (term of office)–
(a) in sub-paragraph (3), for paragraph (b) substitute–

“(b) on Her Majesty being satisfied that the person is incapable for medical reasons of performing the duties of the office.”,
(b) in sub-paragraph (4), for the words following “Ombudsman” substitute “on the making of a recommendation, on the ground of the person’s misbehaviour, that Her Majesty should do so.”, and
(c) for sub-paragraph (5) substitute—

“(5) A recommendation for the removal of a person from office as the Ombudsman may not be made unless—
(a) the Assembly has resolved that the recommendation should be made, and
(b) the resolution of the Assembly is passed on a vote in which the number of Assembly members voting in favour of it is not less than two-thirds of the total number of Assembly seats.”

(4) In paragraph 4 (acting Public Service Ombudsman for Wales), for sub-paragraphs (1) and (2) substitute—

“(1) If the office of the Ombudsman becomes vacant, Her Majesty may, on the nomination of the Assembly, appoint a person to act as the Ombudsman.”


(6) In paragraph 7(3) (exceptions from disqualifications applying to former Ombudsman or acting Ombudsman)—

(a) in paragraph (a), after “Assembly” insert “or the National Assembly for Wales Commission”, and
(b) in paragraph (b), for “Assembly First Secretary or Assembly Secretary” substitute “First Minister for Wales, Welsh Minister appointed under section 48 of the Government of Wales Act 2006, Counsel General to the Welsh Assembly Government or Deputy Welsh Minister”.

(7) In paragraph 9 (remuneration etc.), after sub-paragraph (5) insert—

“(6) Sums required for the making of payments under sub-paragraphs (1), (2) and (5) are to be charged on the Welsh Consolidated Fund.”

(8) For paragraph 10 (expenses) substitute—

“10 Special financial provisions

(1) Any sums payable by the Ombudsman in consequence of a breach, in the performance of any of the Ombudsman's functions, of any contractual or other duty are to be charged on the Welsh Consolidated Fund.

(2) And sub-paragraph (1) applies whether the breach occurs by reason of an act or omission of—

(a) the Ombudsman,
(b) a member of the Ombudsman's staff, or
(c) any other person acting on the Ombudsman's behalf or assisting the Ombudsman in the exercise of functions.

(3) The Ombudsman may retain income derived from fees charged by virtue of sections 12(6), 16(6), 21(8) and 23(2) (rather than pay it into the Welsh Consolidated Fund) for use in connection with the exercise of the functions conferred or imposed by this Act.”
(9) In paragraph 11(5) (payments by Assembly to Minister for the Civil Service in respect of superannuation benefits for Ombudsman's staff)—
(a) for “Assembly” substitute “Ombudsman”, and
(b) for “he” (in both places) substitute “the Minister”.

(10) In paragraph 13 (delegation), for sub-paragraph (4) substitute—
“(4) No arrangements may be made between the Ombudsman, on the one hand, and the Welsh Ministers (or the First Minister for Wales or the Counsel General to the Welsh Assembly Government), on the other, for—
(a) any functions of one of them to be exercised by the other,
(b) any functions of the Welsh Ministers (or the First Minister for Wales or the Counsel General to the Welsh Assembly Government) to be exercised by members of staff of the Ombudsman,
(c) any functions of the Ombudsman to be exercised by members of the staff of the Welsh Assembly Government, or
(d) the provision of administrative, professional or technical services by one of them for the other.”

(11) In paragraph 14(3) (duty to send copy of extraordinary report to listed authorities other than the Assembly)—
(a) after “time” insert “send a copy to the Welsh Assembly Government and”, and
(b) for “than the Assembly” substitute “than the Welsh Assembly Government”.

(12) In paragraph 15 (estimates)—
(a) in sub-paragraph (2), for the words following “estimate” substitute “at least five months before the beginning of the financial year to which it relates to the committee or committees of the Assembly specified in the standing orders of the Assembly.”,
(b) in sub-paragraph (3)—
(i) for “Assembly Cabinet” substitute “committee or committees”,
(ii) omit “to it”, and
(iii) for “it thinks” substitute “thought”, and
(c) for sub-paragraph (4) substitute—
“(4) Before laying before the Assembly with modifications an estimate submitted in accordance with sub-paragraph (2), the committee or committees must—
(a) consult the Ombudsman, and
(b) take into account any representations which the Ombudsman may make.”

(13) In paragraph 18 (accounting officer)—
(a) for “Treasury” (in each place) substitute “Audit Committee”, and
(b) in sub-paragraph (6)(a), for “Assembly Cabinet” substitute “Welsh Ministers”.

Commencement
Sch. 10 para. 86(1)-(13)(b): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller
and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

**Extent**

Sch. 10 para. 86(1)-(13)(b): United Kingdom

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**Law In Force**

### 87

In paragraph 1 of Schedule 2 (excluded matters), for “Assembly” substitute “Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Assembly Government”.

**Commencement**

Sch. 10 para. 87: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

**Extent**

Sch. 10 para. 87: United Kingdom

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**Law In Force**

### 88

In Schedule 3 (listed authorities), under the heading “Government of Wales”, for the entry relating to the Assembly substitute–

The National Assembly for Wales Commission.”

**Commencement**

Sch. 10 para. 88: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

**Extent**

Sch. 10 para. 88: United Kingdom

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**Inquiries Act 2005 (c. 12)**

**Law In Force**

### 89

The Inquiries Act 2005 is amended as follows.
Commencement
Sch. 10 para. 89: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 89: United Kingdom

Law In Force
90
In section 1(2) ("Ministers" who may cause inquiries to be held), after paragraph (b) insert–

“(ba) the Welsh Ministers,”,
and omit the words following paragraph (c).

Commencement
Sch. 10 para. 90: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 90: United Kingdom

Law In Force
91
(1) Section 27 (United Kingdom inquiries) is amended as follows.
(2) In subsection (3)(b), for “National Assembly for Wales” substitute “Welsh Ministers”.
(3) In subsection (7), in the definitions of “the relevant administration” and “Welsh matter”, for “National Assembly for Wales has” substitute “Welsh Ministers have”.

Commencement
Sch. 10 para. 91(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 91(1)-(3): United Kingdom
92
In section 28(4) (Scottish inquiries), for “National Assembly for Wales” substitute “Welsh Ministers”.

Commencement
Sch. 10 para. 92: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 92: United Kingdom

93
(1) Section 29 (Welsh inquiries) is amended as follows.
(2) In subsection (1), for “National Assembly for Wales is” substitute “Welsh Ministers are”.
(3) In subsection (5), for “National Assembly for Wales has” substitute “Welsh Ministers have”.

Commencement
Sch. 10 para. 93(1)-(3): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 93(1)-(3): United Kingdom

94
In section 30(5) (Northern Ireland inquiries), for “National Assembly for Wales” substitute “Welsh Ministers”.

Commencement
Sch. 10 para. 94: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent
Sch. 10 para. 94: United Kingdom
(1) Section 41 (rules) is amended as follows.

(2) In subsection (3)(c)—

(a) for “National Assembly for Wales” substitute “Welsh Ministers”, and

(b) for “that Assembly is” substitute “they are”.

(3) In subsection (4)(a), for “National Assembly for Wales” substitute “Welsh Ministers”.

(4) In subsection (5), after paragraph (a) insert—

“(aa) if made by the Welsh Ministers, in pursuance of a resolution of the National Assembly for Wales;”.

Commencement

Sch. 10 para. 95(1)-(4): May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 10 para. 95(1)-(4): United Kingdom

(96) In section 43(1) (interpretation), in the definition of “the relevant Parliament or Assembly”, for “National Assembly for Wales is responsible, that Assembly” substitute “Welsh Ministers are responsible, the National Assembly for Wales”.

Commencement

Sch. 10 para. 96: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 10 para. 96: United Kingdom

(97) In section 51(2) (commencement), for “National Assembly for Wales” substitute “Welsh Ministers”.

Law In Force
Commencement

Sch. 10 para. 97: May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5) (2006 c. 32 Pt 6 s. 161(1), Pt 6 s. 161(4); 2006 c. 32 Pt 6 s. 161(5))

Extent

Sch. 10 para. 97: United Kingdom

SCHEDULE 11

TRANSITIONAL PROVISIONS

Section 162

Alteration of Assembly electoral regions

Repealed

1 […]¹

Notes

¹ Repealed by Parliamentary Voting System and Constituencies Act 2011 c. 1 Sch.12(2) para.1 (February 16, 2011)

2007 election to be election to Assembly constituted by this Act

Law In Force

2

The 2007 election is an election to the Assembly constituted by this Act (and not that constituted by the Government of Wales Act 1998 (c. 38)).

Commencement

Sch. 11 para. 2: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent

Sch. 11 para. 2: United Kingdom
First meeting after 2007 election

Law In Force

3
The first meeting of the Assembly constituted by this Act after the 2007 election is to be held on the day specified by or in accordance with an order made by statutory instrument by the Assembly constituted by the Government of Wales Act 1998 (c. 38); and that day must be within the period of seven days beginning immediately after the day of the poll at the 2007 election.

Commencement
Sch. 11 para. 3: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 3: United Kingdom

Date of 2011 election

Law In Force

4
Until the first ordinary general election (or any extraordinary general election the poll for which is held as mentioned in section 5(5)), section 3(1) has effect as if the reference to the previous ordinary general election were to the 2007 election.

Commencement
Sch. 11 para. 4: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 4: United Kingdom

No dual constituency and regional candidacy

Law In Force

5
(1) Section 5 of the Government of Wales Act 1998 (ordinary elections: party lists of candidates, and individual candidates, to be Assembly members for Assembly electoral regions) is amended as follows.

(2) In subsection (5) (those who may not be included on party list), for paragraphs (c) and (d) (candidate to be Assembly member for Assembly constituency outside electoral region and candidate of different party to be Assembly member for Assembly constituency within electoral region) substitute
(3) In subsection (6) (those who may not be an individual candidate), for paragraphs (c) and (d) (candidate to be Assembly member for Assembly constituency outside electoral region and candidate of registered political party to be Assembly member for Assembly constituency within electoral region) substitute

“or

(c) a candidate to be the Assembly member for an Assembly constituency.”

Commencement
Sch. 11 para. 5(1)-(3): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 5(1)-(3): United Kingdom

6

(1) Section 7 of that Act (return of electoral region members) is amended as follows.

(2) In subsection (6) (party to be disregarded once party list exhausted by return of all persons on it as constituency or electoral region members), omit “for Assembly constituencies or”.

(3) Omit subsection (10) (person on party list returned as Assembly member to be treated as ceasing to be on list for purposes of drawing on list at ordinary election or in case of vacancy in electoral region seat).

Commencement
Sch. 11 para. 6(1)-(3): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 6(1)-(3): United Kingdom

Electoral region vacancies before first general election etc.

7

Section 11 has effect until the first general election as if–

(a) the references in subsections (2) and (8) to section 9 were to section 7 of the Government of Wales Act 1998, and

(b) the references to the last general election were to the 2007 election.
Commencement
Sch. 11 para. 7(a)-(b): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 7(a)-(b): United Kingdom

Election orders

☐ Law In Force

8
An order under section 11 of the Government of Wales Act 1998 which is in force immediately before the commencement of the repeal of that section by this Act has effect after that time as if made under section 13 of this Act.

Commencement
Sch. 11 para. 8: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 8: United Kingdom

Term of office of Assembly members

☐ Law In Force

9
Section 14 has effect until the first general election as if the reference in paragraph (a) to being declared to be returned included being declared to be returned at the 2007 election.

Commencement
Sch. 11 para. 9: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 9: United Kingdom
### Disqualification Orders

**10** An Order in Council under section 12(1)(b) of the Government of Wales Act 1998 (c. 38) which is in force immediately before the commencement of the repeal of that provision by this Act has effect after that time as if made under section 16(1)(b) of this Act.

**Commencement**
Sch. 11 para. 10: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

**Extent**
Sch. 11 para. 10: United Kingdom

### Disqualification of Lords of Appeal in Ordinary

**11** A Lord of Appeal in Ordinary is disqualified from being a member of the Assembly constituted by the Government of Wales Act 1998 or this Act.

**Commencement**
Sch. 11 para. 11: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

**Extent**
Sch. 11 para. 11: United Kingdom

### Remuneration of Assembly members etc.

**12** (1) This paragraph has effect in relation to a determination under section 16 of the Government of Wales Act 1998 which is in force immediately before the commencement of the repeal of that section by this Act.

(2) So far as relating to the Assembly First Secretary elected under that Act and the Assembly Secretaries appointed under that Act, the determination has effect after that time as if made under section 53, and applies—

(a) in relation to the First Minister as it applied before that time in relation to the Assembly First Secretary elected under that Act, and

(b) in relation to the Welsh Ministers appointed under section 48 of this Act as it applied before that time in relation to the Assembly Secretaries appointed under that Act.
(3) Otherwise, the determination has effect after that time as if made under section 20, and applies—
   (a) in relation to the Presiding Officer as it applied before that time in relation to the
       presiding officer elected under the Government of Wales Act 1998,
   (b) in relation to the Deputy Presiding Officer as it applied before that time in relation to
       the deputy presiding officer elected under that Act,
   (c) in relation to the leader of the largest political group without an executive role as it
       applied before that time in relation to the leader of the largest political party not represented
       on the executive committee constituted by that Act, and
   (d) in relation to any other Assembly member as it applied before that time in relation to
       members of the Assembly constituted by that Act.

(4) For the purposes of sub-paragraph (3)(c) a political group is the largest political group without
    an executive role if—
    (a) it is not a political group with an executive role, and
    (b) more Assembly members belong to it than to each other political group which is not a
        political group with an executive role.

(5) This paragraph has effect in relation to determinations under section 18 of the Government of
    Wales Act 1998 (c. 38) as it has effect in relation to determinations under section 16 of that Act,
    but as if references in this paragraph to members of, or office-holders in connection with, the
    Assembly (as constituted by the Government of Wales Act 1998 or this Act) were references to
    persons who have ceased to be such members or officeholders.

Commencement
Sch. 11 para. 12(1)-(5): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 12(1)-(5): United Kingdom

13
An order under section 17 of the Government of Wales Act 1998 which is in force immediately
before the commencement of the repeal of that section by this Act has effect after that time as if
made under section 21.

Commencement
Sch. 11 para. 13: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 13: United Kingdom
Publication of information about remuneration of Assembly members

Law In Force

14

(1) Section 22(2) does not apply in relation to the financial year ending with 31st March 2007.

(2) The Assembly constituted by this Act has the same duty in relation to that financial year as the Assembly constituted by the Government of Wales Act 1998 would have by virtue of section 19 of that Act but for this Act.

(3) In relation to the financial year ending with 31st March 2008 the references in section 22(2) to salaries and allowances of the kind mentioned in section 20 include sums paid under sections 16 and 18 of the Government of Wales Act 1998.

Commencement

Extent
Sch. 11 para. 14(1)-(3): United Kingdom

Assistance to groups of Assembly members

Law In Force

15

(1) A determination under section 34A of the Government of Wales Act 1998 which is in force immediately before the commencement of the repeal of that section by this Act has effect after that time as if it were made in accordance with section 24.

(2) In relation to the financial year ending with 31st March 2008 the reference in subsection (6)(b) of section 24 to sums paid under that section includes sums paid under section 34A of the Government of Wales Act 1998.

Commencement
Sch. 11 para. 15(1)-(2): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 15(1)-(2): United Kingdom
First Presiding Officer

16
The reference in subsection (1) of section 25 to the first meeting of the Assembly following a general election includes a reference to the first meeting of the Assembly following the 2007 election.

Commencement
Sch. 11 para. 16: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 16: United Kingdom

First Clerk

17
The member of the staff of the Assembly constituted by the Government of Wales Act 1998 who, immediately before the day of the poll at the 2007 election, holds the post referred to in the standing orders made under that Act as the Clerk to the Assembly is to be taken to be appointed under section 26(1) at the beginning of that day.

Commencement
Sch. 11 para. 17: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 17: United Kingdom

Promotion of awareness of election system and devolved government

18
Paragraphs 5 and 6 of Schedule 2 have effect until the end of the initial period as if for the references to the Assembly Commission there were substituted references to the Assembly constituted by the Government of Wales Act 1998 (c. 38).
Commencement
Sch. 11 para. 18: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 18: United Kingdom

Crown status of Assembly Commission

Law In Force

19
Sub-paragraph (4) of paragraph 12 of Schedule 2 has effect until the end of the initial period with the omission of paragraph (b) (and the word “or” before it).

Commencement
Sch. 11 para. 19: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 19: United Kingdom

Standing orders

Law In Force

20
(1) The Secretary of State must, no later than 31st March 2007, make the standing orders which are to have effect in relation to the proceedings of the Assembly following the 2007 election.

(2) The standing orders made under this paragraph–
   (a) must include provision as to the matters which this Act requires to be covered by the standing orders, and
   (b) may include provision as to the matters which this Act provides may be so covered.

(3) In making standing orders made under this paragraph the Secretary of State must give effect to any relevant Assembly proposals (but subject to sub-paragraph (5)).

(4) For this purpose proposals are relevant Assembly proposals if–
   (a) they are proposals for the inclusion in the standing orders made under this paragraph of provision relating to any matters which must or may be covered by them,
   (b) they are made by the Assembly constituted by the Government of Wales Act 1998 by a resolution passed by that Assembly,
   (c) where the motion for the resolution is passed on a vote, at least two-thirds of the members of the Assembly voting support it,
   (d) the proposals are made in both English and Welsh, and
(e) a copy of the proposals are sent to the Secretary of State no later than 28th February 2007.

(5) The Secretary of State may make modifications of any relevant Assembly proposals–
(a) in order to give full effect to what appears to the Secretary of State to be the policy contained in the proposals, or
(b) in consequence of other provision to be included in the standing orders made under this paragraph.

(6) The Secretary of State must publish the standing orders made under this paragraph as soon as reasonably practicable after they are made and must do so in both English and Welsh.

(7) The standing orders made under this paragraph have effect (subject to any revisions made by the Assembly under section 31) unless and until they are remade by the Assembly under that section.

Commencement
Sch. 11 para. 20(1)-(7): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 20(1)-(7): United Kingdom

Witnesses and documents: penalties

Law In Force

21
In relation to an offence committed before the coming into force of section 281(5) of the Criminal Justice Act 2003 (c. 44) the references in section 39(4)(b) and 40(3)(b) to 51 weeks are to three months.

Commencement
Sch. 11 para. 21: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 21: United Kingdom

Exercise of functions before appointment of first First Minister

Law In Force

22
(1) Nothing in this Act (including in particular the repeal of section 1 of the Government of Wales Act 1998 (c. 38)), or in that Act, is to be taken to dissolve the Assembly constituted by that Act until the end of the initial period.
(2) Despite this Act and section 2(5) of that Act, during the initial period the Assembly constituted by that Act is to be treated as consisting of the persons who—
(a) immediately before the beginning of the initial period, hold office as the Assembly First Secretary, an Assembly Secretary or the presiding officer, and
(b) are candidates to be Assembly members at the 2007 election.

(3) But a person ceases to be a member of that Assembly—
(a) if not returned as an Assembly member at that election, when the Assembly members for the Assembly constituency or Assembly electoral region for which that person is a candidate are returned, or
(b) if disqualified from being an Assembly member, when that disqualification takes effect.

(4) For so long as a person is a member of the Assembly constituted by the Government of Wales Act 1998 by virtue of this paragraph the person continues to be entitled to the same salary and allowances as the person was entitled to by virtue of section 16 of that Act immediately before the beginning of the initial period.

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**Commencement**
Sch. 11 para. 22(1)-(4): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

**Extent**
Sch. 11 para. 22(1)-(4): United Kingdom

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(1) This paragraph and paragraph 24 have effect during the initial period.

(2) The functions of the Assembly constituted by the Government of Wales Act 1998, other than functions to which paragraph 24 applies, are exercisable—
(a) by the person who immediately before the beginning of the initial period held office as the Assembly First Secretary, if that person is a member of that Assembly, or
(b) by such of the persons who at that time held office as an Assembly Secretary and are members of that Assembly as those persons may designate, if that person is not a member of that Assembly (or if the office of Assembly First Secretary was vacant at that time).

(3) A person designated for the purposes of sub-paragraph (2)(b) must inform the Secretary of State of the designation as soon as is reasonably practicable.

(4) Functions which are exercisable by virtue of sub-paragraph (2) may be delegated by the person by whom they are exercisable (to such extent as that person may determine) to any other member of the Assembly constituted by the Government of Wales Act 1998 who immediately before the beginning of the initial period held office as an Assembly Secretary.

(5) Functions which—
(a) are exercisable by virtue of sub-paragraph (2), or
(b) are delegated under sub-paragraph (4),
may be delegated by the person by whom they are exercisable or to whom they have been delegated (to such extent as that person may determine) to members of the staff of the Assembly constituted by the Government of Wales Act 1998 (c. 38).

(6) Where a function is delegated under sub-paragraph (5), arrangements for the exercise of the function are to be made by the person who, immediately before the beginning of the initial period, was the Permanent Secretary to the Assembly for the purposes of section 63(2) of the Government of Wales Act 1998.

(7) The delegation of any function under this paragraph does not prevent the exercise of the function by the person by whom the delegation is made.

(8) The exercise of any function in accordance with this paragraph is subject to any condition, limitation or restriction which applied to the exercise of that function immediately before the beginning of the initial period.

Commencement
Sch. 11 para. 23(1)-(8): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 23(1)-(8): United Kingdom
(6) The exercise of any function in accordance with this paragraph is subject to any condition, limitation or restriction which applied to the exercise of that function immediately before the beginning of the initial period.

Commencement
Sch. 11 para. 24(1)-(6): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 24(1)-(6): United Kingdom

25

(1) Where a function of making, confirming or approving subordinate legislation is exercised during the initial period in accordance with paragraph 23, it is to be made, confirmed or approved by being signed by the person by whom the function is exercised.

(2) Despite sub-paragraph (8) of paragraph 23, nothing contained in the following provisions of the Government of Wales Act 1998 (c. 38), or included in the standing orders of the Assembly constituted by that Act by virtue of the following provisions of that Act, applies to subordinate legislation made in accordance with that paragraph—
   (a) section 65 (regulatory appraisals),
   (b) sections 66 and 67 (procedure), and
   (c) section 68 (financial initiative).

(3) But as soon as is reasonably practicable after the end of the initial period the Clerk must lay before the Assembly every statutory instrument containing subordinate legislation made, confirmed or approved in accordance with paragraph 23.

Commencement
Sch. 11 para. 25(1)-(3): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 25(1)-(3): United Kingdom

Saving for existing instruments conferring or imposing functions

26

(1) Any provision of an Order in Council under section 22 of the Government of Wales Act 1998 (whether included by virtue of that section or any other enactment apart from section 155(2) of that Act) which is in force immediately before the commencement of the repeal of that section by this Act continues to have effect after the commencement of that repeal as if it were a provision of an Order in Council under section 58.
(2) Accordingly—
   (a) the reference in paragraph 7(2) of Schedule 3 to an Order in Council under section 58
       of this Act which includes provision transferring a function to the Welsh Ministers, the First
       Minister or the Counsel General includes a reference to an Order in Council under section
       22 of the Government of Wales Act 1998 which includes provision having that effect by virtue
       of this Schedule, and
   (b) the reference in paragraph 18(5) of Schedule 8 to an Order in Council under section 58
       transferring a function of preparing accounts to the Welsh Ministers includes a reference
       to an Order in Council under section 22 of the Government of Wales Act 1998 which makes
       provision having that effect by virtue of this Schedule.

(3) Any provision which—
   (a) is included in an Order in Council under section 22 of the Government of Wales Act
       1998 by virtue of section 155(2) of that Act (meaning of “Wales”), and
   (b) is in force at the time when this Act is passed,
   is to be treated after that time as if it were also contained in an order under subsection (3) of section
   158 of this Act (having effect for the purposes of the definition of “Wales” in subsection (1) of that
   section).

Commencement
Sch. 11 para. 26(1)-(3)(b): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 26(1)-(3)(b): United Kingdom

27
Orders under section 27 of the Government of Wales Act 1998 which are in force immediately
before the commencement of the repeal of that section by this Act continue to have effect despite
the commencement of that repeal.

Commencement
Sch. 11 para. 27: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 27: United Kingdom

28
(1) Designations made under section 2(2) of the European Communities Act 1972 (c. 68) by virtue
of subsection (1) of section 29 of the Government of Wales Act 1998 which are in force immediately
before the commencement of the repeal of that subsection by this Act continue to have effect after
the commencement of that repeal as if made by virtue of subsection (1) of section 59 of this Act.
(2) Regulations made under section 56 of the Finance Act 1973 (c. 51) by virtue of subsection (4) of that section which are in force immediately before the commencement of the repeal of that subsection by this Act continue to have effect after the commencement of that repeal as if made by virtue of subsection (5) of section 59 of this Act.

Commencement
Sch. 11 para. 28(1)-(2): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 28(1)-(2): United Kingdom

First nomination of First Minister

Law In Force

29
The reference in section 47(2)(a) to the holding of a poll at a general election includes a reference to the holding of the poll at the 2007 election.

Commencement
Sch. 11 para. 29: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 29: United Kingdom

Transfer of Assembly functions

Law In Force

30
(1) Subject to paragraph 31, the relevant Assembly functions are transferred to the Welsh Ministers immediately after the end of the initial period.

(2) “The relevant Assembly functions” means functions exercisable by the Assembly constituted by the Government of Wales Act 1998 (c. 38)—

(a) immediately before the end of the initial period, by virtue of an Order in Council under section 22 of the Government of Wales Act 1998,
(b) immediately before the end of that period, as a result of a designation made under section 2(2) of the European Communities Act 1972 (c. 68) by virtue of subsection (1) of section 29 of the Government of Wales Act 1998,
(c) immediately before the end of that period, as a result of having been conferred or imposed on it by an enactment contained in an Act, other than an enactment contained in the Government of Wales Act 1998, or by a prerogative instrument, or
(d) immediately before the end of that period, as a result of having been conferred or imposed on it by subordinate legislation (including subordinate legislation made under the Government of Wales Act 1998).

(3) For the purposes of this paragraph a function is “exercisable” at any time even if the enactment transferring, conferring or imposing it has not come into force at that time.

Commencement
Sch. 11 para. 30(1)-(3): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 30(1)-(3): United Kingdom

31

(1) Her Majesty may by Order in Council provide for–
   (a) the transfer of any of the relevant Assembly functions to–
       (i) the First Minister, or
       (ii) the Counsel General,
   (b) the transfer of any of the relevant Assembly functions, other than functions of making, confirming or approving subordinate legislation, to the Assembly Commission, or
   (c) any of the relevant Assembly functions, other than functions of making, confirming or approving subordinate legislation, to be functions of the Assembly.

(2) Her Majesty may by Order in Council provide for any relevant Assembly function that is a function of making, confirming or approving subordinate legislation in relation to any matter not to be transferred to the Welsh Ministers and, unless the Assembly already has power to pass Assembly Measures in relation to that matter, amend Part 1 of Schedule 5 to enable the Assembly to have instead power to pass Assembly Measures in relation to that matter–
   (a) in the same terms as the relevant Assembly function, or
   (b) in terms differing from those terms to such extent as appears appropriate.

(3) Her Majesty may by Order in Council–
   (a) direct that any function transferred by paragraph 30 is to be exercisable by any one or more of the First Minister, the Counsel General, the Assembly Commission and the Assembly concurrently with the Welsh Ministers,
   (b) direct that any function in relation to which provision is made by virtue of sub-paragraph (1) for it to be transferred to, or continue to be a function of, any person or body is to be exercisable by any other person or body specified in that sub-paragraph concurrently with that person or body, or
   (c) direct that any function transferred by paragraph 30, or transferred to the First Minister or the Counsel General by virtue of sub-paragraph (1), is to be exercisable by the Welsh Ministers, the First Minister or the Counsel General only with the agreement of, or after consultation with, the Assembly Commission.

(4) An Order in Council under sub-paragraph (1), (2) or (3) may make such modifications of–
(a) any enactment (including any enactment comprised in or made under this Act) or prerogative instrument, or
(b) any other instrument or document,
as Her Majesty considers appropriate in connection with the provision made by the Order in Council.

(5) No recommendation is to be made to Her Majesty in Council to make an Order in Council under sub-paragraph (1) or (3) in relation to a function which has already been transferred to the Welsh Ministers, the First Minister or the Counsel General without the consent of those persons or that person to the recommendation.

(6) No recommendation is to be made to Her Majesty in Council to make an Order in Council under sub-paragraph (2) unless a draft of the statutory instrument containing the Order in Council has been laid before, and approved by a resolution of, the Assembly constituted by the Government of Wales Act 1998 (c. 38); and a statutory instrument containing an Order in Council under that sub-paragraph is subject to annulment in pursuance of a resolution of either House of Parliament.

(7) No recommendation is to be made to Her Majesty in Council to make an Order in Council under sub-paragraph (1) or (3) unless a draft of the statutory instrument containing the Order in Council has been laid before, and approved by a resolution of, each House of Parliament.

(8) But sub-paragraph (7) does not apply if the Assembly constituted by the Government of Wales Act 1998 or the Assembly constituted by this Act has resolved that a recommendation should be made to Her Majesty in Council to make the Order in Council.

Commencement
Sch. 11 para. 31(1)-(8): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 31(1)-(8): United Kingdom

Law In Force

32

(1) This paragraph applies so far as may be necessary for the purpose or in consequence of the exercise of any functions of–
(a) the Welsh Ministers,
(b) the First Minister,
(c) the Counsel General,
(d) the Assembly Commission, or
(e) the Assembly constituted by this Act,
which are made exercisable by them by or by virtue of paragraph 30 or 31.

(2) Any relevant reference to the Assembly constituted by the Government of Wales Act 1998 (c. 38) is to be construed as being or including a reference to–
(a) the Welsh Ministers,
(b) the First Minister,
(c) the Counsel General,
(d) the Assembly Commission, or
(e) the Assembly constituted by this Act,
(according to by whom the function in question is, or is to be, exercised).

(3) In sub-paragraph (2) “relevant reference to the Assembly constituted by the Government of Wales Act 1998” means—

(a) a reference in any enactment, prerogative instrument or other document to that Assembly, or

(b) a reference in any enactment or other document which, immediately before the commencement of the repeal by this Act of section 43 of the Government of Wales Act 1998, had effect as a reference to that Assembly.

Functions transferred by Order in Council under section 22 of the Government of Wales Act 1998: Parliamentary and Assembly procedure

[Law In Force]

33

(1) This paragraph applies where—

(a) a function to make subordinate legislation was transferred to, or made exercisable by, the Assembly constituted by the Government of Wales Act 1998 by an Order in Council under section 22 of that Act, and

(b) the function has been transferred to, or made exercisable by, the Welsh Ministers, the First Minister or the Counsel General by or by virtue of paragraph 30 or 31.

(2) If, immediately before the coming into force of the provisions of the Order in Council relating to the function, a provision of any of the descriptions specified in sub-paragraph (3) applied to its exercise by a Minister of the Crown—

(a) that provision does not apply to its exercise by the Welsh Ministers, the First Minister or the Counsel General unless the case is one to which sub-paragraph (6) applies, but

(b) (whether or not the case is one to which that sub-paragraph applies) that provision has effect in relation to its exercise by the Welsh Ministers, the First Minister or the Counsel General as if any reference in it to Parliament or either House of Parliament were (or, if it is such a case, included) a reference to the Assembly.

(3) The descriptions of provision referred to in sub-paragraph (2) are—

(a) provision requiring any instrument made in the exercise of the function, or a draft of any such instrument, to be laid before Parliament or either House of Parliament,

(b) provision for the annulment or approval of any such instrument or draft by or in pursuance of a resolution of either House of Parliament or of each House, and

(c) provision prohibiting the making of any such instrument without such approval.
If, immediately before the coming into force of the provisions of the Order in Council relating to the function, a provision of either of the descriptions specified in sub-paragraph (5) applied to its exercise by a Minister of the Crown—

(a) that provision does not apply to its exercise by the Welsh Ministers, the First Minister or the Counsel General unless the case is one to which sub-paragraph (6) or (7) applies, but
(b) (whether or not the case is one to which either of those sub-paragraphs applies) any instrument made in the exercise of the function by the Welsh Ministers, the First Minister or the Counsel General is (or, if it is such a case, is also) subject to the procedure in the Assembly specified by the standing orders.

The descriptions of provision referred to in sub-paragraph (4) are—

(a) provision for any instrument made in the exercise of the function to be a provisional order (that is, an order which requires to be confirmed by Act of Parliament), and
(b) provision requiring any order (within the meaning of the Statutory Orders (Special Procedure) Act 1945 (9 & 10 Geo. 6 c. 18)) made in the exercise of the function to be subject to special parliamentary procedure.

This sub-paragraph applies in any case if the instrument made in the exercise of the function or (if provision specified in sub-paragraph (3)(a) or (b) applied to a draft of an instrument made in the exercise of the function) a draft of an instrument to be so made—

(a) contains subordinate legislation made or to be made by a Minister of the Crown or government department (whether or not jointly with the Welsh Ministers, the First Minister or the Counsel General),
(b) contains (or confirms or approves) subordinate legislation relating to an English border area, or
(c) contains (or confirms or approves) subordinate legislation relating to a cross-border body (and not relating only to the exercise of functions, or the carrying on of activities, by the body in or with respect to Wales or a part of Wales).

This sub-paragraph applies in any case if, immediately before the coming into force of the provisions of the Order in Council relating to the function, a provision of the description specified in sub-paragraph (5)(b) applied to an instrument made in exercise of the function by a Minister of the Crown and the Order in Council provided that—

(a) any order made by the Assembly constituted by the Government of Wales Act 1998 (c. 38) in the exercise of the function, or
(b) any order so made in circumstances including those of the case, is to be subject to special parliamentary procedure.

In this paragraph “make” includes confirm or approve and related expressions (except “made exercisable”) are to be construed accordingly; but an instrument (or draft) does not fall within sub-paragraph (6)(a) just because it contains subordinate legislation made (or to be made) by the Welsh Ministers, the First Minister or the Counsel General with the agreement of a Minister of the Crown or government department.
Commencement
Sch. 11 para. 33(1)-(8): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 33(1)-(8): United Kingdom

Functions conferred or imposed by pre-commencement enactment: Parliamentary and Assembly procedure

Law In Force

34

(1) This paragraph applies where—
   (a) a function to make subordinate legislation was conferred or imposed on the Assembly constituted by the Government of Wales Act 1998 (c. 38) by a pre-commencement enactment (“the Welsh function”),
   (b) the Welsh function has been transferred to the Welsh Ministers, the First Minister or the Counsel General by or by virtue of paragraph 30 or 31, and
   (c) when the Welsh function was transferred, a Minister of the Crown had the same or substantially the same function exercisable in relation to England (“the corresponding function”).

(2) If, immediately after the transfer of the Welsh function, a provision of any of the descriptions specified in sub-paragraph (4)—
   (a) applied to the exercise of the corresponding function by the Minister of the Crown, but
   (b) did not apply to the exercise of the Welsh function by the Welsh Ministers, the First Minister or the Counsel General,
the provision applies to any exercise of the Welsh function by the Welsh Ministers, the First Minister or the Counsel General as if any reference in it to Parliament or either House of Parliament were a reference to the Assembly.

(3) [Subject to sub-paragraphs (4A) and (4B), if 1 immediately after the transfer of the Welsh function, a provision of any of the descriptions specified in sub-paragraph (4) applied to both—
   (a) the exercise of the corresponding function by the Minister of the Crown, and
   (b) the exercise of the Welsh function by the Welsh Ministers, the First Minister or the Counsel General,
the provision applies to any exercise of the Welsh function by the Welsh Ministers, the First Minister or the Counsel General as if any reference in it to Parliament or either House of Parliament were a reference both to the Assembly and to Parliament or either House of Parliament.

(4) The descriptions of provision referred to in sub-paragraphs (2) and (3) are—
   (a) provision requiring any instrument made in the exercise of the function, or a draft of any such instrument, to be laid before Parliament or either House of Parliament,
   (b) provision for the annulment or approval of any such instrument or draft by or in pursuance of a resolution of either House of Parliament or of both Houses, and
   (c) provision prohibiting the making of any such instrument without such approval.
[(4A) Section 1(5) of the Travel Concessions (Eligibility) Act 2002 (parliamentary procedure) applies to an order made by the Welsh Ministers under section 1(4) of that Act (order changing minimum age for the purposes of eligibility for travel concessions) as if the reference to either House of Parliament were a reference to the Assembly.

(4B) Section 268(13) of the Enterprise Act 2002 (parliamentary procedure) applies to an order made by the Welsh Ministers under section 268(1) of that Act (order in relation to disqualification from office) as if the reference to each House of Parliament were a reference to the Assembly.]

(5) If, immediately after the transfer of the Welsh function, a provision of either of the descriptions specified in sub-paragraph (7)–

(a) applied to the exercise of the corresponding function by the Minister of the Crown, but

(b) did not apply to the exercise of the Welsh function by the Welsh Ministers, the First Minister or the Counsel General,

an instrument made in any exercise of the Welsh function by the Welsh Ministers, the First Minister or the Counsel General is subject to the procedure in the Assembly specified by the standing orders.

(6) If, immediately after the transfer of the Welsh function, a provision of either of the descriptions specified in sub-paragraph (7) applied to both–

(a) the exercise of the corresponding function by the Minister of the Crown, and

(b) the exercise of the Welsh function by the Welsh Ministers, the First Minister or the Counsel General,

the instrument made in any exercise of the Welsh function by the Welsh Ministers, the First Minister or the Counsel General is subject to that provision and to the procedure in the Assembly specified by the standing orders.

(7) The descriptions of provision referred to in sub-paragraphs (5) and (6) are–

(a) provision for any instrument made in the exercise of the function to be a provisional order (that is, an order which requires to be confirmed by Act of Parliament), and

(b) provision requiring any order (within the meaning of the Statutory Orders (Special Procedure) Act 1945 (9 & 10 Geo. 6 c. 18)) made in the exercise of the function to be subject to special parliamentary procedure.

(8) In this paragraph–

“make” includes confirm or approve and related expressions are to be construed accordingly, and

“pre-commencement enactment” means an enactment contained in an Act passed or subordinate legislation made before the end of the initial period.

(9) This paragraph does not apply if the Welsh function was transferred as a result of the operation of paragraph 30(2)(b) (see paragraph 28 and section 59).

Notes


2 Added by Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 Sch.2 para.3(b) (May 2, 2007)

Commencement

Sch. 11 para. 34(1)-(9): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))
Extent
Sch. 11 para. 34(1)-(9): United Kingdom

35

(1) This paragraph applies where—
(a) a function to make subordinate legislation was conferred or imposed on the Assembly constituted by the Government of Wales Act 1998 (c. 38) by a pre-commencement enactment,
(b) the function has been transferred to the Welsh Ministers, the First Minister or the Counsel General by or by virtue of paragraph 30 or 31, and
(c) when the function was transferred, no Minister of the Crown had the same or substantially the same function exercisable in relation to England.

(2) No procedure for scrutiny by the Assembly applies to any instrument made in the exercise of the function, or a draft of any such instrument, unless the function is specified in Table 1 or Table 2.

(3) No subordinate legislation is to be made by the Welsh Ministers, the First Minister or the Counsel General in the exercise of any function specified in Table 1 unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Assembly.

**TABLE 1**

<table>
<thead>
<tr>
<th>Function</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 45B(1) of the Environmental Protection Act 1990 (c. 43).</td>
<td>Power to apply section 45A to Welsh waste collection authorities.</td>
</tr>
<tr>
<td>Section 45D of the School Standards and Framework Act 1998 (c. 31).</td>
<td>Power to repeal school funding provisions.</td>
</tr>
<tr>
<td>Section 8(3) of the Care Standards Act 2000 (c. 14).</td>
<td>Power to confer functions in relation to Part 2 services in Wales.</td>
</tr>
<tr>
<td>Section 72B(2) of that Act.</td>
<td>Power to amend list of persons reviewable by Commissioner.</td>
</tr>
<tr>
<td>Section 73(5A) of that Act.</td>
<td>Power to amend list of arrangements reviewable by Commissioner.</td>
</tr>
<tr>
<td>Section 76(4) of that Act.</td>
<td>Power to confer further functions on Commissioner.</td>
</tr>
<tr>
<td>Section 78(1A) of that Act.</td>
<td>Power to provide that person aged 18 or over is a child for the purposes of Part 5.</td>
</tr>
<tr>
<td>Section 78(6) of that Act.</td>
<td>Power to make provision about persons to whom Part 5 applies.</td>
</tr>
<tr>
<td>Paragraph 2 of Schedule 2 to that Act.</td>
<td>Power to make provision about the appointment etc. of Commissioner.</td>
</tr>
<tr>
<td>Section 68(1) of the Local Government Act 2000 (c. 22), if exercised to amend or repeal any enactment contained in an Act.</td>
<td>Power to confer functions on Public Services Ombudsman for Wales.</td>
</tr>
<tr>
<td>Section 68(3) of that Act, if exercised to amend or repeal any enactment contained in an Act.</td>
<td>Power to make provision relating to Ombudsman’s functions and expenses.</td>
</tr>
<tr>
<td>Function</td>
<td>Description</td>
</tr>
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</tr>
<tr>
<td>Section 70(1) of that Act.</td>
<td>Power to make provision about investigations by Ombudsman.</td>
</tr>
<tr>
<td>[Section 20(1) of the Political Parties, Elections and Referendums Act 2000. Section 3(4) of the Health (Wales) Act 2003 (c. 4).]</td>
<td>Power to transfer functions of the Local Government Boundary Commission for Wales.]¹</td>
</tr>
<tr>
<td>Section 4(1) of that Act.</td>
<td>Power to transfer functions of Wales Centre for Health to Welsh Minister.</td>
</tr>
<tr>
<td>Section 4(3) of that Act.</td>
<td>Power to provide for HPW to carry out Welsh Ministers' functions.</td>
</tr>
<tr>
<td>Section 5(8) of that Act.</td>
<td>Power to abolish HPW.</td>
</tr>
<tr>
<td>Section 83(2) of the Local Government Act 2003 (c. 26).</td>
<td>Power to make fire authorities in Wales major precepting authorities.</td>
</tr>
<tr>
<td>Section 92(2) of that Act.</td>
<td>Power to repeal section 24(3) of the Housing Act 1985 (c. 68).</td>
</tr>
<tr>
<td>Section 23(9) of the Anti-social Behaviour Act 2003 (c. 38).</td>
<td>Power to apply to Wales provisions about penalty notices in cases of truancy.</td>
</tr>
<tr>
<td>Section 75(1) of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), if exercised to amend or repeal any part of the text of an Act.</td>
<td>Power to require prescribed persons to provide explanation of documents etc.</td>
</tr>
<tr>
<td>Section 96 of that Act, if exercised to amend or repeal any part of the text of an Act.</td>
<td>Power to confer additional functions in relation to Welsh local authority social services.</td>
</tr>
<tr>
<td>Section 101(1) of that Act, if exercised to amend or repeal any part of the text of an Act.</td>
<td>Power to require prescribed persons to provide explanation of documents etc.</td>
</tr>
<tr>
<td>Section 33(3)(a)(ii) of the Higher Education Act 2004 (c. 8).</td>
<td>Power to require institutions' plans to include provision relating to promotion of higher education.</td>
</tr>
<tr>
<td>Section 12(2) of the Public Audit (Wales) Act 2004 (c. 23).</td>
<td>Power to add to definition of “local government body in Wales”.</td>
</tr>
<tr>
<td>Section 39(1) of that Act, if exercised so as to include a declaration that a contravention is an offence.</td>
<td>Power to make provision about publication etc. of accounts.</td>
</tr>
<tr>
<td>Section 46(2) of that Act.</td>
<td>Power to apply sections 47 to 49 to other local government bodies.</td>
</tr>
<tr>
<td>Section 47(5) of that Act.</td>
<td>Power to shorten period within which body must publish information.</td>
</tr>
<tr>
<td>Section 62(1) of the Education Act 2005 (c. 18), if exercised to amend or repeal an enactment.</td>
<td>Power to change inspection framework for Wales.</td>
</tr>
<tr>
<td>Section 103(3) of that Act.</td>
<td>Power to repeal certain provisions in the Education Act 2002 (c. 32).</td>
</tr>
<tr>
<td>Section 124(1) of that Act, if exercised to amend or repeal an enactment.</td>
<td>Power to make consequential etc. provision.</td>
</tr>
<tr>
<td>[Section 5(1) of the Transport (Wales) Act 2006.</td>
<td>Power to establish a joint transport authority to discharge specified transport functions for specified areas.</td>
</tr>
<tr>
<td>Section 4(1) of the Commissioner for Older People (Wales) Act 2006.</td>
<td>Power to amend Schedule 2 to that Act.</td>
</tr>
<tr>
<td>Section 6(5) of that Act.</td>
<td>Power to confer power on the Commissioner to require prescribed persons to provide information for the purposes of his functions under section 5.</td>
</tr>
<tr>
<td>Section 7(1) of that Act.</td>
<td>Power to amend Schedule 3 to that Act.</td>
</tr>
</tbody>
</table>
Function | Description
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Section 16(4) of that Act. | Power to apply the joint working provisions in section 16 to persons other than the Ombudsmen specified in that section.
Section 17(8) of that Act. | Power to amend subsection 17(6), which specifies persons with whom the Commissioner may work collaboratively under section 17.
Section 18(10) of that Act. | Power to amend the definition of “permitted person” in section 18(9).
Section 27(2) of that Act. | Power to amend the definition of “family health service provider in Wales” and “independent provider in Wales”.

(4) A statutory instrument containing subordinate legislation made by the Welsh Ministers, the First Minister or the Counsel General in the exercise of any function specified in Table 2 is (unless a draft of the statutory instrument has been laid before, and approved by a resolution of the Assembly) subject to annulment in pursuance of a resolution of the Assembly.

**TABLE 2**

<table>
<thead>
<tr>
<th>Function</th>
<th>Description</th>
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<tbody>
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</tr>
</tbody>
</table>
| Section 79S(2) of the Children Act 1989 (c. 41). | Power to confer functions relating to child minding or day care.
| Section 79T(2) of that Act. | Power to make provision about inspection of child minding and day care.
| Section 16A(3) of the Environment Act 1995 (c. 25). | Power to alter composition of regional flood defence committees in Wales.
| [Section 97D of the School Standards and Framework Act 1998. Paragraph 5(2) of Schedule 7 to the School Standards and Framework Act 1998 (c. 31). Paragraph 12(2)(d) of Schedule 7 to that Act. | Power to make provision about the admission of children looked after by local authorities in Wales to maintained schools in Wales. Power to prescribe content and form of publication of proposals. Power to prescribe period within which objections to proposals may be made.}
<table>
<thead>
<tr>
<th>Function</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paragraph 17(2) of Schedule 7 to that Act.</td>
<td>Power to make transitional exemption order relating to proposal for school to cease to be single sex.</td>
</tr>
<tr>
<td>Paragraph 13B(1) of Schedule 26 to that Act.</td>
<td>Power to prescribe period within which nursery inspection report must be made.</td>
</tr>
<tr>
<td>Section 73(5) of the Care Standards Act 2000 (c. 14).</td>
<td>Power to confer power on the Commissioner to require information.</td>
</tr>
<tr>
<td>Section 74(1) of that Act.</td>
<td>Power to provide for examination by Commissioner of particular cases.</td>
</tr>
<tr>
<td>Section 76(1) of that Act.</td>
<td>Power to confer power on Commissioner to assist children.</td>
</tr>
<tr>
<td>Paragraph 6(4) of Schedule 2 to that Act.</td>
<td>Power to specify the financial years of Commissioner.</td>
</tr>
<tr>
<td>Paragraph 8 of that Schedule.</td>
<td>Power to require Commissioner to make reports to Assembly.</td>
</tr>
<tr>
<td>Paragraph 17 of that Schedule.</td>
<td>Power to add Commissioner to the Superannuation Act 1972 (c. 11).</td>
</tr>
<tr>
<td>Section 77(4) of the Learning and Skills Act 2000 (c. 21).</td>
<td>Power to prescribe period within which report must be made.</td>
</tr>
<tr>
<td>Section 83(7) of that Act.</td>
<td>Power to make further provision about obligation to provide information.</td>
</tr>
<tr>
<td>Section 128(4)(b) and (c) of that Act.</td>
<td>Power about statement of proposed action.</td>
</tr>
<tr>
<td>Section 68(1) of the Local Government Act 2000 (c. 22), unless exercised to amend or repeal any enactment contained in an Act.</td>
<td>Power to confer functions on Public Services Ombudsman for Wales.</td>
</tr>
<tr>
<td>Section 68(3) of that Act, unless exercised to amend or repeal any enactment contained in an Act.</td>
<td>Power to make provision relating to Ombudsman's functions and expenses.</td>
</tr>
<tr>
<td>Section 109(6)(b) of the Transport Act 2000 (c. 38).</td>
<td>Power to specify date by which deemed local transport plan to be replaced.</td>
</tr>
<tr>
<td>[Section 113A(1) of the Transport Act 2000.</td>
<td>Power to modify the application of sections 108 to 111 of that Act in relation to local transport authorities whose areas are in Wales.</td>
</tr>
<tr>
<td>Section 20(6) of the Political Parties, Elections and Referendums Act 2000.</td>
<td>Power to direct that the Local Government Boundary Commission for Wales shall cease to exist.</td>
</tr>
<tr>
<td>[…]</td>
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<td>[…]</td>
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<td>[…]</td>
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</tr>
<tr>
<td>[ Section 139(1) of the Education Act 2002 (c. 32).</td>
<td>Power to approve institutions to provide course of higher education etc.</td>
</tr>
<tr>
<td>Section 192 of that Act.</td>
<td>Power to prescribe content and manner of publication of proposals to secure regional provision.</td>
</tr>
<tr>
<td>Section 193 of that Act.</td>
<td>Power to make provision about proposals to secure regional provision.</td>
</tr>
<tr>
<td>Section 197 of that Act.</td>
<td>Power relating to partnership agreements and statements.</td>
</tr>
<tr>
<td>Section 198 of that Act.</td>
<td>Power relating to transition from primary to secondary school.</td>
</tr>
<tr>
<td>Section 207(4) of that Act.</td>
<td>Power relating to adjustments between local authorities.</td>
</tr>
<tr>
<td>Function</td>
<td>Description</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Section 3(3) of the Health (Wales) Act 2003 (c. 4).</td>
<td>Power to make provision about functions of Wales Centre for Health.</td>
</tr>
<tr>
<td>Section 4(4) of that Act.</td>
<td>Power to make provision for HPW to make arrangements about functions.</td>
</tr>
<tr>
<td>Section 4(7) of that Act.</td>
<td>Power to make provision about constitution of HPW.</td>
</tr>
<tr>
<td>Section 5(1) of that Act.</td>
<td>Power to permit HPW to charge for services.</td>
</tr>
<tr>
<td>Section 5(2) of that Act.</td>
<td>Power to transfer property etc. and personnel to HPW.</td>
</tr>
<tr>
<td>Section 5(7) of that Act.</td>
<td>Power to make provision about accounts and audit of HPW.</td>
</tr>
<tr>
<td>Section 5(9) of that Act.</td>
<td>Power to transfer property etc. and staff from HPW.</td>
</tr>
<tr>
<td>Paragraph 10 of Schedule 2 to that Act.</td>
<td>Power to make provision about Wales Centre for Health.</td>
</tr>
<tr>
<td>Paragraph 27 of Schedule 2 to that Act.</td>
<td>Power to make provision about accounts and audit of Centre.</td>
</tr>
<tr>
<td>Section 29(1) of the Waste and Emissions Trading Act 2003 (c. 33)</td>
<td>Power to require Welsh local authority to have waste management strategy.</td>
</tr>
<tr>
<td>Section 30(1) of that Act.</td>
<td>Power to require Welsh local authority to provide information about waste.</td>
</tr>
<tr>
<td>Section 75(1) of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), unless exercised to amend or repeal any part of the text of an Act.</td>
<td>Power to require prescribed persons to provide explanation of documents etc.</td>
</tr>
<tr>
<td>Section 94(6) of that Act.</td>
<td>Power to require Welsh local authority to pay fee in relation to review of adoption and fostering functions.</td>
</tr>
<tr>
<td>Section 96 of that Act, unless exercised to amend or repeal any part of the text of an Act.</td>
<td>Power to confer additional functions in relation to Welsh local authority social services.</td>
</tr>
<tr>
<td>Section 101(1) of that Act, unless exercised to amend or repeal any part of the text of an Act.</td>
<td>Power to require prescribed persons to provide explanation of documents etc.</td>
</tr>
<tr>
<td>Section 62(4) of the Planning and Compulsory Purchase Act 2004 (c. 5).</td>
<td>Power to prescribe form and content of local development plan.</td>
</tr>
<tr>
<td>Section 63(3)(a) of that Act.</td>
<td>Power to prescribe persons to be included in community involvement scheme.</td>
</tr>
<tr>
<td>Section 63(7) of that Act.</td>
<td>Power to prescribe requirements in relation to that scheme and local development plan.</td>
</tr>
<tr>
<td>Section 69(1) of that Act.</td>
<td>Power to prescribe times for review of local development plan.</td>
</tr>
<tr>
<td>Section 69(3) of that Act.</td>
<td>Power to prescribe form of, and publication requirements for, review.</td>
</tr>
<tr>
<td>Section 76(2) of that Act.</td>
<td>Power to prescribe information to be contained in annual monitoring report.</td>
</tr>
<tr>
<td>Section 76(3) of that Act.</td>
<td>Power to prescribe timing, form and content of report.</td>
</tr>
<tr>
<td>Section 77 of that Act.</td>
<td>Power to make provision about functions conferred by Part 6.</td>
</tr>
<tr>
<td>Section 30(1)(b) of the Higher Education Act 2004 (c. 8).</td>
<td>Power to designate “relevant authority”.</td>
</tr>
<tr>
<td>Section 38(2) of that Act.</td>
<td>Power to prescribe maximum period during which relevant authority can refuse to approve institution’s new plan.</td>
</tr>
<tr>
<td>Section 18(2)(c) of the Public Audit (Wales) Act 2004 (c. 23).</td>
<td>Power to specify documents to which right of access applies.</td>
</tr>
<tr>
<td>Section 21(1) of that Act.</td>
<td>Power to replace scale of audit fees.</td>
</tr>
<tr>
<td>Function</td>
<td>Description</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Section 39(1) of that Act, unless exercised so as to include a declaration that a contravention is an offence.</td>
<td>Power to make provision about publication etc. of accounts.</td>
</tr>
<tr>
<td>Section 52(2)(c) of that Act.</td>
<td>Power to specify documents to which right of access applies.</td>
</tr>
<tr>
<td>Section 26(2)(f) of the Children Act 2004 (c. 31).</td>
<td>Power to make provision about implementation of children and young people's plans.</td>
</tr>
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<td>Section 26(4) of that Act.</td>
<td>Power to require approval of such plans.</td>
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<td>Section 22(1) of the Education Act 2005 (c. 18).</td>
<td>Power to establish panel to advise on Chief Inspector's functions.</td>
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<tr>
<td>Section 25(2) of that Act.</td>
<td>Power to prescribe categories of persons who may be registered inspectors.</td>
</tr>
<tr>
<td>Section 25(3)(b) of that Act.</td>
<td>Power to prescribe fees for applications for registration.</td>
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<tr>
<td>Section 36(2) of that Act.</td>
<td>Power to make provision as to timing of inspections and reports.</td>
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<tr>
<td>Section 38(3)(e) and (4)(b) and (c) of that Act.</td>
<td>Power to make provision relating to destination of reports about maintained schools.</td>
</tr>
<tr>
<td>Section 39(2)(a), (3), (5) and (7)(b) of that Act.</td>
<td>Power to make provision relating to statement prepared by appropriate authority for school.</td>
</tr>
<tr>
<td>Section 40(3)(a) of that Act.</td>
<td>Power to make provision relating to statement prepared by [local authority]¹⁸.</td>
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<tr>
<td>Section 41(4)(b) and (c) of that Act.</td>
<td>Power to make provision relating to destination of reports about nonmaintained schools.</td>
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<td>Section 42(2)(a), (3), (4) and (5)(b) of that Act.</td>
<td>Power to make provision relating to statement prepared by proprietor of school.</td>
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<tr>
<td>Section 52(5) of that Act.</td>
<td>Power to make provision about provision of inspection services by [local authorities]¹⁹.</td>
</tr>
<tr>
<td>Section 55(4) of that Act.</td>
<td>Power to prescribe intervals at which careers services are inspected.</td>
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<td>Section 56(3) of that Act.</td>
<td>Power to prescribe intervals at which related services are inspected.</td>
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<tr>
<td>Section 57(7)(a), (b) and (c) of that Act.</td>
<td>Power to require a person inspected to prepare written statement in response.</td>
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<td>Section 57(9) of that Act.</td>
<td>Power to make provision about inspection reports.</td>
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<tr>
<td>Section 62(1) of that Act, unless exercised to amend or repeal an enactment.</td>
<td>Power to change inspection framework for Wales.</td>
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<td>Section 85(3)(d) of that Act.</td>
<td>Power to designate institutions eligible for HEFCW funding.</td>
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<tr>
<td>Section 90(1) of that Act.</td>
<td>Power to confer functions on HEFCW.</td>
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<td>Section 91(1) of that Act.</td>
<td>Power to give directions to HEFCW.</td>
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<td>Section 92(4) of that Act.</td>
<td>Power to authorise joint exercise of HEFCW functions.</td>
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<tr>
<td>Section 100(2) of that Act.</td>
<td>Power to make provision as to meaning of “governing body”.</td>
</tr>
<tr>
<td>Section 124(1) of that Act, unless exercised to amend or repeal an enactment.</td>
<td>Power to make consequential etc. provision.</td>
</tr>
<tr>
<td>Paragraph 2 of Schedule 3 to that Act.</td>
<td>Power to make provision about appeals to, and procedure of, tribunals.</td>
</tr>
<tr>
<td>Function</td>
<td>Description</td>
</tr>
<tr>
<td>----------</td>
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</tr>
<tr>
<td>Paragraph 3(2)(b) of Schedule 4 to that Act.</td>
<td>Power to prescribe persons who may not be members of inspection team.</td>
</tr>
<tr>
<td>Paragraph 4(3) of Schedule 4 to that Act.</td>
<td>Power to waive fees for applications to be on the list of inspection team members.</td>
</tr>
<tr>
<td>Paragraph 6(b) of Schedule 4 to that Act.</td>
<td>Power to make provisions about meetings between inspectors and pupils.</td>
</tr>
<tr>
<td>[Section 8(1) of the Transport (Wales) Act 2006.</td>
<td>Power to establish the Public Transport Users' Committee for Wales or Pwyllgor Defnyddwyr Trafnidiaeth Gyhoeddus Cymru.</td>
</tr>
<tr>
<td>Section 8(2) of that Act.</td>
<td>Power to change the name of a body established under section 8(1) of that Act.</td>
</tr>
<tr>
<td>Section 8(6) of that Act</td>
<td>Power to make provision for the transfer of staff, property, rights and liabilities, from the Committee to any other person.</td>
</tr>
<tr>
<td>Section 9(3) of that Act.</td>
<td>Power to change or transfer functions of the Public Transport Users' Committee for Wales.</td>
</tr>
<tr>
<td>Section 8(1) of the Commissioner for Older People (Wales) Act 2006.</td>
<td>Power to confer power on the Commissioner to give assistance to certain persons to make complaints in respect of matters specified in section 8.</td>
</tr>
<tr>
<td>Section 10(1) of that Act.</td>
<td>Power to make regulations allowing the Commissioner to examine cases of particular persons who are, or have been, older people in Wales.</td>
</tr>
<tr>
<td>Section 14(1) of that Act.</td>
<td>Power to confer additional functions on the Commissioner.</td>
</tr>
<tr>
<td>Section 15(1) of that Act.</td>
<td>Power to make regulations providing for the Commissioner to make reports following the discharge of any of his functions.</td>
</tr>
<tr>
<td>Section 21(2) of that Act.</td>
<td>Power to prescribe certain functions for the purpose of preventing the Commissioner from being authorised and required to exercise those functions.</td>
</tr>
<tr>
<td>Paragraph 2 of Schedule 1 to that Act.</td>
<td>Power to make provision as to the appointment of the Commissioner and as to the terms of office of the Commissioner.</td>
</tr>
<tr>
<td>Article 16(4) of the National Assembly for Wales (Representation of the People) Order 2007.</td>
<td>Power to specify the apportionment of the costs of combined polls at an Assembly general election and an ordinary local government election.</td>
</tr>
</tbody>
</table>

(5) In this paragraph—
“make” includes confirm or approve and related expressions are to be construed accordingly, and
“pre-commencement enactment” means an enactment contained in an Act passed or subordinate legislation made before the end of the initial period.

(6) This paragraph does not apply if the function was transferred as a result of the operation of paragraph 30(2)(b) (see paragraph 28 and section 59).

Notes
Entries repealed by National Health Service (Consequential Provisions) Act 2006 c. 43 Sch.1 para.304(a) (March 1, 2007)


Entry repealed by National Health Service (Consequential Provisions) Act 2006 c. 43 Sch.1 para.304(b) (March 1, 2007)

Entries repealed by Learning and Skills (Wales) Measure 2009 c. 01 Sch.1 para.22(b) (December 7, 2009 as SI 2009/3174)

Entry substituted by Learning and Skills (Wales) Measure 2009 c. 01 Sch.1 para.22(c) (December 7, 2009 as SI 2009/3174)

Words substituted by Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010/1158 Sch.2(2) para.59(3)(a) (May 5, 2010)

Words substituted by Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010/1158 Sch.2(2) para.59(3)(b) (May 5, 2010)

Words substituted by Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010/1158 Sch.2(2) para.59(3)(c) (May 5, 2010)

Commencement
Sch. 11 para. 35(1)-(6): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 35(1)-(6): United Kingdom

[ Instrument containing provisions under transferred power and provision under power in section 2(2) of the European Communities Act 1972: Assembly procedure ]

Notes
1 Added by Government of Wales Act 2006 (Transitional Provisions) Order 2007/1270 art.2(2) (May 25, 2007 immediately after the end of the initial period as specified in 2006 c.32 s.161(5))

Law In Force
[ 35A.]

(1) Paragraph 2A of Schedule 2 to the ECA 1972 applies to a draft of a statutory instrument laid before the Assembly pursuant to section 59(3) of this Act as it applies to a draft of a statutory instrument laid before Parliament pursuant to paragraph 2(2) of Schedule 2 to the ECA 1972.

(2) Paragraph 2B of Schedule 2 to the ECA 1972 applies to a statutory instrument laid before the Assembly pursuant to section 59(3) of this Act as it applies to a statutory instrument laid before Parliament pursuant to paragraph 2(2) of Schedule 2 to the ECA 1972.

(3) Paragraph 2A, or paragraph 2B, is subject to the following modifications in its application by virtue of this paragraph—

(a) references to Parliament and to each or either House of Parliament are to be read as references to the Assembly;
(b) the reference in paragraph 2A(1)(a), or in paragraph 2B(1)(a), to a power conferred by any other enactment is to be read as a reference to a power which—
(i) is transferred to, or made exercisable by, the Welsh Ministers, the First Minister or the Counsel General by or by virtue of paragraph 30 or 31 of this Schedule, or
(ii) is conferred on the Welsh Ministers, the First Minister or the Counsel General by a provision of any Act in consequence of the amendment of that Act by or under this Act.

(4) In this paragraph, ECA 1972 means the European Communities Act 1972.

Notes

1 Added by Government of Wales Act 2006 (Transitional Provisions) Order 2007/1270 art.2(2) (May 25, 2007 immediately after the end of the initial period as specified in 2006 c.32 s.161(5))

Extent

Sch. 11 para. 35A(1)-(4): United Kingdom

Transfers of Assembly functions: laying of reports and statements

Law In Force

36

(1) This paragraph applies where—
(a) a function to make or receive a report or statement was transferred to, or made exercisable by, the Assembly constituted by the Government of Wales Act 1998 (c. 38) by an Order in Council under section 22 of that Act,
(b) the function has been transferred to, or made exercisable by, the Welsh Ministers, the First Minister, the Counsel General or the Assembly Commission by or by virtue of paragraph 30 or 31, and
(c) immediately before the transfer of the function to that Assembly, any enactment made provision (“provision for Parliamentary laying”) for a report or statement made or received in the exercise of the function to be laid before Parliament or either House of Parliament by the person making or receiving it.

(2) The provision for Parliamentary laying applies to the exercise of the function by the Welsh Ministers, the First Minister, the Counsel General or the Assembly Commission as if it required the report or statement to be laid before the Assembly instead of before Parliament or either House of Parliament.

(3) In this paragraph and paragraph 37 references to a report or statement include any other document (except one containing subordinate legislation).

Commencement

Sch. 11 para. 36(1)-(3): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent

Sch. 11 para. 36(1)-(3): United Kingdom
(1) This paragraph applies where—
   (a) a function to make or receive a report or statement was conferred or imposed on the Assembly constituted by the Government of Wales Act 1998 by a pre-commencement enactment,
   (b) the function has been transferred to the Welsh Ministers, the First Minister, the Counsel General or the Assembly Commission by or by virtue of paragraph 30 or 31, and
   (c) immediately before the transfer, any enactment made provision for a report or statement made or received in the exercise of the function (or the matter contained in such a report or statement) to be published by that Assembly.

(2) A copy of the report or statement must be laid before the Assembly after it has been made or received.

(3) In this paragraph “pre-commencement enactment” means an enactment contained in an Act passed or subordinate legislation made before the end of the initial period.

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Transfers of Assembly functions: property, rights and liabilities

(1) In paragraphs 39 and 40 “transferred function” means a function—
   (a) which is conferred or imposed on the Welsh Ministers, the First Minister or the Counsel General by a provision of this Act which reenacts (with or without modifications) a provision of the Government of Wales Act 1998 (c. 38) which conferred or imposed the same or substantially the same function on the Assembly constituted by that Act,
   (b) which is transferred to a person or body other than the Assembly by or by virtue of paragraph 30 or 31, or
   (c) which is conferred or imposed on the Welsh Ministers, the First Minister or the Counsel General by a provision of any Act in consequence of the amendment of that Act by or under this Act.

(2) In paragraphs 39 and 40 “the transferee”, in relation to a transferred function, means—
   (a) in the case of a function within paragraph (a) or (c) of sub-paragraph (1), the person or body on whom the function is conferred or imposed, and
   (b) in the case of a function within paragraph (b) of that sub-paragraph, the person or body to whom the function is transferred.
(3) In paragraph 39 “transfer time”, in relation to a transferred function, means the time when the function first becomes exercisable by the transferee of the transferred function.

Commencement
Sch. 11 para. 38(1)-(3): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 38(1)-(3): United Kingdom

Law In Force
39

(1) The property, rights and liabilities to which the Assembly constituted by the Government of Wales Act 1998 is entitled or subject in connection with any transferred function are transferred to and vest in the transferee of the function.

(2) Anything (including legal proceedings) which relates to—
   (a) any transferred function, or
   (b) any property, rights or liabilities transferred by sub-paragraph (1) in connection with any transferred function,
and which is in the process of being done by or in relation to the Assembly constituted by the Government of Wales Act 1998 immediately before the transfer time may be continued by or in relation to the transferee of the transferred function.

(3) Anything which was done by or in relation to the Assembly constituted by the Government of Wales Act 1998 for the purpose of or in connection with—
   (a) any transferred function, or
   (b) any property, rights or liabilities transferred by sub-paragraph (1) in connection with any transferred function,
and which is in effect immediately before the transfer time has effect as if done by or in relation to the transferee of the transferred function.

(4) In any instruments, contracts or legal proceedings which relate to—
   (a) any transferred function, or
   (b) any property, rights or liabilities transferred by sub-paragraph (1) in connection with any transferred function,
and which are made or commenced before the transfer time, the transferee of the transferred function is substituted for the Assembly constituted by the Government of Wales Act 1998.

Commencement
Sch. 11 para. 39(1)-(4)(b): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 39(1)-(4)(b): United Kingdom
(1) Her Majesty may by Order in Council provide that all or any of the provisions of paragraph 39–
   (a) do not apply in relation to particular transferred functions or to the property, rights and liabilities connected with the particular transferred functions or particular property, rights and liabilities so connected,
   (b) are to apply only in relation to particular transferred functions or to particular property, rights or liabilities connected with transferred functions, or
   (c) apply with modifications in relation to particular transferred functions or to the property, rights and liabilities connected with the particular transferred functions or particular property, rights and liabilities so connected.

(2) Paragraph 39 does not apply in relation to rights and liabilities under a contract of employment of a member of the staff of the Assembly constituted by the Government of Wales Act 1998 (c. 38).

(3) No recommendation is to be made to Her Majesty in Council to make an Order in Council under this paragraph unless a draft of the statutory instrument containing the Order in Council has been laid before and approved by a resolution of–
   (a) each House of Parliament, and
   (b) the Assembly constituted by the Government of Wales Act 1998 or the Assembly constituted by this Act.

Commencement

Extent
Sch. 11 para. 40(1)-(3)(b): United Kingdom

(1) The Secretary of State may by order provide for the transfer to the Welsh Ministers, the First Minister, the Counsel General or the Assembly Commission of–
   (a) any specified property, rights or liabilities, or
   (b) property, rights or liabilities of any specified description,
   to which the Assembly constituted by the Government of Wales Act 1998 is entitled or subject or to which that Assembly was entitled or subject immediately before the end of the initial period.

(2) An order under sub-paragraph (1) may provide for the transfer of any property, rights or liabilities to have effect subject to exceptions or reservations specified in or determined under the order.

(3) An order under sub-paragraph (1) may provide–
   (a) for the creation in favour of the Assembly Commission of interests in, or rights over, property transferred to the Welsh Ministers, the First Minister or the Counsel General,
(b) for the creation in favour of the Welsh Ministers, the First Minister or the Counsel General of interests in, or rights over, property transferred to the Assembly Commission, or
(c) for the creation of new rights and liabilities between the Welsh Ministers, the First Minister or the Counsel General on the one hand and the Assembly Commission on the other.

(4) The Secretary of State may by order make provision for the continuation by or in relation to the Welsh Ministers, the First Minister, the Counsel General, or the Assembly Commission of—
(a) any specified thing, or
(b) anything of a specified description,
commenced by or in relation to the Assembly constituted by the Government of Wales Act 1998 (c. 38).

(5) The Secretary of State may by order make provision for—
(a) any specified thing, or
(b) anything of a specified description,
done by or in relation to the Assembly constituted by the Government of Wales Act 1998 to have effect as if done by or in relation to the Welsh Ministers, the First Minister, the Counsel General or the Assembly Commission.

(6) The Secretary of State may by order make provision for the substitution of the Welsh Ministers, the First Minister, the Counsel General or the Assembly Commission for the Assembly constituted by the Government of Wales Act 1998 in—
(a) any specified instrument, contract or legal proceedings, or
(b) any instrument, contract or legal proceedings of a specified description.

(7) An order under this paragraph may be made in consequence of provision made by this Act or in any other circumstances in which the Secretary of State considers it appropriate to make such an order.

(8) An order under this paragraph may not provide for the transfer of rights and liabilities under a contract of employment of a member of the staff of the Assembly constituted by the Government of Wales Act 1998.

(9) A statutory instrument containing an order under this paragraph is subject to annulment in pursuance of a resolution of either House of Parliament.

Commencement

Sch. 11 para. 41(1)-(9): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent

Sch. 11 para. 41(1)-(9): United Kingdom
(b) an order under paragraph 41, is conclusive evidence of the transfer.

(2) Paragraph 39, and orders under paragraph 41, have effect in relation to property, rights or liabilities to which they apply in spite of any provision (of whatever nature) which would otherwise prevent, penalise or restrict the transfer of the property, rights or liabilities.

(3) A right of pre-emption, right of return or other similar right does not operate or become exercisable as a result of any transfer of property or rights by virtue of paragraph 39 or an order under paragraph 41.

(4) Any such right has effect in the case of any such transfer as if the transferee were the same person in law as the transferor and no transfer of the property or rights had taken place.

(5) Such compensation as is just is to be paid to any person in respect of any such right which would, apart from sub-paragraph (3), have operated in favour of or become exercisable by that person but which, in consequence of the operation of that sub-paragraph, cannot subsequently operate in favour of or become exercisable by that person.

(6) Any compensation payable by virtue of sub-paragraph (5) is to be paid by the transferor or by the transferee or by both.

(7) The Secretary of State may by order make provision for the determination of disputes as to—
   (a) whether compensation is payable under sub-paragraph (5),
   (b) how much compensation is payable, and
   (c) the person to whom or by whom it is to be paid.

(8) A statutory instrument containing an order under this paragraph is subject to annulment in pursuance of a resolution of either House of Parliament.

(9) Sub-paragraphs (2) to (8) apply in relation to the creation of rights or interests, or the doing of anything else, in relation to property as they apply in relation to a transfer of property; and references to the transferor and transferee are to be read accordingly.

(10) In this paragraph “right of return” means any right under a provision for the return or reversion of property in specified circumstances.

Commencement
Sch. 11 para. 42(1)-(10): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 42(1)-(10): United Kingdom

[ Criminal Liability of the Assembly ]

Notes
1 Added by Government of Wales Act 2006 (Transitional Provisions) Order 2007/1270 art.2(3) (May 25, 2007 immediately after the end of the initial period as specified in 2006 c.32 s.161(5))
[42A.]

(1) In this paragraph, “criminal liability of the Assembly” means criminal liability incurred by the Assembly constituted by the Government of Wales Act 1998.

(2) To the extent that any criminal liability of the Assembly is connected with property, rights and other liabilities transferred to the Assembly Commission by the National Assembly for Wales (Transfer of Property, Rights and Liabilities) Order 2007, that criminal liability is transferred to the Assembly Commission.

(3) Subject to sub-paragraph (2), the criminal liability of the Assembly is transferred to the Welsh Assembly Government.

(4) Paragraph 39(2) to (4) applies in relation to criminal liability transferred by this paragraph as it applies to a liability transferred by paragraph 39; and in that application of paragraph 39(2) to (4)—

“transfer time” means the time immediately after the end of the initial period;
“transferee of the transferred function” means the Assembly Commission or, as the case may be, the Welsh Assembly Government.

1

Notes

1 Added by Government of Wales Act 2006 (Transitional Provisions) Order 2007/1270 art.2(3) (May 25, 2007 immediately after the end of the initial period as specified in 2006 c.32 s.161(5))

Extent

Sch. 11 para. 42A(1)-(4) definition of “transferee of the transferred function”: United Kingdom

Staff of the Assembly

[43]

(1) Subject as follows, at the end of the initial period the members of the staff of the Assembly constituted by the Government of Wales Act 1998 (c. 38) (“relevant employees”) are to be taken to have been appointed as members of the staff of the Welsh Assembly Government.

(2) But the Secretary of State may by order make a scheme (“a transfer scheme”) for the transfer to the Assembly Commission of the rights and liabilities of listed relevant employees under their contracts of employment at the end of the initial period.

(3) A relevant employee is a listed relevant employee if the relevant employee is named in, or is of a description of relevant employees specified in, a list produced by the Secretary of State; and the Secretary of State—

(a) may at any time amend the list, and
(b) must make the list (and any amendments of it) available to such persons, and in such manner, as appear appropriate.
(4) The transfer by a transfer scheme of the rights and liabilities of a relevant employee under the relevant employee's contract of employment does not break the continuity of the relevant employee's employment and accordingly—
   (a) the relevant employee is not to be regarded for the purposes of Part 11 of the Employment Rights Act 1996 (c. 18) (redundancy) as having been dismissed by virtue of the transfer, and
   (b) the relevant employee's period of employment with the Assembly constituted by the Government of Wales Act 1998 counts as a period of employment with the Assembly Commission for the purposes of the Employment Rights Act 1996.

(5) A transfer scheme transferring the rights and liabilities of a relevant employee under the relevant employee's contract of employment must provide for the terms and conditions of the relevant employee's employment with the Assembly Commission (taken as a whole) to be no less favourable to the relevant employee than the terms and conditions on which the relevant employee is employed immediately before the transfer.

(6) A transfer scheme must provide that, if a listed relevant employee informs the Assembly constituted by the Government of Wales Act 1998 or the Assembly Commission that the relevant employee objects to becoming employed by the Assembly Commission—
   (a) the transfer scheme does not operate to transfer any rights or liabilities under the relevant employee's contract of employment, and
   (b) the relevant employee's contract of employment is terminated at the end of the initial period, but
   (c) the relevant employee is not, by virtue of that termination, to be treated for any purpose as having been dismissed.

(7) Anything (including legal proceedings) which relates to any rights or liabilities transferred by a transfer scheme which is in the process of being done by or in relation to the Assembly constituted by the Government of Wales Act 1998 (c. 38) immediately before they are transferred may be continued by or in relation to the Assembly Commission.

(8) Anything which was done by or in relation to the Assembly constituted by the Government of Wales Act 1998 for the purpose of or in connection with any rights or liabilities transferred by a transfer scheme which is in effect immediately before they are transferred has effect as if done by or in relation to the Assembly Commission.

(9) In any instruments, contracts or legal proceedings which relate to any rights or liabilities transferred by a transfer scheme and which are made or commenced immediately before they are transferred, the Assembly Commission is substituted for the Assembly constituted by the Government of Wales Act 1998.

(10) Before making an order under sub-paragraph (2) the Secretary of State must consult the Assembly constituted by the Government of Wales Act 1998.

(11) A statutory instrument containing an order under sub-paragraph (2) is subject to annulment in pursuance of a resolution of either House of Parliament.
Powers to lend money

(1) This paragraph applies where—
   (a) a power to lend money was transferred to the Assembly constituted by the Government of Wales Act 1998 by an Order in Council under section 22 of that Act, and
   (b) the power has been transferred to the Welsh Ministers by paragraph 30.

(2) Sub-paragraph (3) applies to any sums which, for the purpose or as a result of the exercise of the power, would be required (apart from that sub-paragraph)—
   (a) to be issued by the Treasury out of the National Loans Fund, or
   (b) to be paid into that Fund.

(3) Those sums are instead—
   (a) to be charged on the Welsh Consolidated Fund, or
   (b) to be paid into that Fund.

(4) The following provisions apply where—
   (a) the power was exercised by a Minister of the Crown before its transfer to the Assembly constituted by the Government of Wales Act 1998 (c. 38) or by that Assembly after its transfer, and
   (b) the sums required for the exercise of the power were issued by the Treasury out of the National Loans Fund.

(5) Any amount payable by way of repayment of, or of interest on, the loan is to be paid to the Welsh Ministers and into the Welsh Consolidated Fund (instead of to the Minister of the Crown and into the National Loans Fund).

(6) Amounts equal to those which are to be received by the Welsh Ministers in repayment of principal are to be treated as being loans made to the Welsh Ministers by the Secretary of State on the date of the transfer of the power to the Welsh Ministers.

(7) Such loans are to be repaid to the Secretary of State at such times and by such methods, and interest is to be paid to the Secretary of State at such rates and at such times, as the Treasury may from time to time determine.

(8) Sums required to be paid to the Secretary of State under sub-paragraph (7) are to be charged on the Welsh Consolidated Fund.

(9) Sums received by the Secretary of State under sub-paragraph (7) are to be paid into the National Loans Fund.
(10) Her Majesty may by Order in Council disapply this paragraph (in whole or in part) in relation to any power to lend money.

(11) No recommendation is to be made to Her Majesty in Council to make an Order in Council under sub-paragraph (10) unless a draft of the statutory instrument containing the Order in Council has been laid before, and approved by a resolution of, each House of Parliament.

**Commencement**
Sch. 11 para. 44(1)-(11): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

**Extent**
Sch. 11 para. 44(1)-(11): United Kingdom

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**Local government scheme**

**Law In Force**

(1) Any scheme under section 113(1) of the Government of Wales Act 1998 which is in force immediately before the commencement of the repeal of that provision by this Act has effect after that time (with appropriate modifications) as if made under section 73.

(2) Sub-paragraph (1) does not give rise to any obligation under section 73(4) to publish the scheme.

(3) Section 73(6) does not apply in relation to the financial year ending with 31st March 2007.

(4) But if the Assembly constituted by the Government of Wales Act 1998 has not complied with the duty imposed by paragraph 9 of Schedule 11 to that Act in relation to that financial year before the commencement of the repeal of that paragraph by this Act, that duty becomes a duty of the Welsh Ministers on the commencement of that repeal.

(5) In relation to the financial year ending with 31st March 2008, the reference in section 73(6)(a) to the proposals set out in the local government scheme includes those set out in a scheme under section 113(1) of the Government of Wales Act 1998.

**Commencement**
Sch. 11 para. 45(1)-(5): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

**Extent**
Sch. 11 para. 45(1)-(5): United Kingdom
Voluntary sector scheme

(1) Any scheme under section 114(1) of the Government of Wales Act 1998 (c. 38) which is in force immediately before the commencement of the repeal of that provision by this Act has effect after that time (with appropriate modifications) as if made under section 74.

(2) Sub-paragraph (1) does not give rise to any obligation under section 74(7) to publish the scheme.

(3) Section 74(9) does not apply in relation to the financial year ending with 31st March 2007.

(4) But if the Assembly constituted by the Government of Wales Act 1998 has not complied with the duty imposed by subsection (9) of section 114 of that Act in relation to that financial year before the commencement of the repeal of that subsection by this Act, that duty becomes a duty of the Welsh Ministers on the commencement of that repeal.

(5) In relation to the financial year ending with 31st March 2008, the reference in section 74(9)(a) to the proposals set out in the voluntary sector scheme includes those set out in a scheme under section 114(1) of the Government of Wales Act 1998.

Commencement
Sch. 11 para. 46(1)-(5): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 46(1)-(5): United Kingdom

Equality of opportunity arrangements

(1) Any arrangements under section 120(1) of the Government of Wales Act 1998 which are in force immediately before the commencement of the repeal of that provision by this Act have effect after that time (with appropriate modifications) as if made under section 77.

(2) Section 77(2) does not apply in relation to the financial year ending with 31st March 2007.

(3) But if the Assembly constituted by the Government of Wales Act 1998 has not complied with the duty imposed by subsection (2) of section 120 of that Act in relation to that financial year before the commencement of the repeal of that subsection by this Act, that duty becomes a duty of the Welsh Ministers on the commencement of that repeal.

(4) In relation to the financial year ending with 31st March 2008, the references in subsection (2) of section 77 to the arrangements made in pursuance of subsection (1) of that section include those made in pursuance of section 120(1) of the Government of Wales Act 1998.
Commencement
Sch. 11 para. 47(1)-(4): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 47(1)-(4): United Kingdom

**Welsh language strategy and scheme**

- Law In Force

48

1. The National Action Plan for a Bilingual Wales (or Iaith Pawb) as it stands immediately before the coming into force of section 78 has effect after that time (with appropriate modifications) as if it were a strategy adopted under subsection (1) of that section.

2. Any Welsh language scheme adopted by the Assembly constituted by the Government of Wales Act 1998 and current immediately before the coming into force of section 78 has effect after that time (with appropriate modifications) as if adopted under subsection (2) of that section.

3. Sub-paragraphs (1) and (2) do not give rise to any obligation under section 78(6).

4. Section 78(8) does not apply in relation to the financial year ending with 31st March 2007.

Commencement
Sch. 11 para. 48(1)-(4): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 48(1)-(4): United Kingdom

**Sustainable development scheme**

- Law In Force

49

1. Any scheme under section 121(1) of the Government of Wales Act 1998 (c. 38) which is in force immediately before the commencement of the repeal of that provision by this Act has effect after that time (with appropriate modifications) as if made under section 79.

2. Sub-paragraph (1) does not give rise to any obligation under section 79(4) to publish the scheme.

3. Section 79(6) does not apply in relation to the financial year ending with 31st March 2007.

4. But if the Assembly constituted by the Government of Wales Act 1998 has not complied with the duty imposed by subsection (6) of section 121 of that Act in relation to that financial year before the commencement of the repeal of that subsection by this Act, that duty becomes a duty of the Welsh Ministers on the commencement of that repeal.
(5) In relation to the financial year ending with 31st March 2008, the reference in section 79(6)(a) to the proposals set out in the sustainable development scheme includes those set out in a scheme under section 121(1) of the Government of Wales Act 1998.

(6) Section 79(7) has effect as if 2008 were the year following that in which an ordinary general election is held.

Commencement
Sch. 11 para. 49(1)-(6): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 49(1)-(6): United Kingdom

Orders in Council amending Schedule 5

50
(1) Section 95 has effect until the end of the initial period subject to the following modifications.

(2) In subsection (2), for the words after “exercisable by” substitute “the Assembly constituted by the Government of Wales Act 1998”.

(3) In subsection (5)(a), after “Assembly” insert “constituted by the Government of Wales Act 1998”.

(4) Omit subsections (6) to (10).

Commencement
Sch. 11 para. 50(1)-(4): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 50(1)-(4): United Kingdom

51
Section 96 has effect until the end of the initial period with the substitution of “Assembly constituted by the Government of Wales Act 1998” for “Counsel General”.

Commencement
Sch. 11 para. 51: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 51: United Kingdom
Assembly Measures: criminal penalties

52

(1) No term of imprisonment of more than six months is to be imposed on conviction of a summary offence created by or by virtue of an Assembly Measure if the offence is committed before the coming into force of section 281(5) of the Criminal Justice Act 2003 (c. 44).

(2) No term of imprisonment of more than six months is to be imposed on summary conviction of an offence triable either way created by or by virtue of an Assembly Measure if the offence is committed before the coming into force of section 154(1) of that Act.

Commencement
Sch. 11 para. 52(1)-(2): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 52(1)-(2): United Kingdom

Welsh Consolidated Fund

53

On 2nd April 2007 the Assembly constituted by the Government of Wales Act 1998 (c. 38) must pay into the Welsh Consolidated Fund all monies standing to its credit immediately before that day.

Commencement
Sch. 11 para. 53: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 53: United Kingdom

Grants

54

Until the end of the initial period section 118(2) has effect with the substitution of a reference to the Assembly constituted by the Government of Wales Act 1998 for the reference to the Welsh Ministers, the First Minister or the Counsel General.
Section 119 has effect as if—

(a) the references in subsection (1)(b) and (c) to the Welsh Ministers, the First Minister or the Counsel General included the Assembly constituted by the Government of Wales Act 1998, and

(b) the reference in subsection (6) to the Assembly were to that Assembly.

Section 120 has effect—

(a) with the substitution of a reference to the Assembly constituted by the Government of Wales Act 1998 for paragraphs (a) and (b) of subsection (1), and

(b) as if the references in subsections (3), (4) and (5) to the Welsh Ministers were to that Assembly;

and the reference in subsection (2)(a) to a resolution of the Assembly includes a resolution made before the beginning of the initial period by that Assembly.
Borrowing

57

(1) Until the end of the initial period section 121(1) has effect with the substitution of a reference to the Assembly constituted by the Government of Wales Act 1998 for the reference to the Welsh Ministers.

(2) For the purpose of section 122(2) the aggregate amount which, immediately before 1st April 2007, is outstanding in respect of the principal of–
   (a) loans made under section 82 of the Government of Wales Act 1998, and
   (b) any other loans issued out of the National Loans Fund which the Assembly constituted by the Government of Wales Act 1998 is liable to repay,

is treated as outstanding in respect of the principal of sums borrowed under section 121.

Commencement

Sch. 11 para. 57(1)-(2)(b): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent

Sch. 11 para. 57(1)-(2)(b): United Kingdom

Payments out of Welsh Consolidated Fund.

58

Until the end of the initial period section 124(3) has effect with the substitution of a reference to the Assembly constituted by the Government of Wales Act 1998 (c. 38) for paragraphs (a) and (b).

Commencement

Sch. 11 para. 58: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent

Sch. 11 para. 58: United Kingdom

59

Until the end of the initial period–
   (a) paragraph 5(3) of Schedule 31 to the Local Government, Planning and Land Act 1980 (c. 65) (financial provisions relating to urban development corporations: guarantees),
   (b) paragraph 16 of Schedule 8 to the Local Government Finance Act 1988 (c. 41) (non-domestic rating: pooling), and
(c) paragraph 5(3) of Schedule 8 to the Housing Act 1988 (c. 50) (financial provisions relating to housing action trusts: guarantees),

have effect with the substitution of references to that Assembly for the references to the Welsh Ministers.

Commencement
Sch. 11 para. 59(a)-(c): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 59(a)-(c): United Kingdom

Annual Budget motions

Law In Force

60

(1) In its application for the financial year beginning on 1st April 2007 section 125 has effect as if—

(a) the reference in subsection (1) to the Assembly included the Assembly constituted by the Government of Wales Act 1998 (except as it continues in existence by virtue of paragraph 22), and

(b) the references in paragraphs (b) and (c) of subsection (3) to the Welsh Ministers, the First Minister or the Counsel General included that Assembly.

(2) In relation to a Budget motion moved in that Assembly that section has effect as if—

(a) the reference in subsection (2) to the First Minister or a Welsh Minister appointed under section 48, and

(b) the reference in subsection (3) to the Welsh Ministers in the words before the paragraphs, were to a member of the executive committee within the meaning of the Government of Wales Act 1998 and as if the references in paragraphs (a), (b) and (c) of that subsection to the estimate of the Welsh Ministers were to the estimate of the member of that committee by whom the statement is made.

Commencement
Sch. 11 para. 60(1)-(2)(b): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 60(1)-(2)(b): United Kingdom
Supplementary Budget motions

61
(1) In its application for the financial year beginning on 1st April 2007 section 126 has effect as if the reference in subsection (1) to the Assembly included the Assembly constituted by the Government of Wales Act 1998 (except as it continues in existence by virtue of paragraph 22).

(2) In relation to a supplementary Budget resolution moved in that Assembly that section has effect as if the reference in subsection (5) to the First Minister or a Welsh Minister appointed under section 48 were to a member of the executive committee within the meaning of the Government of Wales Act 1998.

Commencement
Sch. 11 para. 61(1)-(2): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 61(1)-(2): United Kingdom

Contingencies

62
Until the end of the initial period section 128 has effect with the substitution of a reference to £50 million for the words after “this section” in subsections (4) and (5) and as if the references to the Welsh Ministers were—

(a) before the beginning of the initial period, to two or more members of the executive committee within the meaning of the Government of Wales Act 1998 (c. 38), and

(b) during the initial period, to two or more members of the Assembly constituted by that Act (as it continues in existence by virtue of paragraph 22) not including the person who immediately before the beginning of the initial period held office as the presiding officer.

Commencement
Sch. 11 para. 62(a)-(b): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 62(a)-(b): United Kingdom
Approvals to draw

63

(1) This paragraph applies until the end of the initial period.

(2) Section 129 has effect as if the reference in subsection (1) to the Welsh Ministers were—
   (a) before the beginning of the initial period, to a member of the executive committee within
   the meaning of the Government of Wales Act 1998, and
   (b) during the initial period, to a member of the Assembly constituted by that Act (as it
    continues in existence by virtue of paragraph 22) other than the person who immediately
    before the beginning of the initial period held office as the presiding officer.

(3) That section has effect as if the reference in subsection (3) to the Welsh Ministers were to the
Assembly.

(4) And that section has effect as if the reference in subsection (5)(b) to the principal accounting
officer for the Welsh Assembly Government were—
   (a) before the beginning of the initial period, to the Assembly's principal accounting officer
   (designated under section 98 of the Government of Wales Act 1998), and
   (b) during the initial period, to the person who was the Assembly's principal accounting
officer immediately before the beginning of the initial period.

Commencement
Sch. 11 para. 63(1)-(4)(b): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 63(1)-(4)(b): United Kingdom

Auditor General

64

The person who, immediately before the commencement of the repeal of section 90 of the
Government of Wales Act 1998, holds the post of Auditor General for Wales is to be taken after
that time to have been appointed to that post under paragraph 1 of Schedule 8.

Commencement
Sch. 11 para. 64: July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 64: United Kingdom


Advocate General for Northern Ireland

Law In Force

65

(1) Until the coming into force of section 27(1) of the Justice (Northern Ireland) Act 2002 (c. 26) this Act has effect subject to the following modifications.

(2) In section 81(3), omit “the Advocate General for Northern Ireland”.

(3) In section 153(5)(c) and paragraphs 23(1) and (2), 24(1) and 29(2)(c) of Schedule 9, for “Advocate General” substitute “Attorney General”.

Commencement

Sch. 11 para. 65(1)-(3): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent

Sch. 11 para. 65(1)-(3): United Kingdom

The Supreme Court

Law In Force

66

(1) Until the coming into force of section 23(1) of the Constitutional Reform Act 2005 (c. 4) this Act has effect subject to the following modifications.

(2) In section 96, for “Supreme Court” substitute “Judicial Committee of the Privy Council”.

(3) In section 98(6)(a), for “the Supreme Court decides” substitute “the Judicial Committee of the Privy Council decide”.

(4) In the following provisions, for “Supreme Court” substitute “Judicial Committee of the Privy Council”–
   (a) the title to section 99,
   (b) subsection (1) of that section,
   (c) section 100(1)(b),
   (d) section 101(4)(c), and
   (e) section 102(2)(b).

(5) In section 102(3)(a), for “the Supreme Court has” substitute “the Judicial Committee of the Privy Council have”.

(6) In section 111(6)(a), for “the Supreme Court decides” substitute “the Judicial Committee of the Privy Council decide”.

(7) In the following provisions, for “Supreme Court” substitute “Judicial Committee of the Privy Council”–
   (a) the title to section 112,
   (b) subsection (1) of that section,
(c) section 113(1)(b),
(d) section 114(4)(c), and
(e) section 115(2)(b).

(8) In section 115(3)(a), for “the Supreme Court has” substitute “the Judicial Committee of the Privy Council have”.

(9) In section 148(1)(f), for “Senior Courts” substitute “Supreme Court”.

(10) In paragraph 1(2) of Schedule 9 after “Schedule” insert

“–

(a) “the Judicial Committee” means the Judicial Committee of the Privy Council, and
(b) ”.

(11) In paragraphs 7(2)(a), 9, 15 and 25 of that Schedule, for “Supreme Court” substitute “House of Lords”.

(12) In the following provisions of that Schedule–

(a) paragraph 10 and the heading before it,
(b) paragraph 18 and the heading before it,
(c) paragraph 19,
(d) paragraph 20 and the heading before it,
(e) paragraph 27 and the heading before it,
(f) sub-paragraph (1) of paragraph 29 and the heading before it, and
(g) paragraph 30(1),

for “Supreme Court” substitute “Judicial Committee”.

(13) In paragraph 11 of that Schedule–

(a) for “Supreme Court”, in both places, substitute “Judicial Committee”,
(b) for “permission”, in the first two places, substitute “leave”, and
(c) for “permission”, in the third place, substitute “special leave”,

and in the heading before it, for “Supreme Court” substitute “Judicial Committee”.

(14) In paragraph 21 of that Schedule–

(a) for “Supreme Court apart from this paragraph” substitute “House of Lords”,
(b) for “Supreme Court”, in the second and third places, substitute “Judicial Committee”,
(c) for “permission”, in the first two places, substitute “leave”, and
(d) for “permission”, in the third place, substitute “special leave”.

(15) In paragraph 28 of that Schedule–

(a) for “Supreme Court”, in both places, substitute “Judicial Committee”,
(b) for “permission”, in the first two places, substitute “leave”, and
(c) for “permission”, in the third place, substitute “special leave”,

and in the heading before it, for “Supreme Court” substitute “Judicial Committee”.

(16) Before paragraph 29 of that Schedule insert–
“28A Proceedings in the House of Lords
Any devolution issue which arises in judicial proceedings in the House of Lords is to be referred to the Judicial Committee unless the House considers it more appropriate, having regard to all the circumstances, that it should determine the issue.”

Commencement
Sch. 11 para. 66(1)-(16): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

Extent
Sch. 11 para. 66(1)-(16): United Kingdom

Law In Force
67

(1) This paragraph has effect until the coming into force of section 23(1) of the Constitutional Reform Act 2005 (c. 4).

(2) Any decision of the Judicial Committee in proceedings under this Act–
(a) must be stated in open court, and
(b) is binding in all legal proceedings (other than proceedings before the Judicial Committee).

(3) The only members of the Judicial Committee who may sit and act as members of the Judicial Committee in proceedings under this Act are those who hold or have held–
(a) the office of a Lord of Appeal in Ordinary, or
(b) high judicial office as defined in section 25 of the Appellate Jurisdiction Act 1876 (c. 59) (ignoring for this purpose section 5 of the Jurisdiction Act 1887 (c. 70) Appellate).

(4) Her Majesty may by Order in Council–
(a) confer on the Judicial Committee in relation to proceedings under this Act such powers as appear to be appropriate,
(b) apply the Judicial Committee Act 1833 (c. 41) in relation to proceedings under this Act with exceptions and modifications, and
(c) make rules for regulating the procedure with respect to proceedings under this Act before the Judicial Committee.

(5) An Order in Council under sub-paragraph (4) may make such modifications of–
(a) any enactment (including any enactment comprised in or made under this Act) or prerogative instrument, or
(b) any other instrument or document,
as Her Majesty considers appropriate in connection with the provision made by the Order in Council.

(6) No recommendation is to be made to Her Majesty in Council to make an Order in Council under sub-paragraph (4) which contains provisions in the form of amendments or repeals of enactments contained in an Act unless a draft of the statutory instrument containing the Order in Council has been laid before, and approved by a resolution of, each House of Parliament.

(7) A statutory instrument containing an Order in Council which makes provision falling within sub-paragraph (4)(a) or (b) is (unless a draft of the statutory instrument has been approved by a
resolution of each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament.

**Commencement**

Sch. 11 para. 67(1)-(7): July 25, 2006 (2006 c. 32 Pt 6 s. 161(2))

**Extent**

Sch. 11 para. 67(1)-(7): United Kingdom

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### SCHEDULE 12

**REPEALS AND REVOCATIONS**

**Section 163**

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<td>In section 145(3), the words “(or, before the first ordinary election, the views of the Secretary of State)”</td>
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<td>(a) in subsection (3), paragraph (a) and, in paragraph (b), the words “96(5), 117,” and the words “144(1) or (4),”</td>
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<td>(b) subsection (4),</td>
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<td>(c) in subsection (6), in paragraph (a), the words from “3” to “118(1)(f),”, the words “144(1) or (4),” and the words “or paragraph 17(9) of Schedule 9” and paragraph (b) and the word “and” preceding it, and</td>
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<td>(d) subsection (7).</td>
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<td>Short title or title</td>
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<td>in subsection (1), the definitions of “[EU] law” and “delegate”, (b) subsection (2), and (c) in subsection (3), the words from “; and the” to the end.</td>
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<td>Copyright and Related Rights Regulations 2003 (S.I. 2003/2498)</td>
<td>In Schedule 1, paragraph 11(a).</td>
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</table>
Short title or title | Extent of repeal or revocation
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Planning and Compulsory Purchase Act 2004 (c. 5) | Section 60(7).
Public Audit (Wales) Act 2004 (c. 23) | Section 2. Sections 6 to 11. Section 65(2). In Schedule 2, paragraphs 43 and 45.
Constitutional Reform Act 2005 (c. 4) | In Schedule 9, paragraphs 87 to 92.
Public Services Ombudsman (Wales) Act 2005 (c. 10) | Section 12(9). Section 16(9). Section 21(11). Section 23(6). In section 24—
(a) in subsection (2), paragraph (b) and the word “and” preceding it, and
(b) subsection (3). In section 41(1), the definition of “Assembly Cabinet”. Section 44(3). In Schedule 1, in paragraph 15(3), the words “to it”. In Schedule 6, paragraphs 62 to 64.
Inquiries Act 2005 (c. 12) | In section 1(2), the words following paragraph (c).

Notes
1 Word substituted by Treaty of Lisbon (Changes in Terminology) Order 2011/1043 Pt 2 art.6(2)(a) (April 22, 2011)

Commencement
Sch. 12 para. 1(a)-(bc): July 25, 2006 for repeals specified in 2006 c.32 s.161(2); April 1, 2007 for repeals specified in 2006 c.32 s.161(3); May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1) except for the repeal specified in 2006 c.32 s.161(4)(d); May 25, 2007 immediately after the end of the initial period for repeals specified in 2006 c.32 s.161(4)-(5) otherwise

Extent
Sch. 12 para. 1(a)-(bc): United Kingdom

EXPLANATORY NOTES

INTRODUCTION
1. These explanatory notes relate to the Government of Wales Act 2006, which received Royal Assent on 25 July 2006. They have been prepared by the Wales Office in order to assist the reader in understanding the Act. They do not form part of the Act, and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not intended to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

**BACKGROUND**

**The Government of Wales Act 1998**


4. The Government of Wales Act 1998 (“GoWA”) provides for the establishment of a National Assembly for Wales consisting of 60 Assembly Members (AMs). 40 AMs are elected on a first past the post basis from constituencies identical with Parliamentary constituencies and a further 20 AMs are elected from five electoral regions, four from each region. These additional AMs are drawn from party regional lists, and seats are allocated having regard both to the votes given for each party's list in a region and the number of constituency seats which the party has secured in that region; the effect is to provide compensation, in the form of regional seats, for parties which secure a significant number of votes across an electoral region without obtaining an equivalent proportion of the constituency seats in that region.

<table>
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<td>Lib Democrats</td>
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<tr>
<td>Other</td>
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<td></td>
<td>40</td>
</tr>
</tbody>
</table>

The first elections to the National Assembly were held in May 1999.

5. Unlike the devolution arrangements put in place at the same time in Scotland and Northern Ireland, GoWA does not provide for a separation of the legislature from the executive. By section 1, the National Assembly is established as a corporate body, which exercises its functions on behalf of the Crown. The Government’s policy, as set out in “A Voice for Wales”, was that the Assembly should assume the statutory powers and duties which the Secretary of State for Wales had hitherto exercised. Provision was made for Orders in Council to transfer these predominantly executive responsibilities to the Assembly and subsequent Acts of Parliament have conferred additional powers on the Assembly. The Assembly's powers, whether transferred by Orders in Council or conferred directly by Act of Parliament, include a large number of subordinate order-making powers (including some powers enabling the Assembly to amend primary legislation), but the Assembly is not empowered by GoWA to make primary legislation for Wales; this remains Parliament's responsibility.
6. Although its statutory functions are in law made the responsibility of the Assembly as a corporate body, in practice most of the Assembly's powers (excluding those of a predominantly legislative character) are exercised on its behalf by Assembly Ministers under delegation arrangements approved by the Assembly in plenary session. The Assembly holds Ministers to account for exercise of these functions, and, under standing orders, has the function of approving the Assembly's Budget. Financial provision for the Assembly is made available to it by the Secretary of State for Wales, out of moneys voted by Parliament.

The Act in Operation

7. In February 2002, in debating its Review of Procedure, the Assembly unanimously approved a motion calling for “the clearest possible separation between the Government and the Assembly which is achievable under current legislation”. Since March 2002, those (Ministers and civil servants) exercising executive powers on behalf of the Assembly have used the title “Welsh Assembly Government” to distinguish themselves from the wider Assembly, and the Assembly's support service has adopted the title “Assembly Parliamentary Service”.

8. In July 2002 the Welsh Assembly Government appointed a Commission, under the chairmanship of Lord Richard of Ammanford, to review the operation of the devolution arrangements.

9. Having analysed the consequences for development and implementation of distinctive policies for Wales of the Assembly's limited legislative powers, the Richard Report recommended that the Assembly should be able to make primary legislation for Wales (although Parliament would continue to have important legislative responsibilities for Wales as well).

10. The Commission therefore concluded, in the light of both this and of its analysis of the implications of the Assembly's corporate body status, that the status quo was not a sustainable basis for the future development of the Assembly. It recommended that the existing Assembly should be “replaced by two separate bodies — an executive and a legislature”.

11. On 6 October 2004, the Assembly adopted a resolution calling for early legislation to amend GoWA.

12. In June 2005 the Secretary of State for Wales published a White Paper “Better Governance for Wales”, setting out proposals for new legislation to:
   a) effect a formal separation between the executive and the legislative branches of the Assembly;
   b) reform existing electoral arrangements;
   c) enhance the legislative powers of the Assembly.

Formal separation between the executive and legislative arms of the Assembly

13. Under the proposals:
   a) the Welsh Assembly Government would be established as an entity separate from, but accountable to, the National Assembly. The First Minister would be appointed by Her Majesty on the nomination of the Assembly, and the First Minister would appoint other Ministers and Deputy Ministers with Her approval. All these Ministers would act on behalf of the Crown, rather than as delegates of the Assembly as now (but would have to resign if they lost the confidence of the Assembly). A new statutory office of Counsel General would be created, the post holder being responsible for providing legal advice to the Assembly Government on matters relating to their devolved functions. Ministers would, as now, be supported by staff who would be civil servants;
b) most of the statutory functions which currently are exercised in the name of the Assembly would formally become the responsibility of Assembly Ministers. The Assembly's current order-making powers would in future generally be exercised by Ministers, although procedures would be in place either for drafts of orders to be approved by the Assembly before they are made (affirmative procedure) or for orders to be annulled after having been made (negative procedure). Ministers would also be subject to duties relating to sustainable development and promotion of equality of opportunity which GoWA currently places on the Assembly as a whole;

c) Ministers would be accountable to the Assembly for the exercise of their powers, and for the use made of the budgetary resources voted each year by the Assembly out of a new Welsh Consolidated Fund (into which the Secretary of State would make payments out of moneys voted by Parliament. The requirement for Ministers to be members of the Assembly's subject committees would end, and the Assembly would in general have more freedom to determine its own “internal architecture” of committees. The Assembly rather than Ministers would be authorised to advise Her Majesty on appointments to the offices of the Auditor General for Wales and the Public Services Ombudsman for Wales.

Enhanced legislative powers for the Assembly

14. The White Paper proposed increasing the Assembly's legislative powers in three ways:

a) as a first stage, by conferring wider powers on the Assembly to make subordinate legislation. The White Paper noted that this proposal would not require legislative amendment (and so there is no provision relating to this in the Government of Wales Act 2006). The first example of a “framework” provision of this kind is contained in the NHS Redress Bill, which was introduced in the House of Lords on 12 October 2005;

b) secondly, by providing an Order in Council mechanism which would allow Parliament to confer enhanced legislative powers on the Assembly in relation to specified subject matter within devolved fields (i.e. fields in which the Assembly Ministers have or are about to obtain executive functions). The Order in Council would enable the Assembly to pass its own legislation within the scope of the powers delegated by Parliament (as defined by the Order in Council);

c) thirdly, and following a referendum, by authorising the Assembly to make law on all the matters within its devolved fields of competence without further recourse to Parliament. A referendum could only be triggered with the approval of both Houses of Parliament and of two-thirds of all Assembly members. In the event of a vote in favour of “primary legislative powers”, Parliament would nonetheless continue to be able to legislate for Wales, and the White Paper mentioned the possible need in this circumstance to develop procedures akin to the Sewel motions to regulate the relationship between the Westminster and Holyrood Parliaments.

15. The White Paper stated that the new (first stage) approach to the drafting of power-conferring clauses could begin immediately. If Parliament approved the proposals, the (second stage) Order in Council mechanism could be in place from immediately after the next Assembly elections in 2007. The third stage in the process could however only be introduced following endorsement of that proposal in a referendum. The White Paper noted that the Government had no current plans to hold such a referendum, but the Bill implementing its proposals should nevertheless provide the powers for one to be held, so as to avoid the need to have to return to Parliament to secure the necessary legislation if it was ever decided to hold one at some future time.
Reforming the Assembly's electoral arrangements

16. The White Paper contained three proposals relating to this:
   a) individuals should henceforth no longer be able to be candidates in constituency elections and at the same time be eligible for election as regional members from party lists.
   b) while there should be no change to the requirement that Assemblies are elected for fixed four-year terms, new provision (equivalent to that made for the Scottish Parliament) should be made for extraordinary elections within a four-year term, to apply in those exceptional circumstances where it was clear that an Assembly as presently constituted could not perform its functions properly;
   c) the Assembly should have a new power to allow it to arrange for public information campaigns to promote participation in its elections.

The Act

17. The Act, which contains 6 Parts, 166 sections and 12 Schedules, gives effect to the White Paper proposals. Its provisions are further described below. Many of these are re-enacted, with amendments, from GoWA.

TERRITORIAL EXTENT AND APPLICATION

18. The Act's substantive provisions extend (with limited exceptions) to the whole of the United Kingdom although its practical application will be confined almost entirely to Wales. The provisions which do not extend to the whole of the United Kingdom are section 36(7) to (9), section 39 and section 40(2) and (3). These provisions create criminal offences and extend only to England and Wales. Where the Act makes consequential amendments, these have the same extent as that of the statutes amended.

COMMENTARY ON SECTIONS AND SCHEDULES

General Overview of the Act

19. The Act is organised in six Parts.

20. Part 1, together with Schedules 1 and 2, makes provision for the election and remuneration of Assembly Members; for the offices of Presiding Officer, Deputy Presiding Officer, and Clerk; for the establishment of an Assembly Commission (to be responsible for providing the Assembly with staff and support services); for committees; and for the Assembly's powers to summon witnesses and call for documents.

21. Part 2, with Schedule 3, establishes the Welsh Assembly Government as an entity separate from, but accountable to, the National Assembly. It deals with the appointment and remuneration of the First Minister and other Ministers and Deputy Ministers; creates the office of Counsel-General to the Welsh Assembly Government and makes provision for appointment to it; and authorises the appointment of staff (who are civil servants) in support of the Assembly Government. It provides for the exercise of statutory functions by Ministers in their own right (rather than as delegates of the Assembly), and places duties on them in respect of carrying out regulatory impact assessments in connection with Welsh subordinate legislation, and duties in respect of equality of opportunity, sustainable development and the Welsh Language. Ministers will also be required to engage with stakeholders through consultation mechanisms with business, local government, and the voluntary sector.

22. Part 3, with Schedule 5, introduces the new mechanism, proposed in the White Paper, by which legislative competence will be conferred on the Assembly, with Parliament's approval, in
respect of specified matters set out in the Schedule as amended by Orders in Council. The Assembly's legislation in exercise of these powers will be known as Assembly Measures.

23. Part 4 and Schedules 6 and 7 make provision for the holding of a referendum on whether the Assembly should have more extensive (“primary”) legislative powers, and specify the subject-matter on which the Assembly would be able to legislate without further recourse to Parliament if such a proposal was approved in a referendum. Provision is made in the Act for the subject-matter on which the Assembly could legislate, following approval in a referendum, to be adjusted and updated to reflect the circumstances of the time when any referendum is held.

24. Part 5, with Schedule 8, deals with Finance. It provides for the creation of a Welsh Consolidated Fund, which will receive payments from the Secretary of State out of moneys voted by Parliament. Payments out of the Fund to meet the costs of Welsh Assembly Government programmes, will be authorised by Annual and Supplementary Budget Motions adopted by the Assembly. No payment out will be made unless approved by the Auditor General for Wales, who will need to be satisfied that it is in line with a Budget Resolution (or otherwise lawful under the Act ). Provision is made for preparation of the accounts of the Welsh Ministers, and of the Assembly Commission, and the Act appoints Accounting Officers to have personal responsibility for these accounts. Schedule 8 re-enacts with modifications the existing provisions relating to the office of the Auditor General for Wales; in particular, appointments to that office will in future be made by Her Majesty on the nomination of the Assembly.

25. Finally, Part 6, with Schedules 9–12, deals with Miscellaneous and Supplementary matters. The provisions in the 1998 Act dealing with Welsh public records are re-enacted to reflect the new circumstances created by this Act. Provision is also made for legal proceedings in relation to “Devolution Issues”. Schedule 11 contains transitional provisions to cover the transfer in May 2007 (when the next Assembly elections take place) from the legal and governmental regime created by the 1998 Act to that envisaged by this Act.

PART 1: NATIONAL ASSEMBLY FOR WALES

Overview of Part 1

26. Part 1 of the Act re-enacts many of the 1998 Act's provisions relating to the establishment of the Assembly, but additional provision is made, in part because the Assembly will no longer be a “corporate body”.

27. By virtue of sections 1 and 2, 40 constituency members will continue to be directly elected from constituencies identical with Parliamentary constituencies, and 20 Assembly regional members from Assembly electoral regions. (Schedule 1 effectively re-enacts provision in the 1998 Act for the areas of those regions to be adjusted to reflect changes from time to time in Assembly/Parliamentary constituency boundaries so that electoral regions will always consist of a number of whole constituencies; and for additional regional members to maintain the 2:1 ratio if there is an increase in the number of Assembly constituencies). Under the 1998 Act, Welsh general elections to the Assembly are held every four years, and that continues generally to be the case under the new Act; but new provision, equivalent to s.3 of the Scotland Act 1998, is made by section 5 of the Act to allow for an extraordinary (early) Welsh general election to be held if not less than two-thirds of all Assembly Members (i.e. 40) vote for a resolution to that effect. Such circumstances might arise if, for example, it became clear that, given the existing composition of the Assembly, no Assembly Government could be formed that would be likely to enjoy the confidence of the Assembly.
28. Provisions on the entitlement to vote, and the voting arrangements, whereby electors are able to vote for a constituency candidate and separately for a party list (or independent candidate) at regional level, are carried forward from the 1998 Act. Assembly elections will be held in accordance with an order to be made by the Secretary of State under section 13 (and new provision will be made for the 2007 Welsh general election, taking into account the provisions of the Electoral Administration Act 2006). On candidacy, section 7 includes the provision so that a person may not appear on a party list as a candidate for a regional seat if that individual is also an Assembly constituency candidate. Provisions on the allocation of regional seats at a general election, and the filling of casual constituency or regional vacancies, are carried forward from the 1998 Act. Provisions relating to the disqualification from Assembly membership of the holders of specified offices are also carried forward, with amendments to reflect changes in legislation since 1998. On becoming Assembly Members, individuals are by section 23 required to take an oath or make an affirmation of allegiance, as was required by the 1998 Act.

29. Arrangements for determining Assembly Members' remuneration are set out in sections 20–22, broadly in line with what was provided for in the 1998 Act. Section 22 provides for the publication of information about the salaries and allowances paid to individual Assembly Members. Provision is also made in section 24 for the Assembly to make payments by way of assistance to groups of Assembly Members to assist them to perform their functions; this is the Assembly equivalent of what is known in Parliament as “Short money”. The Assembly's standing orders must make provision about the publication of information on the use made of this power in each financial year.

30. Sections 25, 26 and 27 make provision respectively for the offices of Presiding Officer and Deputy Presiding Officer, the Clerk, and the establishment of an Assembly Commission to be responsible for providing the Assembly with staff and support services. The offices of Presiding Officer and Deputy Presiding Officer were created by the GoWA, but the Act sets out their responsibilities in fuller detail. Statutory recognition, by section 26, of the office of Clerk of the Assembly is new, and broadly follows s.20 of the Scotland Act 1998; by paragraph 17 of Schedule 11, the member of staff currently serving as Clerk to the Assembly will become the first holder of the office from the 2007 election.

31. Provision for the Commission broadly follows that made in the Scotland Act 1998 for the Scottish Parliamentary Corporate Body. It is a consequence of the fact that the Assembly will no longer be a corporate body and will not therefore have the benefit of legal personality. The Commission, whose membership, duties and powers are set out in fuller detail in Schedule 2, will be a body corporate, capable of entering into contracts and holding property etc in its own right in pursuance of its functions. In recruiting staff, the Commission is to ensure that its procedures, including its selection procedures, and the terms of conditions of employment it offers, are to be broadly in line with those of the Welsh Assembly Government. Paragraphs 5 and 6 of Schedule 2 confer specific powers on the Assembly Commission to promote public awareness of the current or any pending system of Assembly elections, and of devolved government in Wales. The Commission is specifically empowered to provide financial assistance to the Electoral Commission for these purposes, but will also be able to take other such action as it thinks fit in pursuit of these objectives.

32. Sections 28–30 are about Assembly Committees. Generally speaking it will be for the Assembly in future to decide what committees it wishes to establish via its standing orders, but there is a requirement for an Audit Committee. Section 29 makes new provision for determining the membership of such committees as the Assembly may wish to establish after May 2007, so that
(as far as reasonably practicable) the allocation of places on committees secures that the membership of each committee reflects the overall representation of political groups in the Assembly. It includes provision for determining the allocation of places in the event that there is not a consensus (that is, if there is no resolution to allocate committee places which is supported by two-thirds of those voting) and provision to secure that — subject to the total number of places available on committees — members who do not belong to a political group are each offered at least one place and all political groups are offered at least as many places as they have members, thus protecting the position of independent members and small political parties and groups.

33. The Assembly's proceedings generally are to be regulated by its standing orders. By virtue of paragraph 20 of Schedule 11, the Secretary of State is to make standing orders to be in place when the Assembly first meets after the May 2007 elections. In making those standing orders, the Secretary of State must give effect (subject to a power to modify them to make them precisely fit for purpose) to any draft standing orders adopted by the Assembly on a two-thirds vote. After the Assembly is elected in 2007, it will be able to revise any provisions of its standing orders as it sees fit, subject, as now, to two-thirds of Members voting to support such revisions; but any such revisions will need to be compatible with the Act's requirements that certain matters (e.g. integrity and the need for a register of interests, see section 36), are provided for in standing orders.

34. Sections 32–34 of the Act provide variously for the Secretary of State for Wales to participate (but not to vote) in Assembly proceedings; for other Ministers of the Crown to participate, to the extent that is permitted by standing orders; and for the Counsel General, who need not necessarily be an Assembly Member, also to participate as standing orders allow. The Secretary of State for Wales' duty under s.31 of the GoWA to consult the Assembly on the UK Government's legislative programme is carried forward into the new Act as section 33. Assembly proceedings generally are, by virtue of section 35, to reflect equal opportunity principles and equal treatment of the Welsh and English languages. Statements in Assembly proceedings are absolutely privileged for the purposes of the law of defamation (section 42).

35. Finally in this Part, sections 37–40 make revised provision enabling the Assembly, or any of its committees, to summon witnesses or call for documents, “concerning any matter relevant to the exercise by the Welsh Ministers of any of their functions”. Section 40 envisages that a witness giving evidence in such circumstances may be required to do so on oath (or affirmation). It will still be open to an Assembly committee to invite witnesses to give evidence on any matter in which the committee has an interest. There are exceptions to the power to compel attendance or the production of documents. For example, it will not be open to the Assembly to summon to give evidence someone who has been a Minister of the Crown, or has served as a civil servant in support of a Minister of the Crown, in relation to the exercise of any functions of a Minister of the Crown (section 37(3)). On the other hand, Welsh Ministers' officials will be summonable; although provision is made for a Welsh Minister to appear themselves, or to nominate a different official to represent them to the one summoned by the Assembly committee, if the Minister considers that appropriate in the particular circumstances (section 37(5),(6)).

Notes

1 In the event that a review of Parliamentary constituency boundaries in Wales resulted in an increase in the number of constituencies, provisions in Schedule 1 to the Act allow for an increase in the number of regional Members in order to maintain the overall 2:1 ratio.

2 The Act allows an individual to stand for election for an electoral region, but in practice no individual candidates were elected from an electoral region in either 1999 or 2003.
The results of the elections in 1999 and 2003 are set out in the Table below:


GoWA, s.53, refers to an Assembly First Secretary and Assembly Secretaries, but in practice the holders of these offices are referred to as Ministers.

GoWA, s.62, makes provision for delegation of the Assembly's functions to the First Secretary and subsequently to other Assembly Secretaries.

GoWA, ss. 80–81.


Cm 6582

See as the first example of this approach, NHS Redress Bill 2005, clause17.


See “Better Governance in Wales”, para.4.8, for the background to this proposal.

Detailed Comments on

Part 1

The Assembly

Section 1: The Assembly

36. This section provides for establishment of the legislative body called the National Assembly for Wales (“the Assembly”) and the Assembly Members who comprise its membership. The corporate body which was set up under the Government of Wales Act 1998 with legislative and executive powers, and which was also called the “National Assembly for Wales”, will cease to exist.

37. Membership of the Assembly is to consist of Assembly Members of two descriptions: Assembly constituency members and Assembly regional members. Each Assembly constituency elects one Assembly constituency member. Each Assembly region, of which there are five, elects four regional members.

38. Assembly Members will be elected in general elections (in which all Assembly seats are up for election), in by-elections (for Assembly constituency members only), or by application of the rules for filling vacant regional seats. The rules for all these processes are to be found in this Act, in subordinate legislation made under it and in other legislation relating to elections.

39. When a seat in the Assembly becomes vacant (for example, because of the death or resignation of an Assembly constituency or regional member), the fact that there is a vacancy does not invalidate anything done by the Assembly, or by its committees or sub-committees.

Section 2: Assembly constituencies and electoral regions

40. This section and Schedule 1 to the Act provide for the Assembly constituencies (for which Assembly constituency members are returned), and the Assembly electoral regions (for which Assembly regional members are returned).

41. Assembly constituencies have the same boundaries as the parliamentary constituencies for which Members of the UK Parliament are returned. Therefore, at the passing of this Act, there are 40 Assembly constituencies. If the parliamentary constituencies change (by Her Majesty making an Order in Council under the Parliamentary Constituencies Act 1986, following a report of the Electoral Commission), the Assembly constituencies will also change accordingly.
42. At the outset, the 5 electoral regions in Wales are: North Wales, Mid and West Wales, South Wales West, South Wales Central and South Wales East. The boundaries of these electoral regions are laid down by the Parliamentary Constituencies and Assembly Electoral Regions (Wales) Order 2006, which was made under the Parliamentary Constituencies Act 1986.

43. The boundaries of the electoral regions and the numbers of Assembly regional seats allocated to each region will be able to be altered by an Order in Council made by Her Majesty under the Parliamentary Constituencies Act 1986, following a report of the Electoral Commission into parliamentary constituencies. Schedule 1 to the Act makes detailed provision in relation to the procedures for proposals for such alterations.

General Elections

Section 3: Ordinary general elections

44. This section provides that Assembly ordinary general elections are to take place every four years, on the first Thursday in May, subject to a power under which the Secretary of State may change the date of an ordinary general election by order under section 4.

45. In advance of an ordinary general election the Assembly is to be dissolved a specified number of days before that Thursday. This number of days (“the minimum period”) will either be specified in an Order made by the Secretary of State under section 13, or calculated in accordance with rules set out in the Order. This is the minimum period to which subsection (3) refers.

46. The section also provides that the Assembly must meet within seven days after the day of the poll (excluding certain days such as Saturdays, Sundays and Bank Holidays).

Section 4: Power to vary date of ordinary general election

47. This section allows the Secretary of State, by Order, to vary the date of an ordinary general election (i.e. one that is scheduled to occur on the first Thursday in May, every four years) by up to one month either way, if, for example, holding the general election on the first Thursday in May would mean it would coincide with some other important event. Such an Order must also make provision as to when the Assembly is to be dissolved in advance of the varied date of the election and for it to meet within seven days after the day of the poll, again excluding certain days from the calculation. The Order may also apply the Representation of the People Acts, or other legislation that applies to the election of Assembly Members, with any modifications that are necessary because of the change of the date of the general election.

48. Before making an Order under this section, the Secretary of State must first consult the Welsh Ministers and an Order must be laid before Parliament and is subject to being annulled by resolution of either House of Parliament.

Section 5: Extraordinary general elections

49. Section 5 provides a mechanism for an extraordinary general election to take place before the next scheduled ordinary general election in certain circumstances.

50. If the Assembly resolves that it should be dissolved (provided Assembly Members representing at least two-thirds of Assembly seats, i.e. 40 Assembly Members voted for the resolution), or if the Assembly fails to nominate an Assembly Member to be the First Minister within the period laid down by section 47 (usually 28 days), then the Secretary of State must propose a date for the holding of an extraordinary general election. Arrangements for the holding of the extraordinary general election are then to be made by Order in Council.
51. If an extraordinary general election is held less than six months before the date on which an ordinary general election would normally be held, that ordinary general election is not to be held. The date of subsequent ordinary general elections would not however be affected, i.e. they would still normally take place on the first Thursday in May at intervals of four years after that in which the ordinary general election which did not take place was due to have been held.

Section 6: Voting at general elections

52. This section provides that persons voting in Assembly general elections can cast two votes. One vote (“the constituency vote”) may be cast for a named candidate to be the Assembly constituency member. The other (“the electoral region vote”) is for a registered political party which has put forward a list of candidates or for an individual candidate and, in either case, is for the purpose of electing the Assembly regional members for the region.

Section 7: Candidates at general elections

53. This section lays down rules in relation to entitlement to be a candidate for Assembly constituencies and electoral regions at a general election.

54. For example, a person may not be a candidate for more than one constituency. A person may not be included by a registered political party in its list of candidates for more than one electoral region. Nor may a person who is a candidate for any constituency be included in any of a party’s regional lists. Similarly, a person may not be an individual candidate for an electoral region if that person is also a candidate for any constituency or on any list of candidates submitted by any registered political party for any electoral region.

Sections 8 and 9: Calculation of Electoral Region Figures and Allocation of seats to electoral region members

55. These sections set out the method for determining the allocation of the four electoral region seats for each electoral region, using a “d’Hondt” calculation.

56. The starting point is the calculation, for each electoral region, of the initial “electoral region figure” for each registered political party and individual candidate. Section 8 explains how this is to be calculated.

57. In each Assembly region, the successful Assembly constituency members are to be identified before the electoral region figures are calculated. The electoral region figure is then calculated in each electoral region, for each registered political party that has submitted a list of candidates to be elected as the Assembly regional members in that region, by the following formula:

\[ X = \frac{A}{(B + 1)} \]

where:
- \( A \) = the total number of electoral region votes cast for that party across all the constituencies in that electoral region;
- \( B \) = the total number of constituency seats won by that party in that electoral region; and
- \( X \) = the electoral region figure.

58. For an individual electoral region candidate the electoral region figure is the total number of votes cast for that candidate.
59. The electoral region figures of all parties and of any individual regional candidates are compared. The first electoral region seat is allocated to the political party or individual regional candidate with the highest electoral region figure. The candidate elected is the one at the top of that party's list.

60. If a seat is allocated to a party, its electoral region figure must be re-calculated by adding the seat allocated to figure B and dividing figure A by (new figure B + 1). This re-calculated electoral region figure then replaces that party's initial electoral region figure.

61. The electoral region figures of all parties and of any individual regional candidates (other than an individual candidate to whom a seat has already been allocated) are then compared again and the next electoral region seat is allocated to the party or individual candidate with the highest electoral figure. In the case of a party the candidate elected is the one at the top of that party's list, disregarding any candidate already elected. If a seat is allocated to a party, the electoral figure of that party is again re-calculated by adding a further seat to figure B, and re-applying the formula \( X = A/(B + 1) \).

62. The process is repeated until all four regional seats have been allocated.

63. If all the candidates on a political party's regional list have been elected before all four regional seats have been filled, that party is disregarded in subsequently assessing which party or individual has the highest electoral region figure.

64. Provision is made for situations in which, at any comparison of electoral figures, the highest electoral figure is shared by two or more parties or individual candidates. If the number of unallocated seats is equal to or greater than the number of parties or individual candidates sharing the highest electoral figure then a seat is allocated to each. If not, the tie is to be broken, if possible, by increasing figure A by 1 and comparing the electoral figures again. If there are still two parties or individual candidates with equal electoral figures and not enough unallocated seats for all of them, the regional returning officer is to decide the matter by the drawing of lots.

### Vacancies

#### Section 10: Constituency Vacancies

65. Section 10 provides for the filling of a constituency seat which becomes vacant (for example, because of the resignation or death of the Assembly constituency member). A by-election must be held, on a date fixed by the Assembly's Presiding Officer, which must be within 3 months of the vacancy arising, unless it appears to the Presiding Officer that the latest day on which the poll could be held would be within 3 months of the date when the next ordinary general election is due to take place (in which case the seat will remain vacant until the general election.)

66. At a by-election, electors cast only one vote, for a named constituency candidate, (as opposed to the two votes at a general election, when electors are electing both a constituency member and regional members).

#### Section 11: Electoral Region Vacancies

67. Section 11 provides the machinery for filling a regional seat which becomes vacant (for example, because of the resignation or death of the Assembly regional member). If the seat which has fallen vacant was held by a candidate drawn from the list which a party had submitted at the previous general election, the vacancy is filled by the next candidate on that list, provided that person still wishes to be elected, and, in the case of a person who has ceased to be a member of the party, the party has not given notice that it does not wish that person to fill the vacancy.
68. A person who has, since that general election, been a candidate in a constituency by-election, is barred from taking up a regional vacancy as is a person who has previously been allocated a regional seat (and has, for example, ceased to hold that seat by reason of having resigned).

69. If, for any reason, the vacant seat cannot be filled from a party's list (for example because all the candidates on the list have been exhausted or the only candidates who are left are barred from filling the vacancy) then the seat remains vacant until the next ordinary or extraordinary general election.

70. If the Assembly regional member whose seat has become vacant was elected as an individual candidate, as opposed to being drawn from a party list, there is no procedure for filling the seat and it remains vacant until the next ordinary or extraordinary general election.

The Franchise and conduct of elections

Section 12: Entitlement to Vote

71. This section provides that the persons entitled to vote in any Assembly general or by-election in a constituency are those entitled to vote in a local government election in an electoral area included in the constituency. Electors may not cast more than one constituency vote or more than one regional vote at a general election or more than one vote at a by-election.

Section 13: Power to make provision about elections etc

72. This section empowers the Secretary of State to make provision by secondary legislation in relation to Assembly elections. This includes provision:
   a) about the registration of electors;
   b) for disregarding alterations in registers of electors;
   c) about limitations on election expenses;
   d) to allow Assembly elections and other elections, such as local government elections, to be held on the same day; and
   e) to allow sections 6 and 8(2) of the Act to operate differently if an election for an Assembly constituency member at a general election is abandoned.

73. The need to be able to modify the effect of the Act where an election in a particular constituency is abandoned (for example because of the death of a candidate) arises because normally no regional members can be elected until all constituency seats in the region have been filled.

74. Subsection (6) provides that the only method by which the return of an Assembly Member may be challenged (for example, on the ground that the election was not conducted lawfully) is by election petition under Part 3 of the Representation of the People Act 1983 as applied or incorporated by an Order under this section.

75. The Secretary of State must lay a draft of an Order under this section before each House of Parliament and may not make the Order unless approved by resolution of each House.

Duration of membership

Section 14: Term of office of Assembly members

76. This section provides that the term of office of an Assembly member begins when the member is declared to be returned and ends with the dissolution of the Assembly.

Section 15: Resignation of members

77. An Assembly member may resign by giving notice in writing to the Presiding Officer.
Disqualification

Section 16: Disqualification from being Assembly member

78. This section specifies the persons who are disqualified from becoming or continuing to be a member of the Assembly, including:

a) those disqualified from being a member of the House of Commons under section 1(1)(a) to (e) of the House of Commons Disqualification Act 1975 (judges, civil servants, members of the armed forces, members of police forces, members of foreign legislatures);
b) holders of offices designated by Order in Council (which must be laid before and approved by the Assembly);
c) the Auditor General for Wales and the Public Services Ombudsman for Wales;
d) members of the staff of the Assembly.

79. In addition, those disqualified from membership of the House of Commons, other than under the House of Commons Disqualification Act 1975, are also disqualified from membership of the Assembly. This covers common law and other statutory disqualifications and has the effect of excluding from membership:

a) persons under the age of 21 who are disqualified by the Parliamentary Elections Act 1695, section 7;
b) aliens who are disqualified at common law and by virtue of the Act of Settlement 1700, section 3, as amended by the British Nationality Act 1981, Schedule 7. Irish or Commonwealth citizens are not regarded as aliens for this purpose. Section 17(2) also excepts EU citizens who are resident in the UK;
c) local authority employees in politically restricted posts, who are disqualified from candidature for election to the House of Commons by the Local Government Officers (Political Restrictions) (Amendment) Regulations 1998 (SI 1998/3116), Schedule 1 para 1(a);
d) persons who are mentally ill and who are disqualified at common law. The procedure for the vacation of their seats is specified in section 141 of the Mental Health Act 1983;
e) persons in respect of whom a bankruptcy restrictions order has effect are disqualified under section 426A of the Insolvency Act 1986;
f) persons guilty of corrupt or illegal practices at Parliamentary elections are disqualified under the Representation of the People Act 1983;
g) convicted prisoners serving a sentence of more than one year's detention (or an indefinite sentence) in the UK or Ireland, who are disqualified by the Representation of the People Act 1981; Section 16(3) extends this disqualification to prisoners serving a sentence of more than one year's detention in any EU member State.

80. Members of the House of Lords are disqualified from being members of the House of Commons, but section 17(1) lifts these disqualifications in relation to membership of the Assembly.

81. Anyone who holds office as a Lord Lieutenant, Lieutenant or High Sheriff for any area in Wales is disqualified from membership but only for any constituency or electoral region wholly or partly included in that area.

Section 17: Exceptions and relief from disqualification

82. Section 17 provides for certain persons to be exempt from certain of the provisions in section 16 disqualifying certain persons from membership of the Assembly.
83. A citizen of the European Union resident in the UK is not disqualified from membership of the Assembly under section 3 of the Act of Settlement 1700. Such persons would otherwise be disqualified under section 16(2).

84. Subsection (3) permits the Assembly, by resolution, to disregard the disqualification (or alleged disqualification) of a person on any ground falling within section 16(1) or section 16(4). To do so it must consider that the grounds for disqualification have been removed and that it is proper to disregard the disqualification.

85. Any Assembly resolution to disregard a disqualification under subsection (3) is not to affect any proceedings under Part 3 of the Representation of the People Act 1983, as applied by an Order under section 13. Nor can such a resolution enable the Assembly to disregard any disqualification established in proceedings under section 19 (which permits an action to be raised in the High Court seeking a declaration that a person who has been returned as an Assembly member is disqualified).

Section 18: Effect of disqualification

86. This section sets out the consequences of disqualification in relation both to persons who are disqualified before they are returned as Assembly members, and to members who become disqualified during their term of office.

87. If a person is returned as an Assembly member and that person is disqualified from being an Assembly member, either generally or in relation to the particular constituency or region, that return is void and the seat is vacant. A seat also becomes vacant where a person has been validly returned, but then becomes disqualified. These provisions are subject to the power of the Assembly to give relief from disqualification under section 17.

88. Subsections (5), (6) and (7) make special provision as to Assembly members who are detained in mental institutions or are declared bankrupt.

89. Subsections (6) and (7) provide that where the provisions in subsection (5) apply, the disqualified member’s seat will not be vacated immediately and therefore, they do not cease to be a member of the Assembly until the seat is vacant. However, in the meantime, the member cannot participate in any proceedings of the Assembly, and the Assembly may resolve to withdraw other rights and privileges.

90. Subsection (8) protects the validity of any Assembly proceedings where a member is or becomes disqualified.

Section 19: Judicial proceedings as to disqualification

91. This section provides for a procedure before the High Court for establishing whether an Assembly member is disqualified or has been disqualified from membership. It is similar to the procedure before the Judicial Committee of the Privy Council provided in relation to disqualification from membership of the House of Commons by section 7 of the House of Commons Disqualification Act 1975, and to the procedure before the Court of Session in relation to disqualification from the Scottish Parliament under section 18 of the Scotland Act 1998.

92. Subsection (1) provides that a person who claims that a member of the Assembly is, or has (since being elected) been, disqualified may apply to the High Court for a declaration to that effect (i.e. a court order which establishes and declares that to be the case). No declaration may be made, however, on grounds which subsisted at the time of the election if an election petition is pending or has been tried in which the disqualification on those grounds is or was an issue or if a resolution
has already been passed by the Assembly under section 17(3) to the effect that the disqualification is to be disregarded.

93. An applicant to the court under this section must such give security for the costs of the proceedings as the court directs, up to a maximum sum of £5000 (the same maximum sum that an election court may order in relation to a Parliamentary election petition under Part 3 of the Representation of the People Act 1983). The maximum sum may be varied by order made by the Welsh Ministers (and which would be subject to annulment in pursuance of a resolution of the Assembly).

Remuneration, oaths etc.

Section 20: Remuneration of Assembly members

94. This section provides for the payment of salaries and allowances to current Assembly members, and for the payment of pensions, gratuities and allowances to former members and office-holders.

95. Subsection (1) imposes a duty on the Assembly to provide for the payment of salaries to Assembly members. The Assembly is free to determine the amount of any salary.

96. Subsection (2) permits the Assembly to provide for the payment of allowances to Assembly members. It is for the Assembly to decide what allowances are payable.

97. Subsection (3) allows the Assembly to make provision for the payment of pensions, gratuities or allowances to former Assembly members, and to the former holders of certain offices (such as the Presiding Officer and Deputy Presiding Officer) even though they may still remain Assembly members.

98. Subsection (4) permits the Assembly to include in any provision under subsection (3) provision for contributions or payments towards pensions, gratuities and allowances. The Assembly can also make arrangements for the establishment and administration of one or more pension schemes. It can do this through the Assembly Commission or by such other means as the Assembly decides.

99. Payments of salaries, allowances and pensions, etc. to current and past Presiding and Deputy Presiding Officers are to be charged on the Welsh Consolidated Fund (so that payment will not need to be authorised annually by the Assembly).

100. Provision for payments under this section may be made either by the Assembly's standing orders or by Assembly resolution and may also be the subject of an Assembly Measure under Part 3 of the Act. Functions may be conferred on the Assembly Commission.

101. Paragraph 12 of Schedule 11 provides for pay etc, determinations made under sections 16 and 18 of the Government of Wales Act 1998 to continue in force post-repeal of those section as if they had been made under this section.

Section 21: Limit on salaries of members

102. This section requires the Assembly to reduce the salary of any Assembly member who also receives a salary as a Member of Parliament or a Member of the European Parliament. The amount by which the salary is reduced is a matter for the Assembly. Expenses paid to Members of the House of Lords do not give rise to a reduction since they are not a salary. The reduction must be either of a particular proportion of the Assembly member's salary, or the whole, or a proportion of the other salary or some other amount.
103. Provision for the reduction may be made either by the Assembly’s standing orders or by Assembly resolution and may also be the subject of an Assembly Measure under Part 3 of the Act. Functions may be conferred on the Assembly Commission.

Section 22: Remuneration: Supplementary

104. This section makes supplementary provisions about the remuneration of Assembly members. These include requiring the Assembly to publish annually information on the total amount paid, and the amounts paid to individual members, by way of salary and allowances, and also requiring the Assembly Commission, if it has had conferred on it the function of determining the levels of salaries, allowances, pensions and gratuities, to publish any determinations it makes as soon as is reasonably practicable.

Section 23: Oath or affirmation of allegiance

105. Every Assembly member is required by this section to take an oath of allegiance or to make a corresponding affirmation. Standing orders must specify the person before whom the oath is to be taken or the affirmation made. If an Assembly member has already, since being returned as a member at the last election, taken the oath of allegiance (or affirmed) in the capacity of a Welsh Minister or Counsel General (see section 55) then the oath or affirmation need not be repeated.

106. Until a member has taken the oath (or affirmed) that member may not take part in any proceedings of the Assembly other than those at which the oath is taken (or affirmation made) or earlier proceedings to elect a Presiding Officer or Deputy Presiding Officer. Neither may any salary, allowances, pension or gratuity be paid to the member.

Section 24: Assistance to groups of Assembly members

107. This section requires the Assembly Commission to make payments to (or in respect of) political groups, where the Assembly has so determined, in order to assist Assembly members belonging to those groups to perform their functions as Assembly members. Corresponding provision is made in section 34A of the Government of Wales Act 1998 (as inserted by section 158(1) of the Political Parties, Elections and Referendums Act 2000).

108. Any determination by the Assembly that political groups should receive such payments, and fixing the amount which each is to receive, must, in order to have effect, be supported by at least two-thirds of the Assembly members voting.

109. Standing orders must provide the means of determining to which group, if any, a member belongs. They can require a political group to have a minimum number of Assembly Members belonging to it before it is recognised as such.

110. Standing Orders must provide for publication of every determination under this section and of information about sums paid to political groups during each financial year.

Presiding Officer and administration

Section 25: Presiding Officer etc.

111. This section provides for the election by the Assembly, at its first meeting after each general election, of a Presiding Officer and a Deputy Presiding Officer. Unless the Assembly by a two-thirds majority of those voting resolves otherwise, the Presiding Officer and the Deputy Presiding Officer must not both belong to the same political group nor must they both be members of political groups with an executive role (i.e. groups to which Ministers belong).
112. The Presiding Officer's functions under this Act include:

<table>
<thead>
<tr>
<th>Section</th>
<th>Function</th>
</tr>
</thead>
<tbody>
<tr>
<td>10(4)</td>
<td>Fixing the date of an election in the event of a constituency vacancy.</td>
</tr>
<tr>
<td>11(2)</td>
<td>Receiving notification of the filling of a regional member vacancy.</td>
</tr>
<tr>
<td>15</td>
<td>Receiving notification of a member's resignation.</td>
</tr>
<tr>
<td>24(5)</td>
<td>Deciding questions arising under the standing orders about the political group (if any) to which a member belongs.</td>
</tr>
<tr>
<td>27(2)(a)</td>
<td>Membership of the National Assembly for Wales Commission (“the Assembly Commission”).</td>
</tr>
<tr>
<td>29(10)</td>
<td>Deciding questions arising under provision made in compliance with section 29 regarding the composition of committees.</td>
</tr>
<tr>
<td>38(5)(a)</td>
<td>Receiving notification of the issue of a direction by a Welsh Minister or the Counsel General to a current or former member of staff of the Welsh Assembly Government (or person with an equivalent status) that the person need not give evidence or produce documents to the Assembly, its committees or sub-committees.</td>
</tr>
<tr>
<td>40(1)</td>
<td>Administering the oath or affirmation to anyone giving evidence in Assembly proceedings.</td>
</tr>
<tr>
<td>46(5)</td>
<td>Designating a person to act as First Minister (on the recommendation of the Welsh Ministers) if the First Minister's office is vacant, the First Minister is unable to act or the First Minister has ceased to be an Assembly Member.</td>
</tr>
<tr>
<td>47(4)</td>
<td>Recommending to Her Majesty the Assembly's choice as First Minister.</td>
</tr>
<tr>
<td>97(3)</td>
<td>Stating whether the provisions of a proposed Assembly measure are, in the view of the Presiding Officer, within the Assembly's legislative competence.</td>
</tr>
<tr>
<td>110(3)</td>
<td>Stating whether the provisions of an Assembly Bill are, in the view of the Presiding Officer, within the Assembly's legislative competence.</td>
</tr>
<tr>
<td>Schedule 2, Paragraph 1(1)</td>
<td>Membership of the Assembly Commission.</td>
</tr>
<tr>
<td>Schedule 2, Paragraph 7(a)</td>
<td>Such functions as the Assembly Commission delegates to the Presiding Officer.</td>
</tr>
<tr>
<td>Schedule 2, Paragraph 11(2)</td>
<td>Presiding at meetings of the Assembly Commission.</td>
</tr>
<tr>
<td>Schedule 8, Paragraph 8(4)(a)</td>
<td>Certifying to the Assembly that the Auditor General is unable to certify or report on accounts (or statements) in person.</td>
</tr>
</tbody>
</table>

113. The Presiding Officer holds office until a new Presiding Officer is elected under subsection (1). The effect is that the Presiding Officer does not cease to hold office merely because of the dissolution of the Assembly before a Welsh general election. The Deputy Presiding Officer, on the other hand, holds office only until dissolution of the Assembly. Either may, however, resign, and each would also cease to hold office upon ceasing to be an Assembly member otherwise than by virtue of a dissolution (e.g. by resignation as an Assembly member) or by being removed from office by resolution of the Assembly.

114. The Presiding Officer's functions may be exercised by the Deputy Presiding Officer if the Presiding Officer's office is vacant, or if the Presiding Officer is for any reason unable to act and the Presiding Officer may, subject to standing orders, authorise the Deputy Presiding Officer to exercise functions of the Presiding Officer. However, the requirement in paragraph 11 of Schedule 2 that the Presiding Officer presides over meetings of the Assembly Commission may not be
delegated. If there is no Presiding Officer in post, or if the Presiding Officer is unable to act, then it is for the Assembly Commission to appoint another of its members to preside over its meetings.

115. Under subsection (12) the Assembly may include in its standing orders provision for another person to exercise the Presiding Officer’s functions in the event that both the Presiding Officer and Deputy Presiding Officer have either vacated their offices or are unable to act, but again this provision does not extend to the function of presiding over Assembly Commission meetings, which is governed by paragraph 11 of Schedule 2 (as set out above). Standing orders are to determine how such a person is to be chosen.

116. Standing orders may regulate the participation in Assembly proceedings of the Presiding Officer and the Deputy Presiding Officer (and anyone exercising the functions of the Presiding Officer by virtue of provision made under subsection (12)).

117. No defect in the appointment of a person as Presiding Officer or Deputy Presiding Officer (or under provision made under subsection (12)), is to affect the validity of any act of that person in that capacity.

Section 26: Clerk of the Assembly

118. This section requires the Assembly Commission to appoint a person to be Clerk of the Assembly. The Commission may authorise any other member of the Assembly staff can act in place of the Clerk if the Clerk’s office is vacant or if the Clerk is for any reason unable to act. The Clerk can also authorise any other member of the staff of the Assembly to exercise functions on behalf of the Clerk.

119. The Clerk’s functions under this Act include:

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>31(8)</td>
<td>Responsibility for publishing standing orders.</td>
</tr>
<tr>
<td>38(1)</td>
<td>Giving notice to persons who are by virtue of Section 37 required to attend the Assembly, its committees or sub-committees or to produce documents.</td>
</tr>
<tr>
<td>99(3)</td>
<td>Receiving notification from the Counsel General or from the Attorney General that a proposed Measure is not to be referred to the Supreme Court.</td>
</tr>
<tr>
<td>100(2)(a)</td>
<td>Notifying the Counsel General and the Attorney General that the Assembly has resolved to reconsider a proposed Measure which has been referred to the Supreme Court and in relation to which the Supreme Court has made a reference to the European Court of Justice.</td>
</tr>
<tr>
<td>101(5)</td>
<td>Receiving notification from the Secretary of State that no order is to be made prohibiting the Clerk from submitting a proposed Measure for approval by Her Majesty in Council.</td>
</tr>
<tr>
<td>102(1)</td>
<td>Submission of proposed Assembly Measures which have been passed by the Assembly for approval by Her Majesty in Council.</td>
</tr>
<tr>
<td>102(5)</td>
<td>Recording the date of the approval by Her Majesty in Council of an Assembly Measure on the text of the Measure.</td>
</tr>
<tr>
<td>102(6)</td>
<td>Publishing the Order in Council by which an Assembly Measure is approved.</td>
</tr>
<tr>
<td>112(3)</td>
<td>Receiving notification from the Counsel General or from the Attorney General that an Assembly Bill is not to be referred to the Supreme Court.</td>
</tr>
<tr>
<td>113(2)(a)</td>
<td>Notifying the Counsel General and the Attorney General that the Assembly has resolved to reconsider an Assembly Bill which has been referred to the Supreme Court and in relation to which the Supreme Court has made a reference to the European Court of Justice.</td>
</tr>
<tr>
<td>114(5)</td>
<td>Receiving notification from the Secretary of State that no order is to be made prohibiting the Clerk from submitting an Assembly Bill for Royal Assent.</td>
</tr>
<tr>
<td>115(1)</td>
<td>Submitting Assembly Bills for Royal Assent, receiving notification of Royal Assent</td>
</tr>
</tbody>
</table>
Section 27: Assembly Commission

120. This section provides for the establishment, membership and functions of the National Assembly for Wales Commission (“the Assembly Commission”) which provides the Assembly (or arranges for the Assembly to be provided) with the staff, property and services required for the Assembly's purposes, and which, by virtue of section 41(1) represents the Assembly in legal proceedings.

121. The Assembly Commission follows the pattern of arrangements in place at Westminster and in Scotland. The Assembly itself is not a body corporate and the establishment of the Assembly Commission, which is, enables administrative and legal arrangements to be made for employing staff, holding property, purchasing services, and generally entering into contracts for the benefit of the Assembly. It will be required to comply with any directions given by the Assembly.

122. The Commission will consist of the Presiding Officer and four other members, who must all be Assembly members. Standing orders must make provision about the appointment of the four other members and these provisions must, so far as it is reasonably practicable to do so, secure that none of those members belong to the same political group. Detailed arrangements for the Assembly Commission are set out in Schedule 2.

123. The Assembly will have power to pass Assembly Measures under Part 3 of the Act conferring further functions on the Assembly Commission in order to facilitate the exercise of the Assembly's own functions.

124. Part 5 of the Act deals with how the Assembly Commission is to be financed.

Committees, etc.

Section 28: Committees and sub-committees

125. This section allows the Assembly by its standing orders, to make provision for the establishment of committees, and for such committees to establish sub-committees. Only Assembly members may be members of committees or sub-committees.

126. Standing orders must make provision about the membership, chairing and procedure of committees and sub-committees and may make provision for excluding an Assembly member from the proceedings of a committee or sub-committee if the Assembly member is not a member of the committee or sub-committee.

127. Subsection (5) provides that the validity of any proceedings of a committee or sub-committee is not affected by vacancies in membership, defects in appointment, or non-compliance with standing orders relating to procedure.

Section 29: Composition of committees

128. Section 28(3) provides that standing orders must, among other things, contain provision about the membership of committees. Such provision must meet the requirements of section 29.
129. Section 29(2) requires the provision in standing orders to secure that appointments to the places on each committee are, if possible, to be determined by a resolution of the Assembly which secures that the membership of that committee reflects, so far as is reasonably practical, the overall representation of political groups in the Assembly. The, standing orders must also secure that, if such a resolution is passed on a vote, it will only have effect if two — thirds or more of the Assembly members voting support it.

130. Section 29(3) requires the provision in standing orders to secure that, in the event that the membership of a committee is not determined by a resolution of the Assembly which meets the criteria in section 29(2) (a) and (b), then appointments to each committee are made in accordance with the provisions of sub-sections (3) to (7), which are designed to ensure that places on each committee are allocated to political groups to reflect their overall representation in the Assembly.

131. Under those provisions, the allocation of places on committees between different political groups must be made according to the d'Hondt formula, (another example of which is that used in section 9 in order to determine the allocation of electoral region seats in the Assembly for each region). The d'Hondt formula is also used in section 29 of the Northern Ireland Act 1998 to allocate committee chairs and deputy chairs. The formula is set out below.

132. No requirements (other than to make provision in standing orders) are imposed in relation to the composition of sub-committees, the chairing or the procedure of committees or sub-committees. Standing orders may make whatever provision is appropriate in relation to these matters.

133. The political group (if any) to which each Assembly member belongs is a matter to be determined by standing orders (section 24(5)) and questions arising as to the application of standing orders made in pursuance of this section are to be decided by the Presiding Officer (subsection (10)).

134. The first place on each committee is allocated to the political group with the largest number of Assembly members.

135. The second place is then allocated by comparing the figure X produced in relation to each political group by the formula:

\[ X = \frac{A}{(B + 1)} \]

where:

- \( A \) = the number of seats in the Assembly currently held by members of the political group; and
- \( B \) = the number of places on the committee that are already allocated to members of that political group.

136. After the first place is allocated to the largest political group X will be equal to \( A /2 \) for that group and will be equal to A for all the others. The second place on the committee is to be allocated to the political group which has the highest value for X at this stage.

137. B is then adjusted for the party to which the second place has been allocated and X is re-calculated for each political group and the revised value of X for each group is compared. Once more the political group with the highest value of X is allocated the next place on the committee.

138. The process is repeated until all the places on the committee have been filled. (The size of committees is not regulated by this section and is a matter to be decided in accordance with standing orders.)
139. Subsection (8) requires standing orders to specify how ties (i.e. cases where the calculation produces the same figure for X for two or more political groups) are to be resolved.

140. Provision must, under subsection (9), be made in the standing orders for securing, so far as is reasonably practicable having regard to the total number of committee places available, that a place on at least one committee is available for every Assembly member who does not belong to a political group, and that the total number of committee places allocated to each political group is at least equal to the number of Assembly members belonging to that group.

Section 30: Audit Committee

141. While generally it will be for the Assembly to decide what committees it wishes to establish, this section requires the Assembly to have an Audit Committee (or Pwyllgor Archwilio) in order to discharge certain statutory functions under this Act (such as taking evidence from any of the persons mentioned in section 143(3) if requested to do so by the House of Commons Committee of Public Accounts) and other legislation (such as the Public Audit (Wales) Act 2004). The section allows the Assembly to rename the Audit Committee and provides that, in the event that the Assembly does so, references to the Audit Committee in enactments, instruments or documents are to be read as if they referred to the renamed committee.

142. This section requires standing orders to specify how many members the Audit Committee is to have. Provision made in standing orders in accordance with section 29, to aim to secure that the political composition of committees reflects the political composition of the Assembly, will apply to the Audit Committee. Seats on the Audit Committee may not be allocated to the First Minister (or anyone acting as such), any Welsh Minister or Deputy Welsh Minister or to the Counsel General (or anyone acting as such), and it may not be chaired by an Assembly member belonging to the largest government party.

Proceedings etc.

Section 31: Standing orders

143. This section requires Assembly proceedings (which include the proceedings of committees and sub-committees) to be regulated by standing orders.

144. Amongst matters for which standing orders must, under provisions of the Act other than this section itself, expressly make provision are the following:

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>10(8)</td>
<td>Determining the date on which a constituency vacancy is treated as occurring.</td>
</tr>
<tr>
<td>23(2)</td>
<td>Specifying the person before whom Assembly members are to take the oath or make the affirmation of allegiance.</td>
</tr>
<tr>
<td>27(3)</td>
<td>Appointment of the four members (other than the Presiding Officer, who is appointed automatically) of the Assembly Commission.</td>
</tr>
<tr>
<td>28(3)</td>
<td>Provision about the membership, chairing and procedure of the Assembly's committees and their sub-committees — note that such provision must, in relation to committees, meet the requirements of section 29.</td>
</tr>
<tr>
<td>36</td>
<td>Provisions in relation to registration and declaration of members' interests, prohibition of paid advocacy and for defining (or providing for the definition by code or protocol) the respective roles and modes of description of constituency and regional Assembly members.</td>
</tr>
<tr>
<td>98</td>
<td>Procedures for scrutinising proposed Assembly Measures.</td>
</tr>
</tbody>
</table>
### Procedures for scrutinising Assembly Bills.

145. The Act also empowers (but does not oblige) standing orders to be made covering, amongst others, the following matters:

<table>
<thead>
<tr>
<th>Section</th>
<th>Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>145.</td>
<td>The Act also empowers (but does not oblige) standing orders to be made covering, amongst others, the following matters:</td>
</tr>
<tr>
<td>111</td>
<td>Proceedings for scrutinising Assembly Bills.</td>
</tr>
<tr>
<td>114</td>
<td>The Act also empowers (but does not oblige) standing orders to be made covering, amongst others, the following matters:</td>
</tr>
<tr>
<td>20(6)(a)</td>
<td>Provisions for remuneration of Assembly members (including provisions conferring functions on the Assembly Commission).</td>
</tr>
<tr>
<td>21(3)(a)</td>
<td>Provisions for limiting the salaries of Assembly members (including provisions conferring functions on the Assembly Commission).</td>
</tr>
<tr>
<td>25</td>
<td>Provisions for the exercise of the Presiding Officer's functions by the Deputy Presiding Officer, or by any other person where both the Presiding Officer and Deputy Presiding Officer are unable to act or their offices are vacant; and participation by the Presiding Officer and Deputy Presiding Officer in Assembly proceedings.</td>
</tr>
<tr>
<td>28(1)</td>
<td>Provision for the appointment of committees to the Assembly, and for those committees to have the power to appoint sub-committees.</td>
</tr>
<tr>
<td>28(4)</td>
<td>Exclusion from the proceedings of Assembly committees and their sub-committees of Assembly members who are not members of those committees and sub-committees.</td>
</tr>
<tr>
<td>31</td>
<td>Exclusion of members from Assembly proceedings, and withdrawal of members' rights and privileges.</td>
</tr>
<tr>
<td>34</td>
<td>Participation of the Counsel General (if not an Assembly member) in Assembly proceedings.</td>
</tr>
<tr>
<td>37(7)(b)</td>
<td>Power of committees or sub-committees to call for witnesses and documents.</td>
</tr>
<tr>
<td>40(1)</td>
<td>Administration of the oath or affirmation to witnesses in Assembly proceedings.</td>
</tr>
<tr>
<td>40(4)</td>
<td>Payment of allowances and expenses to witnesses in Assembly proceedings and those producing documents for Assembly proceedings.</td>
</tr>
<tr>
<td>53(7)(a)</td>
<td>Remuneration of Welsh Ministers, Deputy Welsh Ministers and the Counsel General (including provisions conferring functions on the Assembly Commission).</td>
</tr>
</tbody>
</table>

146. Because of the change in the structure and functions of the Assembly the standing orders relating to the Assembly constituted under GoWA will not be suitable for use in relation to the Assembly constituted under this Act. Consequently, new standing orders will need to be provided in readiness for use by the Assembly at its first meeting after the May 2007 election.

147. Paragraph 20 of Schedule 11 sets out how the new standing orders are to be made. In summary, the new standing orders must be made by the Secretary of State by no later than 31st March 2007. In making the standing orders, the Secretary of State must give effect to proposals submitted to the Secretary of State by the Assembly (as currently established) no later than 28th February 2007, provided that those proposals have been approved by a two-thirds voting majority in the Assembly. As a minimum, the standing orders have to include the mandatory provisions required by the Act. Both the standing orders made by the Secretary of State, and the Assembly's proposals as to what provisions they should include, must be made in both English and Welsh.

148. The standing orders are to have effect as the standing orders for the reconstituted Assembly at and from its first meeting after the ordinary election in May 2007, unless and until they are remade or revised by the Assembly in accordance with section 31(7), which requires any changes to the standing orders to be approved by a two-thirds voting majority in the Assembly.

149. Standing orders must make provision for preserving order in Assembly proceedings, including provision for preventing conduct that could constitute a criminal offence or contempt of court and...
provision for a *sub judice* rule to prevent matters which are the subject of ongoing court proceedings to be raised in questions or debate.

150. Standing orders may include provision for excluding Assembly members from proceedings and for withdrawing from an Assembly member rights and privileges of membership.

151. Standing orders must make provision for Assembly proceedings normally to be held in public, but allows standing orders to specify circumstances where committee proceedings may be in private. They may set out conditions with which members of the public who are attending Assembly proceedings must comply, and can provide for the exclusion of a member of the public who does not comply with those conditions.

152. Standing orders must provide for those Assembly proceedings that are held in public to be reported, and for reports to be published as soon as practicable.

153. The Assembly may, by resolution supported by at least two-thirds of the members voting, remake or revise the standing orders. The Clerk of the Assembly must publish standing orders from time to time.

Section 32: **Participation by UK Ministers etc.**

154. This section entitles the Secretary of State for Wales to participate, but not to vote, in proceedings of the Assembly, and to have access to documents relevant to those proceedings. Standing orders may make provision for the participation of other Ministers of the Crown and of civil servants in proceedings, and for them to have access to documents and information relevant to their participation. Again there is to be no entitlement to vote.

Section 33: **Consultation about UK Government's legislative programme**

155. This section requires the Secretary of State for Wales, as soon as is reasonably practicable after the beginning of each Parliamentary session, to consult the Assembly about the UK Government's legislative programme, except to the extent that it appears to the Secretary of State that consultation on a particular Bill is inappropriate. As part of such consultation, the Secretary of State must participate in a plenary session of the Assembly at least once in the session. The Secretary of State can participate by actually attending the plenary session, or by video link. Where, after the beginning of the session, it is decided that a Bill should be introduced into Parliament and that Bill has not been included in the Secretary of State's initial consultation with the Assembly, then the Secretary of State must consult the Assembly about it (unless it appears to the Secretary of State to be inappropriate to do so).

Section 34: **Participation by Counsel General**

156. Section 49 makes provision about the appointment of the Counsel General to the Welsh Assembly Government. It does not require the Counsel General to be an Assembly member. This section makes provision about the participation of the Counsel General, if not an Assembly member, in the proceedings of the Assembly, including committees and subcommittees.

157. The section also allows the Counsel General to decline to answer questions or produce documents about the operation of the criminal prosecution system in any particular case, if the Counsel General considers that to do so might prejudice criminal proceedings in the case or otherwise be contrary to the public interest.

Section 35: **Equality of treatment**
158. This section requires the Assembly, in the conduct of its proceedings, to give effect, so far as is both appropriate in the circumstances and is reasonably practicable, to the principle that the English and Welsh languages should be treated on a basis of equality.

159. It also requires the Assembly to make appropriate arrangements with a view to securing that Assembly proceedings are conducted with due regard to the principle that there should be equality of opportunity for all people.

Section 36: Integrity

160. This section requires standing orders to make various kinds of provision to safeguard standards of integrity in relation to Assembly proceedings, namely:
   a) for Assembly members to be required to register certain interests defined by standing orders in a compulsory public register of Assembly members' interests;
   b) for an Assembly member who has a financial or other interest, as defined in standing orders, in a matter to which Assembly proceedings relate, to declare that interest before taking part in those proceedings;
   c) for preventing or restricting the participation in proceedings of an Assembly member who has an interest (as defined in standing orders) in the matter to which those proceedings relate;
   d) prohibiting Assembly members, from advocating or initiating any cause or matter, or urging another member to do so, in return for a payment or benefit in kind.

161. A failure to comply with these provisions of standing orders constitutes a criminal offence which can be punished, on summary conviction, with a fine not exceeding level 5 on the standard scale (at present up to £5,000). Consent of the Director of Public Prosecutions is required before a prosecution can be brought.

162. The provisions of standing orders under this section are to apply to the Counsel General even if not an Assembly member.

163. The Assembly will be able to pass Assembly Measures under Part 3 of the Act on matters relating to registration of members' interests.

164. Subsection (6) requires standing orders to make provision, either directly or by a code or protocol, about the different roles and responsibilities of Assembly constituency and regional members.

165. Assembly regional members are to be prohibited from describing themselves in a way which suggests that they are Assembly constituency members, and vice versa.

Witnesses and documents

Section 37: Power to call

166. This section, together with the associated sections 38, 39 and 40, provides the Assembly with powers to require witnesses to appear to give evidence before, or to produce documents to the Assembly, its committees or their sub-committees.

167. The Assembly may, under subsection (1), require any person to attend Assembly proceedings to give evidence, or to produce documents which are in that person's possession or control, concerning any matter relevant to the exercise by the Welsh Ministers of any of their functions and provided the person in question is involved in the exercise of functions or the carrying on of activities
in relation to Wales. It is anticipated that persons will almost always attend or produce documents to the Assembly voluntarily, and that this power will only need to be used very rarely.

168. “Assembly proceedings” includes any proceedings of the Assembly, its committees, or sub-committees.

169. “Document” is defined by section 40(6) as anything in which information is recorded in any form. It would therefore include, e.g., a video recording, a computer hard drive, a floppy disk, or CD-ROM. Section 40(6) also provides that a person is taken to comply with a requirement to produce a document on production of a copy of, or an extract of the relevant part of, the document. The information recorded in the document must be produced in a visible and legible form.

170. “Person” is intended to have the same meaning as in the Interpretation Act 1978, i.e. it applies to public bodies and officers, as well as to private bodies such as companies, trusts etc.

171. The Assembly cannot impose a requirement under subsection (1) on a current or former Minister of the Crown, or on anyone serving, or who has served, in a Minister of the Crown’s department, in relation to the exercise of the functions of a Minister of the Crown.

172. Under subsection (4) current full-time judges are immune from being required to give evidence or produce a document under subsection (1). Other current and former members of courts (e.g. lay magistrates and Recorders), and current or former members of tribunals, are immune only in relation to the exercise of their functions as such.

173. Subsections (5) and (6) make special provision in relation to persons who are current or former members of staff of the Welsh Assembly Government, or are current or former secondees. Where such a person is required to give evidence or produce documents under subsection (1), then any of the Welsh Ministers, the First Minister or the Counsel General can issue a direction that the person summoned need not comply, and that a specified replacement is to comply instead. This means that it is for the Welsh Ministers to decide which of their staff should appear before the Assembly or its committees. Welsh Ministers will ultimately be answerable to the Assembly for their decisions to direct that a different member of staff from the one identified by the Assembly is to appear.

174. The power under subsection (1) may be exercised by the Audit Committee or, with the authority of the Assembly, by any other committee or sub-committee.

175. No-one is obliged by this section to answer any question or produce any document which they would be entitled to refuse to answer or produce in court proceedings in England and Wales, for example under the privilege against self-incrimination or on grounds of legal privilege.

176. Subsection (9) entitles prosecutors to decline to answer questions or produce documents about particular criminal prosecutions if authorised by the appropriate officer on the grounds that to do so might prejudice criminal proceedings in that case, or would be contrary to the public interest. The appropriate officer for the purpose of subsection (9) is the Counsel General in cases where the criminal proceedings were instituted by or on behalf of the Welsh Ministers, the First Minister or the Counsel General and in all other cases is the Attorney General.

Section 38: Notice

177. This section sets out the procedure by which the Assembly exercises its power under section 37(1) to require persons to attend and give evidence at proceedings, or produce documents.

178. Subsections (1) and (2) require the Clerk of the Assembly to give written notice to those who are made subject to a requirement under section 37(1), specifying the following matters:
a) in all cases, whether they are being required to attend to give evidence or produce documents to the Assembly itself, or to a specified committee or sub-committee;
b) in cases of witnesses required to give evidence, the time and place at which they must attend, and the subjects about which they are required to give evidence;
c) in cases of people required to produce documents, the documents which they need to produce, the deadline for producing them, the person to whom they are to produce them and the subject concerning which the documents are required.

179. Notice is to be sent by registered or recorded delivery post. In the case of an individual, it is to be sent to that person's usual or last known address or to an address for service, where one has been given. In any other case (e.g. a limited company, a health board or another public body) the notice is to be sent to the person's registered or principal office.

180. Subsection (5) provides that where the Welsh Ministers, the First Minister, or the Counsel General issue a direction under section 37(6) that a particular person is not to attend or produce documents in response to a requirement under section 37(1), then the person issuing the direction must give notice of having done so. Where the requirement to give evidence or produce documents was imposed for the purposes of the Assembly, notice of a direction under section 37(6) must be given to the Presiding Officer. In other cases, notice of the direction must be given to the chair of the committee or sub-committee for the purposes of which the requirement was imposed.

Section 39: Offences

181. Subsection (1) of this section makes it a criminal offence for a person to whom a notice under section 38(1) has been given to:
   a) refuse, or fail, without reasonable excuse, to attend proceedings as required by the notice;
   b) refuse, or fail, without reasonable excuse, to answer any question concerning the subjects specified in the notice;
   c) refuse, or fail, without reasonable excuse, to produce a document which the notice required to be produced; or
   d) intentionally alter, suppress, conceal or destroy any such document.

182. Subsection (1) is subject to the various grounds on which a person may decline to answer a question or produce a document (sections 34(3) and 37(5), (6), (8) and (9)).

183. If a person charged with an offence under subsection (1)(a), (b) or (c) can adduce evidence of a reasonable excuse for the refusal or failure, then it is for the prosecution to prove that the person did not have such an excuse.

184. The penalty in the case of a person found guilty of an offence under subsection (1) is a fine not exceeding level 5 on the standard scale (currently £5,000) or of imprisonment for up to 51 weeks, or both. (Under transitional provisions in paragraph 21 of Schedule 11 the maximum term of imprisonment will be three months until section 281(5) of the Criminal Justice Act 2003 is brought into force.) Offences are triable summarily.

185. Certain senior officers of a body corporate (e.g. a company) are personally liable (in addition to the body corporate itself) to prosecution where they have consented to or connived at the commission of an offence or the offence is attributable to their neglect.

Section 40: General

186. Under this section the Presiding Officer, or any other person authorised by standing orders, may require anyone giving evidence in Assembly proceedings to take an oath (or make an
affirmation), and to administer such an oath or affirmation. This section applies both to a person who has been required to attend and to a person who attends by invitation.

187. Subsection (2) creates an offence where a person who has been required by notice under section 38(1) to attend to give evidence in Assembly proceedings refuses to take the oath or make an affirmation when required to do so. Anyone found guilty of such an offence will be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale (currently £5,000) or up to 51 weeks' imprisonment (again, subject to a transitional provision limiting the term to three months until section 281(5) of the Criminal Justice Act 2003 comes into force) or both.

188. Standing orders may provide for the payment of expenses and allowances to people who attend to give evidence to, or produce documents to, the Assembly, its committees and their sub-committees, whether or not they were required to do so by a notice under section 38(1). Standing orders can confer functions in relation to these matters on the Assembly Commission.

Legal issues

Section 41: Proceedings by or against Assembly etc.

189. This section makes provision in relation to legal proceedings by and against the Assembly.

190. Where proceedings are brought by or against the Assembly these are to be instituted by or against the Assembly Commission. Proceedings by or against the Presiding Officer, the Deputy Presiding Officer or any member of the staff of the Assembly are to be brought by or against the Assembly Commission on their behalf.

191. Where proceedings are brought against the Assembly the court may not grant a mandatory, prohibiting or quashing order or an injunction or make an order for specific performance. It may instead make a declaration.

192. A similar restriction applies to such remedies in legal proceedings against any Assembly member, the Presiding Officer or Deputy Presiding Officers, members of the staff of the Assembly or the Assembly Commission, if the effect of granting such a remedy would be to give relief against the Assembly which could not be given against the Assembly itself. This is intended to prevent the protection for the Assembly being circumvented by taking action instead against individual members or office-holders. The approach is similar to that taken in section 21(2) of the Crown Proceedings Act 1947.

193. The protection would not extend to proceedings taken against Assembly members arising for example out of their constituency work, since remedies granted in such proceedings would not be equivalent to remedies granted against the Assembly itself.

194. The effect of the equivalent provision in Scotland (section 40(4) of the Scotland Act 1998) was considered by the Scottish Court of Session in Whaley v Lord Watson of Invergowrie 2000 SLT 475 where it was held that it did not prevent an interdict (equivalent to an injunction) being granted against a MSP from introducing a Bill on the grounds that he would thereby be breaching some provision of the Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999 (SI 1999/1350). As the Lord President stated at page 482:

“… the subsection does not bar a remedy against a member simply because it may have some consequential effects on the working of the Parliament: the bar applies only where the interdict against the member would have the effect of granting relief, i.e. a legal remedy, against the Parliament.”
195. Subsection (5) provides that the prohibition on certain remedies is not limited to final orders. So, for example, it would prohibit the granting of an interim injunction against the Assembly (or the Assembly Commission, in so far as it is acting on the Assembly's behalf).

Section 42: Defamation

196. This section replicates the provisions in section 41 of the Scotland Act 1998, rather than the more detailed provisions in section 77 of the Government of Wales Act 1998, which reflected the fact that the Assembly as a unitary corporate body had both legislative and executive functions. The protection afforded to the newly constituted Assembly by this section is intended to be the same as that afforded to the legislative and scrutinising arm of the current Assembly by the 1998 Act.

197. This section confers absolute privilege for the purposes of the law of defamation on any statement made in Assembly proceedings and on the publication of any statement under the authority of the Assembly.

198. The provision is intended to ensure that Assembly members are free to debate and the Assembly is free to report on matters of public interest without fear of an action for defamation being raised.

199. The privilege of freedom of speech is part of the law and custom of the UK Parliament. It is also reflected in Article 9 of the Bill of Rights 1688–9 which confers on “proceedings in Parliament” protection from being “impeached or questioned” in any court. No similar general privilege is conferred upon proceedings in the Assembly. However, this section and section 43 protect statements made in such proceedings and their publication against proceedings for defamation and contempt of court.

200. The regulation-making power in section 42(2) allows the Welsh Ministers to specify how it may be proved conclusively in legal proceedings that a statement was made in Assembly proceedings or published under the authority of the Assembly, and therefore attracts absolute privilege — for example, by the Clerk of the Assembly providing certification of the fact. The making of the regulations is subject to Assembly affirmative procedure.

201. The Act contains other provisions which make provision in relation to defamation.

202. The amendments made to the Defamation Act 1952 and the Defamation Act (Northern Ireland) 1955 by paragraphs 5 and 6 of Schedule 10 limit privilege in relation to defamation at elections of Assembly members.

203. Paragraph 40 of Schedule 10 amends paragraph 11(1)(c) of Schedule 1 to the Defamation Act 1996 to provide that the reports and statements of any commission, tribunal, committee or person appointed for the purposes of any inquiry by a Welsh Ministers or by the Counsel General attract qualified privilege subject to explanation or contradiction.

204. Paragraph 19 of Schedule 10 amends section 26(1) of the Public Order Act 1986 to protect reports of Assembly proceedings against offence under Part 3 of the 1986 Act relating to racial hatred.

Section 43: Contempt of court

205. Assembly proceedings, unlike those of the UK Parliament, are subject to the law of contempt of court. No express provision is needed to make them so, because the law of contempt of court and particularly the strict liability rule in the Contempt of Court Act 1981 will apply automatically unless expressly disapplied.
206. This section disapplies the rule of strict liability for contempt of court in relation to publications made in or for the purposes of Assembly proceedings, or in certain reports of Assembly proceedings.

207. The strict liability rule is defined by section 1 of the Contempt of Court Act 1981 as that whereby conduct may be treated as a contempt of court regardless of intent to interfere with the course of justice in particular legal proceedings. In terms of section 2 of that Act the rule only applies to a publication which creates a substantial risk that the course of justice in active legal proceedings will be seriously impeded or prejudiced. Section 5 of the Act provides that the rule does not apply to publications made during a discussion in good faith of public affairs if the risk of impediment or prejudice to particular legal proceedings is merely incidental to the discussion.

208. This section is intended to ensure that the Assembly is not prevented from legislating on any matter merely because anything said or done in proceedings to consider an Assembly Measure, an Assembly Bill or subordinate legislation might be treated as a contempt of court under the “strict liability rule”. However, unlike section 42 of the Scotland Act 1998, the protection afforded by this section applies not just to proceedings relating to legislation, but to all proceedings of the Assembly, as currently does section 78 of the Government of Wales Act 1998. Section 31(2) requires standing orders to include provision “for preventing conduct which would constitute … a contempt of court” and a sub judice rule.

Section 44: Corrupt practice

209. The effect of the section is to make members and staff of both the Assembly and the Assembly Commission subject to liability for criminal offences under the Prevention of Corruption Acts 1889 to 1916. It does so by making both the Assembly and the Assembly Commission (by whom staff of the Assembly are employed) public bodies for the purposes of those Acts.


211. The Welsh Ministers, Deputy Welsh Ministers, the Counsel General and their staff will also be covered by the Prevention of Corruption Acts 1889 to 1916 to the extent that Ministers of the Crown and Crown servants are covered.

PART 2: WELSH ASSEMBLY GOVERNMENT

Overview of Part 2

212. Part 2 of the Act makes provision establishing the Welsh Assembly Government as a distinct entity in its own right, authorises Ministers to exercise statutory powers and places certain statutory duties on them. Ministers will discharge their responsibilities on behalf of the Crown.

 Ministers etc

213. Sections 45–51 set out in detail the membership and appointment procedures of the Welsh Assembly Government. The members are the First Minister, who is appointed by Her Majesty on the nomination of the Assembly; the (other) Welsh Ministers and Deputy Ministers, who are appointed by the First Minister with Her Majesty's approval; and the Counsel General, who is appointed by Her Majesty on the recommendation of the First Minister, with the agreement of the Assembly. Ministers and Deputy Ministers (of whom together there may not be more than twelve) may be removed from office by the First Minister (or may resign) at any time. The First Minister
may with the agreement of the Assembly recommend to Her Majesty at any time the removal of
the Counsel General; the Counsel General may tender resignation to Her Majesty at any time.
Sections 53–55 provide procedures for determining all these office-holders' remuneration, and for
their taking an oath (or making an affirmation) on assuming office.

214. The Act makes detailed provision to cover circumstances:
   a) following a vote of no confidence in the Welsh Ministers (the First Minister remains in
office until a successor is appointed, which must happen within the specified period of 28
days, but the other Welsh Ministers and Deputy Ministers are required to resign forthwith;
the Counsel General remains in office until a new First Minister is nominated); or
b) where the First Minister's office becomes vacant, the First Minister becomes unable to
act or has ceased to be an Assembly Member (the Presiding Officer, acting on the
recommendation of the other Welsh Ministers, designates another Assembly Member to
exercise the functions of the office).

215. The Assembly Government will be supported by staff who (unlike the staff supporting the
National Assembly itself) are civil servants (section 52).

Exercise of Functions

216. Under the Act, Ministers will exercise functions in their own right, rather than as delegates
of the Assembly, and statutory functions will in future be expressed to be exercisable by the “Welsh
Ministers”, rather than conferred on the Assembly and then delegated. Any function conferred on
the “Welsh Ministers” will be exercisable by the First Minister or any of the other Welsh Ministers
individually (but not generally by the Counsel General, who will not have “portfolio”
responsible); they will be assisted in the discharge of their responsibilities by the Deputy
Ministers. Paragraphs 30–42 of Schedule 11 make detailed provision transferring the Assembly's
existing (executive) set of functions, together with the associated property, rights and liabilities, to
the Welsh Ministers, although Orders in Council may make alternative provision, for example
transferring specific functions to the First Minister, the Counsel General, or the Assembly
Commission, or leaving the function (particularly if it is of a predominantly legislative character)
with the Assembly. Once the new arrangements are in place following the May 2007 elections,
Welsh Ministers may acquire further powers:
   a) by specific provision in future Acts of Parliament;
   b) by Transfer of Functions Orders (section 58 and Schedule 3 to the Act effectively re-enact
s.22 and Schedule 3 of the 1998 Act, under which Transfer of Functions Orders have been
made hitherto, and section 88 and Schedule 4 transfer the associated property, rights and
liabilities attached to any such transferred function);
   c) by designation under s.2 of the European Communities Act 1972, in order to implement
requirements of European law; or
   d) by specific provision in future Assembly Measures.

217. Sections 60–65, 69, 70–71 and 83 and 84 provide additional or supplementary powers enabling
the Welsh Ministers to discharge their functions effectively. Most of these provisions derive from
similar provisions in the 1998 Act, with the exception of section 60. Section 60 empowers the
Welsh Ministers to do anything which they consider is likely to achieve the promotion or
improvement of the economic, social or environmental well-being of Wales. This does not reflect
any specific provision of the 1998 Act although local authorities have similar powers under section

**Duties placed on Ministers**

218. Under the 1998 Act, the Assembly is required to establish a Partnership Council with Welsh local government, and establish close working or consultative relations with the voluntary sector and the business community respectively. Each of these duties will transfer to the Welsh Ministers under sections 72–75 of the Act, requiring the Assembly Government to establish stakeholder management relationships with these respective interests. In the same way, the 1998 Act places duties on the Assembly both to make arrangements with a view to securing that its functions are exercised with due regard to equality of opportunity, and to make a scheme setting out how it will promote sustainable development in the exercise of its functions. Sections 77 and 79 place analogous obligations on the Welsh Ministers, while section 78 places obligations on the Welsh Ministers in relation to the Welsh Language.

219. Sections 80, 81 and 82 set out limitations on the Welsh Ministers' powers deriving from international relations in the fields of Community Law, Human rights, and International Obligations. These carry forward the provisions of ss.106–108 of the 1998 Act, which place equivalent limitations on the Assembly.

**DETAILED COMMENTARY ON SECTIONS IN PART 2**

**Government**

Section 45: **Welsh Assembly Government**

220. This section provides for the establishment of the Welsh Assembly Government, which comprises the First Minister (Prif Weinidog), the Welsh Ministers (Gweinidogion Cymru), the Counsel General to the Welsh Assembly Government (Cwnsler Cyffredinol i Lywodraeth Cynulliad Cymru) and the Deputy Welsh Ministers (Dirprwy Weinidogion Cymru).

**Ministers, staff, etc**

Section 46: **The First Minister**

221. This section provides for the First Minister to be appointed by Her Majesty. Section 47 deals with how the First Minister is chosen. The First Minister may tender resignation to Her Majesty at any time and ceases to hold office when the resignation is accepted. The First Minister would also cease to hold office on the appointment of another person as First Minister.

222. If the office of the First Minister is vacant (for example through resignation or death of the First Minister) or if the First Minister has ceased to be a Member of the Assembly or is for any reason unable to act, the functions of First Minister will be exercisable by a member of the Assembly designated for that purpose by the Presiding Officer. Except where the Assembly has been dissolved or where for any other reason all ministerial posts are vacant (e.g. because all the Welsh Ministers have resigned), the Presiding Officer must designate such a person on the recommendation of the Welsh Ministers. A person so designated as “acting” First Minister will be capable of continuing to exercise the functions of the First Minister even if the Assembly is subsequently dissolved.

Section 47: **Choice of the First Minister**

223. While section 46 provides for the First Minister to be appointed by Her Majesty, the person appointed will have been chosen in accordance with this section, which provides for the Assembly
to nominate one of its members for appointment as First Minister and for the Presiding Officer to recommend the appointment of that person to Her Majesty.

224. Nomination of an Assembly member for appointment as First Minister is triggered by one of the events mentioned in subsection (2). These are:
   a) the holding of a poll at a general election;
   b) the Assembly resolving that the Welsh Ministers no longer enjoy the confidence of the Assembly;
   c) the First Minister tendering resignation to Her Majesty;
   d) the First Minister dying or becoming permanently unable to act or to tender resignation;
   e) the First Minister ceasing to be a member of the Assembly, other than on a dissolution (e.g. by resigning from the Assembly).

225. Once one of these events occurs, the Assembly must nominate a First Minister before the end of the period of 28 days after the occurrence of the event in question. If another such event occurs (for example if the holding of a poll at a general election were to take place within 28 days of a First Minister having tendered resignation) the period is extended to the end of the period of 28 days after that second event. If the Assembly, within the 28 day period, resolves under section 5(2) that it should be dissolved, then the 28 day period ceases and a further 28 day period for nomination of a First Minister will begin when the poll for the consequent extraordinary general election is held.

226. If the Assembly fails to make a nomination within the period allowed, then the Secretary of State is required by section 5 to propose a day for the holding of an extraordinary general election.

227. Where the Assembly resolves that the Welsh Ministers no longer enjoy the confidence of the Assembly, sections 48 and 50 provide that all Welsh Ministers and Deputy Welsh Ministers resign with immediate effect. The First Minister remains in office with all the functions of that office and of the Welsh Ministers generally, until the Assembly nominates a First Minister (or re-nominates the same person as First Minister). The First Minister could therefore, during that period, appoint Ministers if this were necessary for the efficient and effective administration of government, for example in case of emergencies.

Section 48: Welsh Ministers

228. This section provides for the appointment of Ministers by the First Minister from among members of the Assembly. Appointments require the approval of Her Majesty. The Ministers appointed under this section, together with the First Minister, are known collectively as “the Welsh Ministers”.

229. A Minister may be removed from office by the First Minister and may resign at any time. A Minister must resign if the Assembly resolves that the Welsh Ministers no longer enjoy the confidence of the Assembly. Subsection (6) provides that a Minister ceases to hold office immediately upon resigning. A Minister also ceases to hold office upon ceasing to be a member of the Assembly other than by virtue of a dissolution (e.g. by resigning as an Assembly Member).

Section 49: The Counsel General

230. This section provides for there to be a Counsel General who is legal adviser to, and representative in the courts of, the Welsh Assembly Government. The Counsel General is appointed by Her Majesty on the recommendation of the First Minister but with the agreement of the Assembly. The person appointed need not be a member of the Assembly.
231. The Counsel General is a member of the Welsh Assembly Government but although the office is of “ministerial” status the holder is not one of “the Welsh Ministers”.

232. The Counsel General may resign at any time. Unlike Welsh Ministers and Deputy Welsh Ministers, the Counsel General can only be removed from office by Her Majesty and does not have to resign after a vote of no confidence in the Welsh Ministers. The Counsel General ceases to hold office on the nomination of a First Minister under section 47 (but could of course be re-appointed).

233. Section 34 deals with the participation of the Counsel General in the proceedings of the Assembly and includes provision enabling the Counsel General to decline to provide documents or to answer questions about particular criminal cases (the Counsel General may be conducting criminal proceedings on behalf of the Welsh Assembly Government) if the Counsel General considers that doing so might prejudice the proceedings in that case or would otherwise be contrary to the public interest. If the office of Counsel General is vacant, or if the Counsel General is for any reason unable to act, the functions of the office can, under subsection (6) be exercised by a person designated by the First Minister. There is no requirement for Her Majesty's approval or the agreement of the Assembly to this designation. The period during which Counsel General functions can be exercised by virtue of a designation under subsection (6) is limited to a maximum of 6 months and a designation comes to an end if a person is nominated for appointment as First Minister. This ensures that a First Minister who has been newly appointed is not in a position where there is already an acting Counsel General in office.

234. A person who is appointed as Counsel General (or designated to exercise the functions of the office under subsection (6)) cannot also hold, or be appointed to the office of First Minister, or a Welsh Minister or Deputy Welsh Minister.

Section 50: Deputy Welsh Ministers

235. This section provides for the appointment of Deputy Welsh Ministers by the First Minister, with the approval of Her Majesty, from among members of the Assembly. The function of Deputy Welsh Ministers is to assist the First Minister, Welsh Ministers or the Counsel General in the exercise of their functions. They may be removed from office by the First Minister, may resign at any time and must do so, with immediate effect, if the Assembly resolves that the Welsh Ministers no longer enjoy the confidence of the Assembly. A Deputy Welsh Minister also ceases to hold office on ceasing to be a member of the Assembly other than by reason of a dissolution.

Section 51: Limit on number of Ministers

236. A limit of 12 is placed on the total number, together, of Welsh Ministers and Deputy Welsh Ministers (but not including the First Minister or the Counsel General).

Section 52: Staff

237. This section makes provision as respects persons appointed by the Welsh Ministers to be members of the staff of the Welsh Assembly Government. Staff are members of the Home Civil Service and, accordingly, their appointment is subject to the provisions of the Civil Service Order in Council. Responsibility for the management of such staff will therefore ultimately remain with the Minister for the Civil Service (i.e. the Prime Minister) but provision is made enabling responsibility for their day to day management to be delegated in the same way as happens for government departments in the UK Government.

238. The Welsh Ministers are responsible for payment of salary and allowances to or in respect of the staff of the Welsh Assembly Government. Section 1(2) and (3) of the Superannuation Act 1972
have effect as if references to a Minister of the Crown (other than the Minister for the Civil Service) included the Welsh Ministers. This allows functions relating to civil service pensions to be delegated to the Welsh Ministers.

239. The Welsh Ministers are required to make payments to the Minister for the Civil Service of such amounts as the Minister for the Civil Service may determine in respect of the pensions etc. payable to persons who are or have been in service as staff of the Welsh Assembly Government and in respect of any expenses to be incurred in administering those pensions etc. The Welsh Ministers may also, if they so wish, make payments towards the provision of pensions, allowances and gratuities to or in respect of any person who is or has been a member of staff of the Welsh Assembly Government.

240. Subsection (9) gives statutory effect, in relation to the staff of the Welsh Assembly Government to the application of the “Carltona” principle (see Carltona Ltd. V. Commissioners of Works [1948] 2 All ER 560) namely that the functions vested in the Welsh Ministers (or First Minister or Counsel General) may, in the absence of any express statutory prohibition, be exercised in their name and under their authority by officials.

Section 53: Remuneration

241. This section is one of two on remuneration of members of the Welsh Assembly Government. It requires the Assembly to make provision for the payment of salaries to members of the Welsh Assembly Government. That is: the First Minister, Welsh Ministers, the Counsel General and Deputy Welsh Ministers. The amount of any salary is a matter for the Assembly to determine. The Assembly can also make provision for the payment of allowances, pensions and gratuities. In respect of pensions, the Assembly can provide for contributions or payments towards such pensions or for the establishment and administration, whether by the Assembly Commission or otherwise, of a pension scheme or schemes.

242. Monies required to make payments under this section are payable out of the Welsh Consolidated Fund and therefore have to be authorised annually by a budget resolution passed by the Assembly.

243. Provision made by the Assembly under this section can be made in the Assembly Standing Orders or by resolutions of the Assembly and both the Standing Orders and any such resolutions can confer functions on the Assembly Commission.

244. The Assembly also has the option of making provision on this matter by way of an Assembly Measure under Part 3 of this Act.

Section 54: Remuneration: supplementary

245. Subsection (1) of this section allows for different provisions to be made under section 53 for different cases. This allows the Assembly to provide for different salaries to be paid to the First Minister, Welsh Ministers, the Counsel General and Deputy Welsh Ministers according to the office that they hold in the Welsh Assembly Government.

246. Subsection (2) places a duty on the Assembly to publish, for each financial year, the total amount paid to members of the Welsh Assembly Government by way of salaries and allowances, and the amount of salary and allowances paid to each such individual. It allows the Assembly to do so by requiring the Assembly Commission to publish the information, but places no restriction as to the means used by the Assembly to make this information available.
247. Subsection (3) places a duty on the Assembly Commission, where the Assembly has conferred
the power to determine salaries, etc under section 53, to publish every determination of the Assembly
Commission as to those matters as soon as possible after a determination is made.

248. Subsection (4) provides that provision made under section 53(3) in respect of pensions or
allowances does not affect pensions or allowances in payment before the provision was made.

Section 55: Oath or affirmation

249. This section requires the First Minister, Welsh Ministers and the Counsel General, on
appointment, to take the official oath under the Promissory Oaths Act 1868. It also requires all
members of the Welsh Assembly Government to take the oath of allegiance unless they have already
taken it as a member of the Assembly. No payment of salary or allowances may be made until the
oath(s) is (are) taken. This section further provides for the oath(s) to be taken before one of the
Presiding Judges of the Wales and Chester Circuit

Section 56: Introduction

250. This section provides that the Welsh Ministers (and the First Minister and the Counsel General
where distinct functions are conferred or imposed specifically on them) are to have those functions
which are conferred or imposed on them by or under the Act itself or by any other enactment or
prerogative instrument.

Section 57: Exercise of functions

251. This section provides that functions may be conferred or imposed on the Welsh Ministers by
specifying that they are functions of the Welsh Ministers. When this is done, those functions will
be exercisable by any of the Welsh Ministers (including the First Minister). Similarly, any act or
omission by or in relation to the First Minister or the other Welsh Ministers is to be treated as an
act or omission in relation to each of them, unless the act or omission relates to a function which
is that of the First Minister alone. This rule also applies where a function is conferred or imposed
on the Counsel General and that function is exercisable concurrently with the First Minister or the
Welsh Ministers, so that an act or omission in relation to that function is to be treated as an act or
omission of each of them.

252. Functions of the First Minister, the Welsh Ministers and the Counsel General are to be
exercisable on behalf of the Crown.

Section 58: Transfer of Ministerial functions

253. This section provides a mechanism for transferring to the Welsh Ministers (or specifically to
the First Minister or to the Counsel General) functions in relation to Wales which are exercisable
by a Minister of the Crown. The transfer is to be by Order in Council which will require approval
by both Houses of Parliament and by the Welsh Ministers. (Any subsequent Order in Council
varying or revoking such an Order would also require such approval).

254. The Order in Council transferring a function to the Welsh Ministers, to the First Minister or
to the Counsel General may provide for the function to be exercised concurrently with any other
of them.

255. An Order in Council under this section may, instead of transferring functions to the Welsh
Ministers (etc.) provide for them to be exercisable, in relation to Wales, concurrently by the Welsh
Ministers and by a Minister of the Crown. Where a function continues to be exercisable solely by
a Minister of the Crown, an Order in Council may impose a requirement that the Minister in question,
when proposing to exercise that function in relation to Wales, must first obtain the agreement of the Welsh Ministers or, alternatively, must first consult them.

256. A number of detailed provisions about the scope and operation of transfers of functions under this section are contained in Schedule 3.

Section 59: Implementation of Community law

257. This section enables the Welsh Ministers to be designated under section 2(2) of the European Communities Act 1972, thereby empowering them to make provision within the scope of the particular designation, to implement Community obligations or to enable United Kingdom rights under the European Treaties to be enjoyed and for associated purposes. Unless such provision is made by a Minister of the Crown, or relates to an English border area or to a cross-border body (and does not relate solely to functions or activities of that body in relation to Wales), the statutory instrument in which the provision is contained is not required to be laid before Parliament and to be subject to annulment in pursuance of a resolution of either House, but it will instead have to be laid before the Assembly and will be subject to annulment in pursuance of a resolution of the Assembly.

258. The section also confers on the Welsh Ministers the power, with the consent of the Treasury, to make regulations prescribing, or providing for the determination of fees and charges in respect of services provided by them in pursuance of a Community obligation. Unless they are made together with a Minister of the Crown, relate to an English border area or relate to a cross-border body (and do not relate solely to functions or activities of that body in relation to Wales) no Parliamentary procedures are to apply to such regulations but they will have to be laid before the Assembly instead and will be subject to annulment in pursuance of a resolution of the Assembly.

Section 60: Promotion etc. of well-being

259. This section provides the Welsh Ministers with a power to do anything which they consider is appropriate to achieve the promotion of the economic, social or environmental well-being of Wales. The power may be exercised for the benefit of the whole or any part of Wales or of all or any persons resident or present in Wales. If the Welsh Ministers consider that it would promote the economic, social or environmental well-being of Wales it may also be exercised in relation to or for the benefit of areas outside Wales or persons resident or present in any area outside Wales.

Section 61: Support of culture etc.

260. This section empowers the Welsh Ministers to do anything which they consider appropriate to support archaeological remains, ancient monuments, buildings and places of historical or architectural interest, historic wrecks, and museums, galleries, and libraries in Wales; to support arts and crafts, archives and historical records, other cultural activities and projects, and sport and recreational activities relating to Wales; and to support the Welsh language.

Section 62: Representations about any matter affecting Wales

261. This section enables the Welsh Ministers, the First Minister and the Counsel General to make appropriate representations about any matter affecting Wales.

Section 63: Consultation about cross-border bodies

262. This section requires any Minister of the Crown who exercises certain functions in relation to relevant cross-border bodies (i.e. bodies which exercise functions, or carry on activities, of a public nature both in relation to Wales and elsewhere) to consult the Welsh Ministers before doing
so. The functions in question are the appointment or removal of the body or the members or office-holders of the body (unless they are not concerned in functions in or with respect to Wales) and other functions which might affect Wales in relation to any matters as respects which the Welsh Ministers may exercise functions. The requirement does not apply if it is not reasonably practicable to comply with it (for example because of the urgency of the matter) but in such a case the Minister of the Crown in question is required to inform the Welsh Ministers of the action as soon as reasonably practicable and to give reasons for it. A failure to comply with the requirement before taking an action does not affect the validity of that action.

Section 64: **Polls for ascertaining views of the public**

263. This section gives the Welsh Ministers the power to hold a poll in the whole, or in any part of Wales, for the purpose of ascertaining the views of those polled as to whether or how the Welsh Ministers should exercise any of their functions (other than the function of making representations about matters affecting Wales). Orders making provision about the conduct of such polls may be made by the Welsh Ministers and are subject to annulment in pursuance of a resolution of the Assembly.

Section 65: **Private bills**

264. Under this section the Welsh Ministers will have the power to promote (or to oppose) any private bill in Parliament.

Section 66: **Provision of information to Treasury**

265. The Treasury is to have the power under this section to require the Welsh Ministers to provide the Treasury with information which is in the possession or under the control of the Welsh Ministers and which is required for the exercise of any of the functions of the Treasury.

Section 67: **Legal proceedings**

266. Under this section the Counsel General, as the representative of the Welsh Ministers in the courts, will be able to institute, defend or appear in any legal proceedings relating to matters with respect to which any functions of the Welsh Ministers, the First Minister of the Counsel General are exercisable, provided the Counsel General considers it appropriate to do so for the promotion or protection of the public interest.

Section 68: **Contracts**

267. This section allows the Secretary of State to make an order applying, subject to any appropriate modifications, the Local Government (Contracts) Act 1997 to contracts entered into by the Welsh Ministers, the First Minister or the Counsel General. A similar provision was contained in section 39 of GoWA. The effect of such an order would be to prevent it being argued in private law proceedings that a contract covered by the order is *ultra vires* and therefore unenforceable. This is intended to protect contractors and lenders dealing with the Welsh Assembly Government.

Section 69: **Charges for documents**

268. This section provides that (subject to any other specific enactment relating to charging for supplying copies of documents or for making documents available for inspection) the Welsh Ministers may charge for supplying copies of any document or any part of a document which they publish or make available for public inspection.

Section 70: **Financial assistance**
269. This section gives the First Minister, the Welsh Ministers and the Counsel General the power to give financial assistance (whether by grant, loan or guarantee) to any person engaged in any activity which the Welsh Ministers consider will secure, or help to secure, the attainment of any objective which they aim to achieve in the exercise of their functions. Conditions may be attached to such assistance.

Section 71: Supplementary

270. This section makes it clear that the Welsh Ministers, the First Minister and the Counsel General may do anything which is calculated to facilitate or is conducive or incidental to the exercise of any of their functions.

“Inclusive” approach to exercise of functions

Section 72: Partnership Council

271. The Welsh Ministers are required by this section to establish a Partnership Council for Wales whose members, to be appointed by the Welsh Ministers, are to comprise Welsh Ministers (or Deputy Welsh Ministers) and members of local authorities (including national park authorities, police authorities, fire and rescue authorities and other authorities which may be added by order) in Wales. Before appointing local authority members the Welsh Ministers will be required to consult appropriate local government associations. The function of the Council will be to advise the Welsh Ministers on matters affecting their functions, to make representations on matters affecting, or of concern to, those involved in local government in Wales and also to give advice to those involved in local government in Wales.

Section 73: Local government scheme

272. Under this section the Welsh Ministers are required to make, keep under review, and from time to time remake or revise, a local government scheme, setting out how they propose, in the exercise of their functions, to sustain and promote local government in Wales. When determining the content of the scheme the Welsh Ministers must have regard to any advice or representations on the part of the Partnership Council. The scheme, and any revisions to it must be published and laid before the Assembly as must an annual report by the Welsh Ministers setting out how the proposals in the scheme were implemented during the preceding financial year.

Section 74: Voluntary sector scheme

273. Under this section the Welsh Ministers are required to make, keep under review, and from time to time remake or revise, a voluntary sector scheme, setting out how they propose, in the exercise of their functions, to promote the interests of relevant voluntary organisations. The Ministers are under a duty to consult any voluntary organisations they consider appropriate before they make, remake or revise a scheme.

274. Relevant voluntary organisations are organisations that are not local authorities or other public bodies, whose activities are not carried on for profit and which, directly or indirectly, benefit Wales or a part of Wales.

275. When determining the content of the scheme the Welsh Ministers must consider how they intend to exercise their functions in relation to matters which concern or affect voluntary organisations. The scheme must specify the Ministers proposals to assist voluntary organisations, their proposals to monitor assistance provided and how they will consult voluntary organisations about their functions.
276. The scheme, and any revisions to it, must be published and laid before the Assembly, as must an annual report by the Welsh Ministers setting out how the proposals in the scheme were implemented during the preceding financial year.

Section 75: Business scheme

277. Under this section, the Welsh Ministers must make a business scheme setting out how they propose to take account of the interests of business in exercising their functions. The scheme must specify how the Welsh Ministers propose to carry out consultation about the exercise of their functions in relation to matters affecting the interests of business, and how they propose to consider the impact of the exercise of their functions on the interests of business.

278. The Welsh Ministers are obliged to keep the business scheme under review and may remake or revise it. Before making, remaking or revising the scheme, the Welsh Ministers are obliged to consult such organisations representing business (including trade unions) and such other organisations, as they consider appropriate. They are obliged to publish the scheme once made or remade, as well as revisions to the scheme, and must lay the same before the Assembly.

279. The Welsh Ministers must publish reports of how the proposals set out in the business scheme have been implemented. The first report must be published within the two year period beginning with the day on which the first business scheme is made. Subsequent reports must be published at intervals of no more than two years. These reports must be laid before the Assembly.

Section 76: Regulatory impact assessments

280. Under this section the Welsh Ministers are required to make, keep under review, and from time to time to remake or revise, a code of practice (“the regulatory impact assessment code”), setting out their policy on the carrying out of regulatory impact assessments in relation to Welsh subordinate legislation and on the carrying out of consultation in connection with regulatory impact assessments. The Ministers are under a duty to consult such persons as they consider appropriate before they make, remake or revise a code.

281. Regulatory impact assessments are assessments as to the likely costs and benefits of complying with the Welsh subordinate legislation in question.

282. The regulatory impact assessment code, and any revisions to it, must be published and laid before the Assembly.

Section 77: Equality of opportunity

283. Under this section the Welsh Ministers are required to make arrangements with a view to securing that their functions are exercised with due regard to the principle that there should be equality of opportunity for all people.

284. The Welsh Ministers are also required, after each financial year, to publish and lay before the Assembly a report containing a statement of the arrangements made under subsection (1) which had effect during that financial year and an assessment of how effective they were in promoting equality of opportunity.

Section 78: The Welsh Language

285. Under this section the Welsh Ministers are required to adopt a Welsh language strategy which sets out their proposals for promoting and facilitating the use of the Welsh Language. The Welsh Ministers are also required to adopt a Welsh language scheme. The scheme must specify the measures they are proposing to take, for the purpose of giving effect (as far is appropriate and
reasonably practicable) to the principle that English and Welsh should be treated on a basis of equality in the conduct of public business in Wales. The scheme applies in relation to the use of Welsh in connection with the provision of services to the public by the Welsh Ministers or by those acting as servants or agents of the Crown, or by those who are public bodies within the meaning of Part 2 of the Welsh Language Act 1993.

286. The Welsh Ministers must keep both the strategy and scheme under review, and may revise or replace them with new versions as they deem appropriate. The Welsh Ministers must consult such persons as they think appropriate before they adopt or revise a strategy or scheme. They are also required to publish the scheme and strategy when they are first adopted, and any new versions or revisions which are subsequently adopted, and to lay that which is published before the Assembly.

287. At the end of each financial year the Welsh Ministers must publish a report of how the proposals in the strategy and scheme were implemented in that financial year. The report must also set out how effective the implementation of the proposals in the strategy has been in promoting and facilitating the use of Welsh. A copy of the report must be laid before the Assembly.

Section 79: **Sustainable development**

288. Under this section the Welsh Ministers are required to make, keep under review, and from time to time remake or revise, a sustainable development scheme, setting out how they propose, in the exercise of their functions, to promote sustainable development. The Ministers are under a duty to consult such persons as they consider appropriate before they make, remake or revise a scheme.

289. The scheme, and any revisions to it, must be published and laid before the Assembly, as must an annual report by the Welsh Ministers, setting out how the proposals in the scheme were implemented during the preceding financial year.

290. The Welsh Ministers are also required, in the year after an ordinary general election is held, or was due to be held under section 3, to publish and lay before the Assembly a report containing an assessment of how effective the proposals contained in their scheme have been in promoting sustainable development.

Section 80: **Community law**

291. This section makes it clear that a European Community obligation of the United Kingdom is also an obligation of the Welsh Ministers, the First Minister or the Counsel General if (and so far as) the obligation could be implemented or complied with by the exercise by the Welsh Ministers etc. of their functions.

292. Where, however, the obligation in question is to achieve a result defined by reference to a quantity and that quantity relates to the whole of the United Kingdom or some part of the United Kingdom which includes a part, or the whole, of Wales this rule does not apply unless a Minister has, after consultation with the Welsh Ministers, made an order under this section apportioning the obligation so as to define what contribution the Welsh Ministers must make to the achievement of that result.

293. This section also provides that the Welsh Ministers, First Minister and Counsel General have no power to make subordinate legislation, or to do any other act, if the subordinate legislation or act is incompatible with Community law or with an obligation imposed by an order of a Minister of the Crown made under this section.

Section 81: **Human Rights**
294. This section provides that the Welsh Ministers, First Minister and Counsel General have no power to make subordinate legislation, or to do any other act, if the subordinate legislation or act is incompatible with the European Convention of Human Rights.

295. The section also provides that the only persons (apart from the Attorney General, the Counsel General, the Advocate General for Scotland, Advocate General for Northern Ireland or the Attorney General for Northern Ireland) who can bring proceedings on the ground that an act of the Welsh Ministers etc. is incompatible with Convention rights or rely on Convention rights in proceedings are persons who are “victims” for the purposes of Article 34 of the Convention. (Article 34 of the convention requires applications to the European Court of Human Rights to be from “any person, non-governmental organisation or groups of individuals claiming to be a victim of a violation of a Convention right”).

296. The section also makes clear that an act of the Welsh Ministers etc. is not outside their powers by reason of being incompatible with Convention rights if that act is not unlawful under section 6 of the Human Rights Act 1998, i.e. if the act in question was inevitable as a result complying with an Act of Parliament.

297. Further, the section restricts the damages which a court or tribunal may award in respect of an act incompatible with Convention rights to the damages which could be awarded if the act was found to be unlawful under section 6 of the Human Rights Act.

Section 82: International obligations etc.

298. This section relates to international obligations of the United Kingdom which impinge on functions of the Welsh Ministers (and of the First Minister or Counsel General).

299. It firstly gives the Secretary of State a power to intervene in order to restrain and if necessary reverse action by the Welsh Ministers etc. which the Secretary of State considers to be incompatible with such an obligation. The Welsh Ministers etc. can be directed by order not to take a proposed action (including the making of subordinate legislation) and any subordinate legislation which has been made by the Welsh Ministers etc. (or which was made under powers since transferred to the Welsh Ministers etc. so that they now have the power to revoke it) may be revoked by order made by the Secretary of State, which may have retrospective effect.

300. The Secretary of State may also by order direct the Welsh Ministers etc. to take action which is within their powers if this is necessary in order to give effect to an international obligation.

301. If an international obligation requires a result to be achieved by reference to a quantity and that quantity relates to the United Kingdom as a whole, or to a part of the United Kingdom which includes Wales, the Secretary of State may make an order apportioning the obligation so as to define what contribution the Welsh Ministers must make to the achievement of that result.

302. Orders under this section, with the exception of orders under subsection (1) directing that a proposed action should not be taken may only be made after the Secretary of State has consulted the Welsh Ministers, and the orders must state the reason why they are being made.

303. Orders directing the Welsh Ministers etc. not to act in a way which they propose and those apportioning international obligations are subject to annulment in pursuance of a resolution of either House of Parliament. Those requiring the Welsh Ministers to take action and those revoking subordinate legislation require affirmative resolutions of each House of Parliament before they can be made.

Section 83: Agency arrangements and provision of services
304. This section empowers the Welsh Ministers (and the First Minister and Counsel General) and any Minister of the Crown, government department, public authority or holder of a public office in England and Wales, to enter into an arrangement under which each (including their respective staffs) exercises functions of the other. Functions to which such arrangements may relate may not, however, include functions of making, confirming or approving subordinate legislation contained in a statutory instrument. The fact that a party to such an arrangement has made arrangements under it for the other party to exercise a function on its behalf does not relieve the former of its legal responsibility in relation to the exercise of that function.

Section 84: Different exercise of functions by Welsh Ministers etc.

305. Where an enactment (usually an Act of Parliament) confers a power in relation to England and to Wales (or in relation to England and Wales and also to some other territory, such as Scotland) and the power is exercisable in relation to Wales by the Welsh Ministers (or the First Minister or Counsel General) but in relation to England by a Minister of the Crown, this section makes it clear that the fact that the power is exercisable under the same provision does not require it to be exercised in the same way in relation to both countries or indeed require it to be exercised at all by the Welsh Ministers etc. in relation to Wales. In other words the Welsh Ministers etc. may exercise their discretion as to how to exercise such functions differently from the way in which the relevant Minister of the Crown exercises the same discretion in relation to England. However, the provision made by this section is subject to any different provision which might be made by the enactment etc which gave the power to the Welsh Ministers, First Minister or Counsel General.

Section 85: Construction of references to Ministers and Departments

306. This section requires references in Acts of Parliament and other enactments or other documents to a “Minister of the Crown” or to a “government department” to be construed, where necessary (i.e. where relevant functions have been transferred to the Welsh Ministers, the First Minister or Counsel General) as references to the Welsh Ministers etc. Similarly, references in such Acts or other enactments or other documents to property vested in or held for the purposes of a “government department” are to be construed as including references to property vested in or held by the Welsh Ministers etc.

Section 86: Laying of reports and statements

307. Some Acts of Parliament impose requirements on Ministers of the Crown (and others) to lay reports or statements before Parliament. This section makes provision for those cases where the report or statement to be laid relates to matters in respect of which functions are exercisable by the Welsh Ministers, the First Minister, the Counsel General or the Assembly Commission, but the function of making or receiving the report or statement is not one which the Welsh Ministers, the First Minister etc have by virtue of this Act. If no functions in relation to the matters to which the report relates are exercisable any longer by Ministers of the Crown, the requirement to lay the document before Parliament is to be construed as a requirement to lay it before the Assembly instead. If a Minister of the Crown still has functions in relation to those matters, the document must be laid both before Parliament and before the Assembly.

Property, rights and liabilities

Section 87: Property, rights and liabilities of Welsh Ministers etc.

308. This section deals with the holding of property, rights and liabilities of the Welsh Assembly Government. These may belong to the Welsh Ministers, the First Minister or to the Counsel General.
by those names and in each case this has the effect that they belong to the Welsh Ministers, First Minister of Counsel General for the time being. References in registers or other documents to property belonging to “the Welsh Ministers” etc. are to be read accordingly.

Section 88: Transfer of Ministerial property rights and liabilities

309. This section introduces Schedule 4, which deals with transfers of property rights and liabilities of Ministers of the Crown to the Welsh Ministers.

Supplementary

Section 89: Rights and liabilities of the Crown in different capacities

310. The Crown was originally regarded as indivisible. The effect of devolution to Wales, Scotland and Northern Ireland is however that the devolved administrations are, within the scopes of their respective powers, autonomous even though they exercise their functions on behalf of the Crown. In practice, therefore, each, together with the United Kingdom government, is a distinct entity and this section makes it clear that as far as legal rights and liabilities are concerned, each (“the Crown in right of Her Majesty's Government in the United Kingdom”, “the Crown in right of the Welsh Assembly Government” and so on) is to be treated as having separate legal personality. Property may be transferred between them, contracts between them may be entered into and they may be separate parties to legal proceedings.

Section 90: Documents

311. This section makes provision in relation to the execution and authentication of legal documents by or on behalf of the First Minister, the Welsh Ministers or the Counsel General.

Section 91: Validity of acts

312. This section ensures that the validity of the acts of a person as First Minister are not affected by any defect in that person's nomination by the Assembly and that, similarly, the validity of any act of a person as Counsel General is not affected by any defect in the Assembly's agreement to that person's appointment to that office. Similar protection is given in relation to the Presiding Officer and Deputy Presiding Officer (section 25(14), members of the Assembly Commission (Schedule 2 paragraph 10(b)), and the Auditor General for Wales (Schedule 8 paragraph 1(4)).

Section 92: Official secrets

313. This section provides that the First Minister (and any person designated to exercise the functions of the First Minister), the Welsh Ministers, the Counsel General (and any person designated to exercise the functions of the Counsel General) and Deputy Welsh Ministers are Crown servants for the purposes of the Official Secrets Act 1989.

PART 3: ASSEMBLY MEASURES

Overview of Part 3

314. Part 3 of and Schedule 5 to the Act introduce the new mechanism for enhancing the Assembly's legislative powers which was proposed in paragraphs 3.14 to 3.21 of “Better Governance for Wales”. It should be noted that, with minor exceptions mentioned below, the Act does not itself confer additional legislative powers on the Assembly; rather, it provides a mechanism whereby such powers can be conferred on a case by case basis as appropriate, with Parliamentary consent.

315. The White Paper envisaged that enhanced legislative competence would be conferred on the Assembly by way of Orders in Council. Section 95 makes provision for such Orders in Council.
Such an Order in Council confers competence by modifying Schedule 5. Within that competence as it appears from time to time in that Schedule, the Assembly can pass laws known as Assembly Measures in relation to “matters” set out in that Schedule (as amended by such Orders in Council). Such “matters” must relate to one or more of the fields which are also set out in Part 1 of Schedule 5 to the Act. The Order in Council\(^1\) will be able to amend the list of fields in relation to which “matters” can be specified, but it will not be possible for these Orders in Council to add a field, and so potentially give the Assembly legislative competence, if no function in the field is exercisable by the Welsh Ministers, the First Minister or the Counsel General.

316. The effect of an individual Order in Council will be to insert, under the relevant field heading in Part 1 of Schedule 5, a description of the “matter” in relation to which the Assembly is to be given enhanced legislative competence, together with any specific exceptions necessary accurately to define its scope. Part 2 of Schedule 5 lists restrictions which a provision in an Assembly Measure must not breach if it is to be within legislative competence. There are exceptions from those restrictions, which are set out in Part 3 of Schedule 5. In Part 1 of Schedule 5, under the heading “Field 13: the National Assembly for Wales”, several entries are listed on the face of the Act as “matters” in relation to which the Assembly may pass Measures. These are the only examples of the Act itself conferring additional legislative powers on the Assembly; and the form of the entries may be taken as a guide to the way in which further “matters” will be added to Schedule 5 by future Orders in Council conferring enhanced legislative competence.

317. The Act provides for the Assembly and both Houses of Parliament to approve draft Orders in Council before they are recommended to be made by Her Majesty in Council. In circumstances where the Welsh Assembly Government has initiated the proposal, the main procedural stages will normally include:

a) preparation of a proposed draft Order in Council following discussion between the Welsh Assembly Government, relevant Whitehall Departments, and the Wales Office. This will focus on ensuring there is clarity about the *vires* / scope of the Order in Council and confidence that it will give the necessary legislative competence to enable the Assembly Government's policy objective to be achieved;

b) pre-legislative (non-statutory) scrutiny of a proposed draft Order in Council by the Assembly and Parliament. The precise nature of pre-legislative scrutiny undertaken by the National Assembly and Parliament will be a matter for those two institutions to determine. The processes are not prescribed in the Act, although, in this context, paragraph 3.21 of the White Paper “Better Governance for Wales” said “The consideration (i.e., consideration by Parliamentary Committees or perhaps a joint Committee of both Houses) could be informed by understanding the use the Assembly might propose to make of these powers in the immediate future. However, as the power would be a general and continuing one for that particular policy area, this would serve only as an example of what could be done; the issue for the Committees and for each House would be the appropriateness in general of delegating legislative authority to the Assembly on the particular policy area specified in the draft Order in Council”. This stage will enable modifications to be made to the proposed draft, if required, in the light of comments made;

c) the formal (statutory) processes for the Assembly and both Houses of Parliament to give their approval to the final draft Order in Council, modified as appropriate following the pre-legislative scrutiny processes. At this stage the draft Order in Council will not be able to be amended as both the Assembly and Parliament will need to approve identical text.
318. When a draft Order in Council has been approved by the Assembly, the First Minister will be required, as soon as reasonably practicable, to give notice in writing of that fact to the Secretary of State, who must, by the end of 60 days (not counting days when Parliament is dissolved or prorogued or adjourned for more than four days) either have laid the draft Order in Council before both Houses of Parliament or have given the First Minister written reasons for not being prepared to do so.

319. Once an Order in Council conferring enhanced legislative powers in relation to a “matter” has been made, the competence conferred will be of a continuing character; that is to say, although a request for such powers may have been stimulated by a particular project of reform, use by the Assembly of the competence conferred to address that project will not preclude further Assembly Measures relating to that matter, again in the future, perhaps with some different policy objective in view. The Assembly’s legislative competence under Part 3 of the Act will be the sum total of the matters listed in Part 1 of Schedule 5 read with the restrictions and exceptions to those restrictions specified in Parts 2 and 3 of that Schedule respectively.

320. Assembly legislation made under the legislative competence of the Assembly will be known as Measures of the National Assembly for Wales. Section 94 specifies the tests that proposed Assembly Measures must satisfy if they are to be within the legislative competence of the Assembly. In particular, Measures must relate to one or more of the matters specified in Part 1 of Schedule 5 and comply with the restrictions set out in Part 2 of Schedule 5. The question whether a particular provision of a Measure relates to a matter specified in Part 1 of Schedule 5 “is to be determined by reference to its purpose, having regard (among other things) to its effect in all the circumstances” (section 94(7)). Within the legislative competence conferred, an Assembly Measure may make any provision that could be made by Act of Parliament (section 94(1)).

321. Measures may only make provision in relation to Wales or in relation to functions relating to Wales (section 94(4)(b)). However, an Assembly Measure may make provision which applies in relation to England (but not beyond) for the enforcement of Assembly Measures or which it is appropriate to make for making a provision of a Measure effective (section 94(5)(a)). Incidental and consequential amendments of the law applying in relation to England, for example to ensure that the statute book reflects accurately the effect of changes to the law made by a Measure, will also be possible (section 94(5)(b)). The Secretary of State’s power of intervention under section 101 will ensure that the Assembly does not use its powers in a way which the Secretary of State has reasonable grounds to believe would have an adverse effect on operation of the law applying in England.

322. Sections 97 and 98 make provision about Assembly proceedings on proposed Measures. Subject to exceptions for special categories of Measure (see section 98(3)), standing orders must include provision for general debate and a vote on the principles of a proposed Measure; for detailed scrutiny of its provisions; and for a final endorsement of the draft (as reconsidered and amended by the Assembly, if that is the case). Once Assembly consideration of the proposed Measure is complete, the Clerk of the Assembly submits the proposed Measure to Her Majesty in Council for approval, and the Measure is enacted on receiving such approval.

323. A period of four weeks following completion of the Assembly's deliberations on the proposed Measure must elapse before it can be submitted to Her Majesty for approval, during which time the Counsel General or the Attorney General may refer to the Supreme Court any question as to whether the proposed Measure is within the Assembly’s legislative competence; or the Secretary of State may prevent it from being submitted to Her Majesty if the Secretary of State has reasonable
grounds to believe that its provisions are incompatible with international obligations or the interests of defence or national security, would have an adverse effect on the operation of the law as it applies in England or matters which are not specified in Part 1 of Schedule 5, or might have a serious adverse impact on water resources or water supply in England, or the quality of water in England. However, the Clerk may submit a proposed Assembly Measure for approval by Her Majesty before the end of the four weeks following its passing, provided that the Clerk has received notifications from the Attorney General and the Counsel General that they are not going to make a reference to the Supreme Court, and from the Secretary of State that the Secretary of State is not going to make an order under section 101.

324. Section 98(6) requires the standing orders to provide for Assembly reconsideration of the proposed Measure provisions if the Secretary of State intervenes under section 101, or if the Supreme Court has ruled that the proposed Measure is ultra vires or if the proposed Measure has been the subject of a reference by the Supreme Court to the European Court of Justice which has been withdrawn as a result of a request by the Assembly to be allowed to reconsider the proposed Measure.

Notes

1 An Order in Council, of whatever nature, under Part 3 of the Act can only be made if a draft of the Order in Council has first been approved by the Assembly and both Houses of Parliament.

DETAILED COMMENTARY ON SECTIONS IN PART 3

Section 93: Assembly Measures

325. This section confers on the Assembly the power to pass a type of subordinate legislation in relation to Wales called “Measures of the National Assembly for Wales” in English, or “Mesurau Cynulliad Cenedlaethol Cymru” in Welsh. They are referred to in this Act as Assembly Measures. The ultimate right of Parliament to legislate in relation to Wales, even in principle on a matter over which legislative competence has been conferred on the Assembly, is preserved.

326. Assembly Measures will, subject to the limitations set out in this section and in Schedule 5 as to what provisions they may contain, have the same effect as an Act of Parliament. In other words they may modify the effect of legislation made or enacted before or after this Act is enacted, or make entirely new provision.

327. An Assembly Measure will be enacted (i.e., will become law) when:
   (a) it has been passed by the Assembly, or
   (b) alternatively, when it has been “approved” by the Assembly, in the case of a Measure which has been reconsidered in accordance with provision made under section 98(6), and it has been approved by Her Majesty in Council (i.e. Her Majesty attending a meeting of the Privy Council).

328. If an Assembly Measure is enacted, but it then appears that there was some invalidity or procedural irregularity in the Assembly proceedings which led up to its enactment (for example, a rule in the Assembly’s standing orders was not complied with), the effect of section 93(3) is that the invalidity or irregularity will not render the Measure invalid and it will still be law. However, this subsection will not save a purported Assembly Measure which has not been passed at all by the Assembly because, in those circumstances, section 93(2) would not have been complied with.
329. Assembly Measures are to be judicially noticed. This means that, if an Assembly Measure is relevant in any Court proceedings, the court will apply its provisions without them having to be proved in court by evidence.

Section 94: Legislative competence

330. The purpose of this section and Schedule 5 is to set out the extent of the Assembly's power to pass Measures (the Assembly's "legislative competence"). Its legislative competence may be altered by Order in Council under section 95, amending Schedule 5.

331. Provided it complies with the limits set by this section and by Schedule 5, an Assembly Measure can have the same effect as an Act of the UK Parliament. In other words it can, for example, modify existing Acts of Parliament or other enactments and it can make new provision not covered by existing statutes.

332. Subsection (2) makes it clear that if an Assembly Measure contains a provision which is outside the Assembly's legislative competence (that is, it goes beyond the limits set by this section and by Schedule 5, as amended from time to time), that provision has no legal effect. However, the whole Measure is not rendered invalid, provided that the provision which is outside legislative competence can be severed from the Measure.

333. Subsections (3) to (6) set out the rules with which a provision in a Measure must comply in order to be within the Assembly's legislative competence. It will only be within competence if it satisfies the criteria in either 94(4) or 94(5), and it also complies with 94(6).

334. In order to satisfy the criteria in section 94(4):
   a) the provision in question must relate to one of the "matters" specified in Part 1 of Schedule 5; and
   b) the provision in question must apply only in relation to Wales, and it must not confer, impose, change or remove (or give anyone else the power to confer, impose, change or remove) functions exercisable other than in relation to Wales.

335. Part 1 of Schedule 5 contains a list of fields, but only one of them ("National Assembly for Wales") has any matters specified in relation to it, and those relate to the internal arrangements of the Assembly. Orders in Council under section 95 will have the effect of adding matters under different field headings, thereby enabling the criteria referred to in (a) above to be satisfied over wider policy areas.

336. In order to satisfy the criteria in section 94(5):
   a) the provision in question must be one which enables a provision of an Assembly Measure (i.e. one which itself satisfies the criteria in subsection (4)) to be enforced or which is otherwise appropriate for making such a provision effective; or
   b) the provision in question must be one which is incidental to or consequential on such a provision.

337. So if a provision satisfies the criteria in subsection (5) it is not subject to the limitation in subsection (4) that a provision in a Measure may only relate to Wales. This, for example, will enable the Assembly to include in Measures necessary consequential amendments to Acts of Parliament to make it clear where they no longer apply in relation to Wales or to include provisions enabling the courts of England and Wales to enforce Assembly Measures effectively.

338. In order to comply with section 94(6):
a) the provision in question must comply with restrictions on the Assembly's legislative competence which are set out in Part 2 of Schedule 5 to the Act. There are exceptions from these restrictions, which are set out in Part 3 of Schedule 5; and
b) the provision in question may not “extend” to any jurisdiction other than England and Wales. (England and Wales is a single legal jurisdiction and Assembly Measures will form part of the law of that jurisdiction. Although they will only, with limited exceptions, apply to Wales, they will be able to be enforced by the courts of England and Wales generally. They will not, however, be able to make provision forming part of the law of other legal jurisdictions such as Scotland); and
c) the provision in question must not be incompatible with the European Convention on Human Rights or European Community law.

339. Subsection (7) lays down the test to be used to decide whether a particular provision in an Assembly Measure relates to a matter or matters listed in Part 1 of Schedule 5, and therefore whether it meets the criteria in 94(4)(a). The correct approach will be to consider the purpose of the provision having regard to its effect in all the circumstances.

Section 95: Legislative Competence : supplementary

340. This section provides a mechanism by which amendments may be made to Schedule 5 to the Act, so as to enhance, restrict or otherwise change the Assembly's legislative competence to pass Assembly Measures. Amendments are made by Order in Council, which can:
   a) add to, remove or change the fields set out in Part 1 of Schedule 5;
   b) list a matter or a further matter under a field, or remove or change a matter already listed;
   c) amend Parts 2 or 3 of Schedule 5, which set out general restrictions on the passing of Assembly Measures, and exceptions to those restrictions respectively.

341. A field cannot be added to Schedule 5 if it is one in which no functions are exercisable by the Welsh Ministers, the First Minister or the Counsel General.

342. An Order in Council amending Schedule 5 can also make changes to any enactment, including Acts of the Scottish Parliament and instruments made under those Acts, prerogative instruments, and other instruments or documents, where those changes are appropriate in connection with the amendment to Schedule 5.

343. Orders in Council under this section can make provisions which apply retrospectively (i.e., to things which have already been done). So, for example, this power could be used to clarify the extent of a matter in Part 1 of Schedule 5, where there has been a legal challenge to the validity of an Assembly Measure made in relation to that matter, and there is a need for legal certainty about the extent of the matter.

344. An Order in Council under this section may only be made if the draft of it has been approved by the Assembly, the House of Commons and the House of Lords. Thus Parliament retains control over the fields and matters in relation to which the Assembly has power to pass Measures.

345. Once a draft Order in Council has been approved by the Assembly, the First Minister must, as soon as reasonably practicable, send the Secretary of State written notice of that fact and a copy of the draft approved by the Assembly. The Secretary of State must then decide whether to lay the draft Order in Council before Parliament with a view to obtaining approval of the two Houses. The Secretary of State is not obliged to lay the draft before Parliament but if the Secretary of State does not do so before the end of 60 days (not counting days when Parliament is dissolved or prorogued or adjourned for more than four days) written notice of the reasons for refusing to do so must be
given to the First Minister, who must then lay it before the Assembly. The Assembly must publish it.

346. Under subsection (10), if a change is made to Schedule 5, and thus to the Assembly's legislative competence to pass Measures, the change is to have no effect upon Assembly Measures which have already been passed (or approved, in the case of Measures which have been reconsidered and amended) by the Assembly. So even if the powers of the Assembly were narrowed so as to remove the power to pass a particular Measure it would remain law. This is subject to the power to make retrospective provision in the Order in Council.

Section 96: Scrutiny of proposed Orders in Council

347. Under this section the Counsel General or the Attorney General may refer a proposed Order in Council to the Supreme Court for a decision as to whether the matter which it proposes to add to Part 1 of Schedule 5 relates to a field listed in that Part.

Procedure

Section 97: Introduction of proposed Assembly Measures

348. This section imposes certain requirements in relation to the introduction into the Assembly of proposed Assembly Measures.

349. A proposed Assembly Measure may, subject to provisions of standing orders, be introduced by the First Minister, any of the Welsh Ministers, any Deputy Welsh Minister, the Counsel General or any Assembly Member. Standing orders might restrict the ability of some of these persons to introduce a proposed Measure.

350. The person in charge of a proposed Assembly Measure must, on or before the proposed Measure's introduction, make a statement expressing their view that the provisions in the proposed Measure are within the Assembly's legislative competence.

351. The Presiding Officer of the Assembly must on or before introduction of a proposed Measure, decide whether or not it is within the Assembly's legislative competence and state that decision.

Section 98: Proceedings on proposed Assembly Measures

352. This section requires the Assembly's standing orders to contain certain provisions in relation to the consideration and passing (or approval, in the case of Measures which are reconsidered and amended) of proposed Measures by the Assembly.

353. Standing orders must ensure that, generally, Measures must pass through three stages.

354. There must firstly be an opportunity for a general debate about the proposed Measure by the Assembly, and for Assembly Members to vote on its general principles. This stage mirrors the Second Reading stage of Bills in the UK Parliament.

355. There must then be a stage involving consideration of, and an opportunity for Assembly members to vote on, the details of the proposed Measure, corresponding to the committee stage of a Bill at Westminster.

356. Finally there must be a stage at which members can vote on whether to pass the proposed Measure in its final form. This is equivalent to the Third Reading of a Parliamentary Bill.

357. Standing orders may allow a different procedure in the case of proposed Measures which fall within certain categories, namely those which restate the law, those which repeal or revoke spent
enactments and “private” proposed Assembly Measures. In the case of the first two, standing orders may permit a streamlined procedure whilst in the case of “private” proposed Measures procedures they are likely to include an opportunity for individuals affected to make representations to the Assembly, as in the case of private Parliamentary Bills.

358. Standing orders must include provision for securing that, except in specified circumstances (which are left to standing orders to define) a proposed Assembly Measure can only be passed if the text of the proposed Measure is in both English and Welsh.

359. Standing orders must provide for a proposed Measure which has been passed by the Assembly to be reconsidered in certain circumstances. These are:

   a) where the Supreme Court has decided that the proposed Measure is outside the Assembly’s legislative competence, following the Counsel General or the Attorney General referring that issue to the Supreme Court under section 99;
   b) where the Counsel General or the Attorney General has referred the issue of whether the proposed Measure is within the Assembly’s legislative competence to the Supreme Court under section 99, the Supreme Court has then referred an issue arising out of it to the European Court of Justice for a preliminary ruling, but the reference to the Supreme Court has been withdrawn following a decision by the Assembly that it wishes to reconsider the proposed Measure; or
   c) where the Secretary of State has made an Order under section 101 prohibiting the Clerk of the Assembly from submitting a proposed Measure for approval by Her Majesty.

360. If a proposed Assembly Measure is, upon reconsideration, amended by the Assembly, then there must be a further final stage at which the amended proposed Assembly Measure can be approved or rejected by the Assembly.

Section 99: Scrutiny of Proposed Assembly Measures by Supreme Court

361. This section provides a mechanism through which either the Counsel General or the Attorney-General can obtain a decision by the Supreme Court as to whether proposed Assembly Measures or particular provisions of proposed Assembly Measures are within the Assembly’s legislative competence. This may only be done within the four week period starting with the date the Measure was passed by the Assembly or, in the case of a Measure which has been reconsidered and approved by the Assembly, starting with the date the Measure was approved by the Assembly.

362. If the Counsel General or the Attorney General formally notifies the Clerk that he or she is not going to make such a reference then he or she is afterwards barred from doing so (unless the proposed Measure has subsequently been reconsidered and approved).

Section 100: ECJ references

363. Where the Counsel General or the Attorney General has referred a proposed Assembly Measure to the Supreme Court, and the Supreme Court has referred a question in connection with the matter to the European Court of Justice for a preliminary ruling then, provided neither of these references has been decided or otherwise disposed of, the Assembly may opt to reconsider the proposed Measure under provision made under section 98(6). If it does so the person who referred the proposed Measure to the Supreme Court (i.e. Counsel General or the Attorney General, as the case may be), must request the withdrawal of the reference. If, following reconsideration, the proposed Measure were to be approved, in an amended form, and the Counsel General or Attorney General are not satisfied that the amendment has removed the cause for referring the proposed Measure to the Supreme Court, a fresh reference may be made, within four weeks of that approval.
Section 101: Power to intervene in certain cases

364. This section enables the Secretary of State to intervene and, by order which would be subject to annulment in pursuance of a resolution of either House of Parliament, prohibit the Clerk from submitting a proposed Measure for approval by Her Majesty in Council if the Secretary of State has reasonable grounds to believe that its provisions:

a) would have an adverse effect on matters which are not within the legislative competence of the Assembly;

b) might have a serious adverse impact on water resources in England, water supply in England or the quality of water in England;

c) would have an adverse effect on the operation of the law as it applies in England; or

d) would be incompatible with any international obligation or the interests of defence or national security.

365. The first ground set out above on which the Secretary of State may make an order, appears in the Act in the form “would have an adverse effect on any matter which is not specified in Part 1 of Schedule 5”. Matters which are not specified (i.e., as ones in respect of which the Assembly has legislative competence) include those which are excepted from a matter that is specified.

366. Such an order may be made within four weeks of the passing of the proposed Measure, or of the approval of the proposed Measure following reconsideration under provision made under section 98(6) or, if a reference to the Supreme Court has been made under section 99, within four weeks of the reference being decided or otherwise disposed of. If the Secretary of State has formally notified the Clerk that no order is going to be made in relation to the proposed Measure such an order is barred in relation to it, unless the proposed Measure is reconsidered and approved by the Assembly under provision made under section 98(6) after that notification was given.

Section 102: Approval of proposed Assembly Measures

367. Once a proposed Measure has been passed (or approved upon reconsideration) by the Assembly, it is for the Clerk to submit it for approval by Her Majesty in Council.

368. However, the Clerk may not do so:

a) if the Counsel General or the Attorney General is still entitled to refer to the Supreme Court under section 99 the issue of whether a provision in the proposed Measure is within the Assembly's legislative competence (i.e. if the four week period for doing so has not expired and they are not both barred from making a reference as a result of having notified the Clerk that they do not intend to do so);

b) if the Counsel General or the Attorney General has made a reference to the Supreme Court under section 99 which has not yet been decided or disposed of;

c) if the Secretary of State is still entitled to make an order under section 101 (see the notes to that section) prohibiting the Clerk from submitting the proposed Measure for approval.

369. The Clerk may not submit a proposed Measure for approval by Her Majesty in its unamended form if:

a) the Supreme Court has ruled, on a reference under section 99, that the proposed Measure, or any provision of it, would not be within the Assembly's legislative competence; or

b) such a reference has been withdrawn as a result of a decision by the Assembly that it wishes to reconsider the proposed Measure.

370. Once Her Majesty in Council has approved a proposed Measure the Clerk must write the date of that approval on the text of the Measure, must publish the instrument by which Her Majesty
approved the Measure and must, in accordance with standing orders, notify the Assembly of the date of that approval.

PART 4: ACTS OF THE ASSEMBLY

Overview of Part 4

371. Following paragraphs 3.22–3.29 of “Better Governance for Wales”, this Part of the Act makes provision for the Assembly to have primary legislative powers across the broad range of the subjects in Part 1 of Schedule 7 without the need for further recourse to Parliament. As the White Paper made clear, such powers will only be conferred on the Assembly following approval for this in a referendum, and this Part of the Act also makes provision for holding one.

372. Section 103 of the Act provides for a referendum to be authorised by Order in Council (and Schedule 6 makes more detailed provision in relation to its organisation), but an Order in Council may not be submitted to Her Majesty in Council for approval unless a draft has been approved by both Houses of Parliament and the Assembly; and in the case of the Assembly, such approval must be demonstrated by Assembly Members representing not less than two-thirds (i.e. 40) of the Assembly seats voting in support of the motion. If a referendum is held and there is majority support for conferring these powers on the Assembly, the effect of section 105 is that the Welsh Ministers would be able to make a commencement order to bring the relevant “primary power” provisions into force. Once that is done, the Order in Council/Measure provisions of Part 3 of the Act will cease to have effect, and the Assembly would in future be able to pass legislation, to be known as Acts, in relation to one or more of the “subjects” set out in Schedule 7.

373. The White Paper stated that conferring primary legislative powers on the Assembly would mean that “it would be able to make law on all subjects within its devolved fields”. That is, the Assembly's primary legislative powers would extend to those subjects where the Assembly constituted by the Government of Wales Act 1998 already has executive competence, and would preserve restrictions in particular areas where they exist now. The Act sets out those subjects, and some restrictions, in Schedule 7. Section 109 provides Order in Council powers for this Schedule to be updated to take account of any Measure making powers granted or transfers of functions agreed by Parliament between enactment and the time when any referendum might be in prospect; in other words, any referendum would proceed on the basis of an up to date statement of the scope of the powers to be conferred if the electorate approved of the Assembly gaining these powers.

374. Unlike the Scotland Act 1998, the Act defines the scope of the Assembly’s “primary” legislative powers (after a referendum) by listing the subjects in relation to which the Assembly would be able to make law, rather than only listing those areas outside its legislative competence. The reasons for this were set out in a joint Memorandum from the Secretary of State for Wales and the First Minister for Wales to the Welsh Affairs Committee:

“Under the approach of the Scotland Act 1998 changes to the law which are made by the Scottish Parliament are not limited to specific subjects. They can include changes to basic principles of law. For example, the Scottish Parliament has made changes in land law in Scotland, beginning with the Abolition of Feudal Tenure etc. (Scotland) Act 2000). Scotland has its own distinct legal jurisdiction, with its own system of courts, judges, legal profession and provision for legal education. An ability on the part of its legislature to change basic principles of law and specific rules relating to subjects such as land law which have a general impact across almost all day-to-day activities is consistent with this situation.
Wales is different. It forms part of a single unified England and Wales jurisdiction with a common courts system, judges who can act throughout the two countries and lawyers who are educated and who practice in a way which does not distinguish between England and Wales. There is no intention to change this. The Assembly is to be able to make laws which apply in relation to activities in Wales but these will be part of the general law of the jurisdiction of England and Wales.

Lawyers who practice in Wales and judges who normally sit in Wales would inevitably be more familiar with laws which applied only to Wales than their colleagues in England but they would still be working within a single unified jurisdiction and if, in the course of a case being heard in England, it were relevant to consider something done in Wales to which an Assembly Act applied then the court would apply that Act in exactly the same way as it would apply an Act of Parliament.

If the Assembly had the same general power to legislate as the Scottish Parliament then the consequences for the unity of the England and Wales legal jurisdiction would be considerable. The courts would, as time went by, be increasingly called upon to apply fundamentally different basic principles of law and rules of law of general application which were different in Wales from those which applied in England. The practical consequence would be the need for different systems of legal education, different sets of judges and lawyers and different courts. England and Wales would become separate legal jurisdictions.

In order to avoid this result the simplest solution is to follow the Scotland Act 1978 model, limiting the legislative competence of the Assembly to specified subjects.

The other approach having, in principle, the same effect would be to transfer general law-making powers to the Assembly but then to reserve fundamental legal principles and basic legal rules to the UK Parliament. The view of Parliamentary Counsel is that such a reservation would be so complex and its effect so uncertain that the alternative of limiting devolved legislative competence to specific subjects would be by far the better approach.

There are further, subsidiary, reasons for adopting the Scotland Act 1978 approach in relation to Wales. Firstly, the list of reserved subjects which would apply in relation to Wales would be substantially longer and more complex than that in the Scotland Act 1998, in that it would need to include subjects such as criminal justice and the courts which are generally devolved in relation to Scotland but not in relation to Wales. Secondly, the task of formulating a list of devolved subjects in relation to Wales, which builds on the executive functions already devolved to the Assembly, is one which can develop out of the existing pattern of Welsh devolution and is therefore much easier to accomplish accurately and effectively than would be that of compiling an exhaustive list of subjects in relation to which the Assembly does not exercise executive functions.”

375. Assembly legislation made in exercise of “primary” legislative powers will be known as Acts. Section 108 specifies the tests that provisions of Acts must satisfy if they are to be within its legislative competence. In particular, they must relate to one or more of the subjects in Part 1 of Schedule 7, and not fall within any of the exceptions in that Part. Restrictions on the use of the Assembly’s powers, within the scope of its general area of legislative competence, are set out in Part 2 of Schedule 7. The question whether a particular provision of an Act relates to a subject is to be determined by reference to its purpose, having regard (among other things) to its effect in all the circumstances” (section 108(7)). Subject to these and other tests being satisfied, an Assembly Act may make any provision that could be made by Act of Parliament.
376. Sections 110 and 111 make provision about Assembly proceedings on draft Acts, which are referred to as Bills. Subject to exceptions for special categories of Bill (see section 111(3)), standing orders must include provision for general debate and a vote on the principles of a Bill; for detailed scrutiny of its provisions; and for a final endorsement of the Bill (including a final endorsement of a Bill which has been reconsidered and amended by the Assembly). Once Assembly consideration of the Bill is complete, the Clerk submits it to Her Majesty for Royal Assent, and the Bill becomes law on receiving this. But a period of four weeks following completion of the Assembly's deliberations on the Bill must elapse before it can be submitted, during which time the Counsel General or the Attorney General may refer to the Supreme Court any question as to the vires of the Bill; or the Secretary of State may prevent it from being submitted for Royal Assent if the Secretary of State has reasonable grounds to believe that its provisions are incompatible with international obligations or the interests of defence or national security, or might have a serious adverse effect on water resources, water supply or water quality in England, or would have an adverse effect on the operation of the law as it applies to England, or on non-devolved matters. Section 111(6) requires the standing orders to provide for Assembly reconsideration of the Bill's provisions in such circumstances. The Bill may be submitted for Royal Assent before the end of the four weeks following its passing by the Assembly, if the Attorney General and the Counsel General have notified the Clerk that they are not going to make a reference to the Supreme Court, and the Secretary of State has notified the Clerk that no order is going to be made under section 114.

Notes

1 Evidence to the Committee, 10 November 2005.

DETAILED COMMENTARY ON SECTIONS IN PART 4

Referendum

Section 103: Referendum about commencement of Assembly Act provisions

377. This section allows a referendum to be held in Wales on whether those sections in the Act which give the Assembly power to pass Acts (“the Assembly Act provisions”), should come into force.

378. If the majority of voters in a referendum vote for the Assembly Act provisions to come into force, they are to be brought into force by commencement order made by the Welsh Ministers.

379. There is no power to bring the sections into force without the prior approval of the majority of voters in a referendum.

380. The section deals with the mechanism for calling a referendum.

381. Subsection (3) makes it clear that, if the majority of voters vote against the Assembly Act provisions being brought into force, this will not bar the holding of a later referendum on the same issue.

382. Subsection (4) provides that a recommendation to Her Majesty to make an Order initiating a referendum may only be made if the draft Order has been approved by the House of Commons, the House of Lords and the Assembly.

383. Subsection (5) provides that any Assembly resolution to approve a draft Order in Council will only be effective if the number of Assembly Members voting for it represent two-thirds or more of the total Assembly seats (as opposed to the total number of Assembly Members voting).
Section 104: Proposal for referendum by Assembly

384. This section provides the mechanism under which the First Minister or a Welsh Minister can initiate a proposal that a referendum be held on bringing the Assembly Act provisions into force.

385. If a sufficient number of Assembly Members approve the proposal, the Secretary of State is required, within 120 days, to either lay before Parliament a draft Order in Council which will initiate a referendum, or give formal notice refusing to do so which sets out the reasons for that refusal.

Section 105: Commencement of Assembly Act provisions

386. The purpose of this section is to give the Welsh Ministers the power, by order, to bring into force the Assembly Act provisions following endorsement in a referendum.

387. Subsection (3) allows a commencement order made by the Welsh Ministers to include provisions modifying other legislation, prerogative instruments, other instruments and documents, where the Welsh Ministers consider such amendments are appropriate in connection with the coming into force of the Assembly Act provisions.

388. Subsection (4) provides that an order made by the Welsh Ministers bringing the Assembly Act provisions into force on a date specified in the order, must be approved by the Assembly.

Section 106: Effect on Measures of commencement of Assembly Act provisions

389. This section provides that, as soon as the Assembly Act provisions have come into force (i.e. under an order made by the Welsh Ministers under section 105), Part 3 of the Act ceases to have effect.

390. This means that the Assembly will no longer have the power to pass Assembly Measures. The vehicle for laws that might formerly have been made by Assembly Measure will, from then on, be Acts of the Assembly.

391. However, Assembly Measures which have already been enacted (i.e. passed or approved by the Assembly, and approved by Her Majesty in Council) will continue to be law.

Section 107: Acts of the Assembly

392. This section confers on the Assembly the power to pass legislation in relation to Wales called “Acts of the National Assembly for Wales”, or “Deddfau Cynulliad Cenedlaethol Cymru”. They are referred to in the Act as Acts of the Assembly.

393. It also confirms that the power of the UK Parliament to legislate in relation to Wales, if it chooses to do so, is not affected.

394. Subsection (1) provides that the National Assembly for Wales may enact Acts of the Assembly.

395. Subsection (2) provides that a proposed Act of the Assembly (to be known as a Bill) will become law when:
   a) it has been passed by the Assembly (or “approved” by the Assembly, in the case of a Bill which has been reconsidered), and
   b) it has received Royal Assent.

396. Subsection (3) provides that if, after an Act is enacted, it becomes apparent that there was some invalidity or procedural irregularity in the Assembly proceedings which led up to its enactment (for example, a rule in the Assembly's standing orders was not complied with), the invalidity or irregularity will not render the Act invalid and it will still be law. However, it is thought that this
subsection will not save a purported Act which had not been passed by the Assembly at all because, in those circumstances, section 107 (2) would not have been complied with.

397. Subsection (4) means that, if a particular Act of the Assembly is relevant in any Court proceedings, its existence and validity need not be proved to the Court in the same way that other types of evidence have to be proved to the Court before the Court will take it into account.

398. Subsection (5) makes it clear that the UK Parliament is sovereign and retains the power to make laws in relation to Wales. This is the case even in relation to matters where the power to pass an Act has been given to the Assembly.

Section 108: Legislative competence

399. The purpose of this section and Schedule 7 is to set out the extent of the Assembly’s power to pass Acts. The section calls this the Assembly’s “legislative competence”. Its legislative competence may be altered by Her Majesty making an Order in Council under section 109.

400. Subsection (1) makes it clear that within the limitations imposed by the Act an Act of the Assembly can have the same effect as an Act of the UK Parliament.

401. The Assembly’s power to pass Acts will be limited to the legislative competence given to it by this Act, which may be modified by Order in Council.

402. Subsection (2) means that if an Act contains a provision which is outside the Assembly’s legislative competence, that provision has no legal effect.

403. Subsections (3) to (6) identify when a provision of an Act will be within the Assembly’s legislative competence.

404. It will only be within competence if it satisfies the criteria in either section 108(4) or 108(5), and it complies with section 108(6).

405. In order to satisfy the criteria in section 108(4):
   a) the provision in question must relate to one or more of the subjects listed under any of the headings in Part 1 of Schedule 7. (Section 109 allows Her Majesty to make Orders in Council listing further headings and subjects in Part 1 of Schedule 7, or changing or removing those which are already there); and
   b) the provision in question must not fall within any of the exceptions listed in Part 1 of Schedule 7. For example, a provision in an Act which related to the subject of the Welsh Language (heading 20 in Part 1 of Schedule 7), but which sought to legislate on broadcasting would not meet the criteria in section 108(4)(a), because it would fall within the exception of “broadcasting” under heading 3 in Part 1 of Schedule 7; and
   c) the provision in question must apply only in relation to Wales, and it must not confer, impose, change or remove (or give anyone else the power to confer, impose, change or remove) functions to be carried out in relation to countries other than Wales (e.g. England).

406. In order to satisfy the criteria in section 108(5):
   a) the provision in question must be one which allows a provision contained in any Act of the Assembly (i.e. one which did meet the criteria in section 108(4)) or in an Assembly Measure, to be enforced, or be one which is otherwise appropriate for making such a provision effective; or
   b) the provision in question must be one which is incidental to or consequential on a provision contained in any Act of the Assembly or Assembly Measure which does meet the criteria in section 108(4).
407. In order to comply with section 108(6):
   a) the provision in question must comply with restrictions on the Assembly's legislative competence which are set out in Part 2 of Schedule 7 to the Act. There are exceptions from these restrictions, which are set out in Part 3 of Schedule 7; and
   b) the provision in question must form part of the law of England and Wales only (for example, the provision cannot form part of the law of Scotland); and
   c) the provision in question must not be incompatible with the European Convention on Human Rights or European Community law.

408. Subsection (7) lays down the test to be used to decide whether a particular provision in an Act of the Assembly relates to a subject listed under any of the headings in Part 1 of Schedule 7, and does not fall within any of the exceptions.

409. The correct approach will be to consider the purpose of the provision having regard to its effect in all the circumstances.

Section 109: Legislative competence: supplementary

410. The purpose of this section is to allow amendments to be made to Schedule 7 to the Act, so as to enhance, restrict or change the Assembly's legislative competence to pass Acts.

411. Subsection (1) provides that Her Majesty may, by making an Order in Council, add further subjects and headings to Part 1 of Schedule 7. The Order in Council may also remove or change subjects or headings already listed.

412. Her Majesty may also amend Parts 2 and 3 of Schedule 7, which set out general restrictions on the passing of Bills, and exceptions to those restrictions respectively.

413. Subsection (2) provides that Orders in Council made by Her Majesty amending Schedule 7 can also make changes to enactments, including Acts of the Scottish Parliament and instruments made under those Acts, prerogative instruments, and other instruments or documents, where those changes are appropriate in connection with the amendment to Schedule 7.

414. Subsection (3) provides that Orders in Council under this section can make provisions which apply retrospectively.

415. For example, this power could be used to clarify the extent of a subject in Part 1 of Schedule 7, where there has been a legal challenge to the validity of an Act of the Assembly made in relation to that subject, and there is a need for legal certainty about the extent of the subject.

416. Subsection (4) provides that, except in relation to the first Order in Council amending Schedule 7 a recommendation to Her Majesty to make such an Order must only be made if the draft Order in Council has been approved by the House of Commons, the House of Lords and the Assembly.

417. Subsection (5) makes it clear that if a change is made to Schedule 7, and thus to the Assembly's power to pass Acts, the change is to have no effect upon Acts already passed (or approved, in the case of Acts which have been reconsidered and amended) by the Assembly. They will remain law. This is subject to any retrospective provision that may be made in the Order in Council.

Procedure

Section 110: Introduction of Assembly Bills

418. This section imposes certain requirements in relation to the introduction into the Assembly of Assembly Bills.
419. A Bill may, subject to provisions of standing orders, be introduced by the First Minister, any of the Welsh Ministers, any Deputy Welsh Minister, the Counsel General or any Assembly Member. Standing orders might restrict the ability of some of these persons to introduce a Bill, for example by requiring Bills giving rise to public expenditure to be introduced by Ministers.

420. The person in charge of a Bill must, on or before the Bill's introduction, make a statement expressing their view that the provisions in the Bill are within the Assembly's legislative competence.

421. The Presiding Officer of the Assembly must on or before introduction of a Bill, decide whether or not it is within the Assembly's legislative competence and state that decision.

Section 111: Proceedings on Bills

422. This section requires the Assembly's standing orders to contain certain provisions in relation to the consideration and passing (or approval, in the case of Bills which are reconsidered and amended) of Assembly Bills.

423. Standing orders must ensure that, generally, Bills must pass through three stages.

424. There must firstly be an opportunity for a general debate about the Bill by the Assembly, and for Assembly Members to vote on its general principles. This stage mirrors the Second Reading stage of Bills in the UK Parliament.

425. There must then be a stage involving consideration of, and an opportunity for Assembly members to vote on, the details of the Bill, corresponding to the committee stage of a Bill at Westminster.

426. Finally there must be a stage at which members can vote on whether to pass the Bill in its final form. This is equivalent to the Third Reading of a Parliamentary Bill.

427. Standing orders may allow a different procedure in the case of Bills which fall within certain categories, namely those which restate the law, those which repeal or revoke spent enactments and “private” Bills, that is ones which change the law only on a very localised basis. In the case of the first two, standing orders may well permit a streamlined procedure whilst in the case of “private” Bills they are likely to include an opportunity for individuals affected to make representations to the Assembly, as in the case of private Parliamentary Bills.

428. Standing orders must include provision for securing that, except in specified circumstances (which are left to standing orders to define) a Bill can only be passed if the text of the Bill is in both English and Welsh.

429. Standing orders must provide for a Bill which has been passed by the Assembly to be reconsidered in certain circumstances. These are:

   a) where the Supreme Court has decided that the Bill is outside the Assembly's legislative competence, following the Counsel General or the Attorney General referring that issue to the Supreme Court under section 112;
   b) where the Counsel General or the Attorney General has referred the issue of whether the Bill is within the Assembly's legislative competence to the Supreme Court under section 113, the Supreme Court has then referred an issue arising out of it to the European Court of Justice for a preliminary ruling, but the reference to the Supreme Court has been withdrawn following a decision by the Assembly that it wishes to reconsider the Bill;
   c) where the Secretary of State has made an Order under section 114 prohibiting the Clerk of the Assembly from submitting a proposed Bill for approval by Her Majesty.
430. If a proposed Assembly Bill is, upon reconsideration, amended by the Assembly, then there must be a further final stage at which the amended Bill can be approved or rejected by the Assembly.

Section 112: Scrutiny of Bills by Supreme Court

431. This section provides a mechanism through which either the Counsel General or the Attorney General can obtain a decision by the Supreme Court as to whether a Bill or particular provisions of a Bill are within the Assembly's legislative competence. This may only be done within the four week period starting with the date the Bill was passed by the Assembly or, in the case of a Bill which has been reconsidered and approved by the Assembly, starting with the date the Bill was approved by the Assembly.

432. If the Counsel General or the Attorney General formally notifies the Clerk that he or she is not going to make such a reference then he or she is afterwards barred from doing so (unless the Bill has subsequently been reconsidered and approved).

Section 113: ECJ references

433. Where the Counsel General or the Attorney General has referred a Bill to the Supreme Court, and the Supreme Court has referred a question in connection with the matter to the European Court of Justice for a preliminary ruling then, provided neither of these references has been decided or otherwise disposed of, the Assembly may opt to reconsider the Bill under provision made under section 111(6). If it does so the person who referred the Bill to the Supreme Court (i.e. Counsel General or the Attorney General, as the case may be), must request the withdrawal of the reference. If, following reconsideration, the Bill were to be approved, in an amended form, and the Counsel General or Attorney General are not satisfied that the amendment has removed the cause for referring the Bill to the Supreme Court, a fresh reference may be made, within four weeks of that approval.

Section 114: Power to intervene in certain cases

434. This section gives the Secretary of State a power to prevent, in certain circumstances, a Bill being submitted for Royal Assent.

435. Subsection (1) sets out the circumstances in which the Secretary of State may make an order namely, where the Secretary of State has reasonable grounds to believe that the Bill contains provisions which:

a) would have an adverse effect upon any matter which is not listed in Part 1 of Schedule 7 to this Act, or which falls within any of the exceptions listed in that Part of the Schedule; or
b) might have a serious adverse impact on water resources in England, water supply in England or the quality of water in England; or
c) would have an adverse effect on the operation of the law as it applies in England; or
d) would be incompatible with any international obligations, or the interests of defence or national security.

436. Such an order may be made within four weeks of the passing of the Bill, or of the approval of the Bill following reconsideration under section 111(6) or, if a reference to the Supreme Court has been made under section 112, within four weeks of the reference being decided or otherwise disposed of. If the Secretary of State has formally notified the Clerk that no order is going to be made in relation to the Bill such an order is barred in relation to it (unless the Bill is reconsidered and approved by the Assembly under section 111(6) after that notification was given).

Section 114: Royal Assent
437. Once a Bill has been passed (or approved upon reconsideration) by the Assembly, it is for the Clerk to submitting it for Royal Assent. The Clerk may not however do so:
   a) if the Counsel General or the Attorney General is still entitled to refer to the Supreme Court under section 112 the issue of whether a provision in the Bill is within the Assembly's legislative competence (i.e. if the four week period for doing so has not expired and they are not both barred from making a reference as a result of having notified the Clerk that they do not intend to do so);
   b) if the Counsel General or the Attorney General has made a reference to the Supreme Court under section 112 which has not yet been decided or disposed of;
   c) if the Secretary of State is still entitled to make an order under section 114 (see the notes to that section) prohibiting the Clerk from submitting the Bill for Royal Assent.

438. The Clerk may not submit a Bill for Royal Assent in its unamended form if:
   a) the Supreme Court has ruled, on a reference under section 112, that the Bill, or any provision of it, would not be within the Assembly's legislative competence; or
   b) such a reference has been withdrawn as a result of a decision by the Assembly that it wishes to reconsider the proposed Bill.

439. Once Royal Assent has been given the Clerk must write the date of that approval on the text of the Bill and must, in accordance with standing orders, notify the Assembly of the date of Royal Assent.

Section 116: Welsh Seal and Letters Patent

440. This section establishes a Welsh Seal and designates the First Minister as its keeper. The section also allows provision to be made by an Order in Council about the preparation and publication of the Letters Patent that signify that Royal Assent has been given to an Act of the Assembly.

PART 5: FINANCE

Overview of Part 5

441. Part 5 puts in place new provisions, dealing with the administration of the finances of the Assembly and the Welsh Ministers. These draw on the relevant sections of the Scotland Act 1998. But the provisions concerning the manner in which the Assembly will decide on the spending plans of Welsh Ministers (and others) represent a new model.

The Welsh Consolidated Fund

442. Section 117 establishes a Welsh Consolidated Fund (WCF). The Fund will receive payments from the Secretary of State out of moneys voted by Parliament (section 118). The moneys voted by Parliament to the Secretary of State will be calculated having regard to the “Barnett Formula”, to determine what is known as the “Welsh Block Grant”. The Secretary of State will deduct the administrative expenses of the Wales Office from this, and pay the remainder into the WCF. The Secretary of State will be required, at least four months before the beginning of each financial year, to prepare and lay before the Assembly a written statement with an estimate of payments to be made into the Fund, and to the Welsh Ministers, First Minister and Counsel General, in that financial year (section 119). Under section 120, provision can be made so that certain categories of receipts are to be dealt with other than by payment into the WCF, and section 130 makes provision for receipts paid into the WCF by mistake which need to be recovered.

443. Sections 121–123 make provision for the Welsh Ministers to borrow from the Secretary of State either to cover any short-term deficit in the Fund or to provide a working balance. The total
of such borrowing may not exceed £500m at any given time. The Secretary of State will be required to prepare accounts in respect of loans issued under these powers.

444. Sections 124–129 are the provisions specifying the processes which must be complied with for expenditure out of the Fund to be regular. The norm is that sums may only be paid out of the WCF on the authority of a Budget resolution passed by the Assembly. There will be a small number of instances in which a sum may be paid out of the WCF without the need for a reference to it in a Budget motion, because the sum has been “charged on” the Fund by an enactment (for an example in this Act, see section 20(5)). As stated above, there is also special provision, in section 130, for monies that were paid into the WCF by mistake to be paid out of it without the authority of a Budget resolution. The only other exceptions to the principle that a Budget resolution of the Assembly is required before sums can be spent from the WCF are described in sections 127 and 128 (see below).

445. Section 125 sets out the requirement for an annual Budget motion (which may be moved only by the First Minister or another Welsh Minister) seeking authorisation for:

   a) the amounts of resources that can be used on the “services and purposes” specified in the motion,
   b) the amounts of accruing resources which may be retained (rather than being paid into the Welsh Consolidated Fund), and
   c) the amounts of cash that may be issued from the Fund.

446. Section 126 permits one or more Supplementary Budget motions to be moved to vary the amount of resources that can be used for specified services and purposes in a particular financial year, or to add new services and purposes and allocate resources to them. A Supplementary Budget motion may also vary the amounts of resources that can be retained instead of being paid into the WCF, or authorise new retentions. Once a Budget motion has been approved by the Assembly and becomes a Budget resolution, sums may be paid out of the WCF in support of the services and purposes referred to in the resolution; it will be for the Auditor General for Wales, under section 129, to give approvals for sums to be paid out, if satisfied that the payment out will be in accordance with the relevant Budget resolutions.

447. As mentioned above, sections 127 and 128 provide exceptions to the general principle of no payments out of the Fund without a Budget resolution (or a provision charging the payment in question on the WCF). Section 127 deals with the situation where no Budget resolution has been adopted by the Assembly by the beginning of the relevant financial year. In the absence of such a resolution, resources for services and purposes may be used up to a specified level, determined as a fixed percentage of the preceding financial year’s provision for that service or purpose; in this way, a failure by the Assembly to pass a Budget resolution by the beginning of the financial year will not automatically lead to the public services funded by the Welsh Ministers exhausting their resources within a few days of the beginning of the financial year. Section 128 allows for resources to be used, up to a specified level, in emergency situations where Welsh Ministers consider the expenditure to be in the public interest and it is not reasonably practicable, for reasons of urgency, for a Budget motion to be put down to authorise the expenditure. In such a situation, the Welsh Ministers are required as soon as possible to lay a report before the Assembly explaining why they considered the action they took to be necessary.

Accounts and Audit — Sections 131–145

448. Provision is made in the Act for the preparation of accounts in respect of the use of resources by the Welsh Ministers and Counsel General; payments into and out of the WCF; the use of resources
by the Assembly Commission; and for the preparation by the Welsh Ministers of “Whole of Government of Wales accounts”, a concept deriving from the Government Resources and Accounts Act 2000. The Act defines who are to be the Accounting Officers for the Welsh Ministers and the Assembly Commission. The Auditor General for Wales (AGW) has responsibility for examining and certifying these accounts, and for carrying out examinations into the economy, efficiency and effectiveness with which the Welsh Ministers and the Assembly Commission have used their respective resources in discharging their functions. The AGW can lay before the Assembly any report made by the AGW in the exercise of these responsibilities, and must do so in the case of reports on accounts, or where the AGW considers it is in the public interest to do so (Schedule 8, paragraph 19). The Audit Committee can give views on what examinations the AGW should carry out and can also under section 143 consider and report itself on the reports and accounts laid before the Assembly by the AGW. The Comptroller and Auditor General may carry out examinations into the payments into and out of the WCF, and report the results of such examinations to the House of Commons and the Assembly.

449. Section 145 and Schedule 8 to the Act make revised provision for the office of AGW. In particular, it is for Her Majesty to make appointments to the office of AGW, on the nomination of the Assembly; but the AGW is not in the exercise of any functions to be subject to the direction or control of either the Assembly or the Welsh Assembly Government. The AGW obtains funding by submitting an estimate of the expenses of carrying out the functions of that office to the Audit Committee. This is then laid before the Assembly, with any modifications the Committee considers appropriate; but if modifications are to be proposed, that may only be done following consultation with the AGW. The Assembly will vote on the resources to be allocated to the AGW as part of the Budget resolution process, referred to above.

DETAILED COMMENTARY ON SECTIONS INPART 5

Welsh Consolidated Fund

Section 117: Welsh Consolidated Fund

450. This section establishes the Welsh Consolidated Fund (WCF), and stipulates that it is to be held with the Paymaster General. The norm is that sums may only be paid out of the WCF on the authority of a Budget resolution passed by the Assembly. Thus, the creation of the WCF provides the mechanism whereby the Assembly will control the use of resources by the Welsh Ministers and other bodies and offices funded directly from the WCF.

Payments into Welsh Consolidated Fund

Section 118: Grants

451. Subsection (1) provides that payments from the Secretary of State, deriving from the moneys voted to him or her by Parliament, must be paid into the WCF.

452. Subsection (2) empowers any Minister of the Crown, and any government department, to make payments to the Welsh Ministers, the First Minister or the Counsel General. This may happen where, for example, the Welsh Ministers agree to carry out, in Wales, a function of a UK Minister of the Crown. By virtue of section 120(1), such sums will normally fall to be paid into the WCF. However, this requirement may be overridden by the Assembly passing a resolution under section 120(2).

Section 119: Statement of Estimated Payments
453. In order to assist the Welsh Ministers in formulating a Budget motion under section 125 and to assist the Assembly in scrutinising that Budget motion, section 119 requires the Secretary of State to lay a written statement before the Assembly at least four months before the beginning of each financial year. The statement must contain an estimate of the total payments that the Secretary of State will pay into the WCF in that financial year. It must also contain an estimate of how much will be paid to the Welsh Ministers, the First Minister or the Counsel General in that financial year (whether by Ministers of the Crown, government departments or other persons), together with any other information that the Secretary of State considers appropriate (see subsections (1), (2), (4) and (5)).

454. Under subsection (3), the statement must also show how much of the Welsh Block Grant, voted to the Secretary of State for Wales by Parliament, the Secretary of State proposes to deduct (in particular, to meet the expenses of the Secretary of State’s own department, the Wales Office), before paying the remainder into the WCF.

Section 120: *Destination of Receipts*

455. This section deals with which sums need to be paid into the WCF, and which do not. The normal position is that sums received by the Welsh Ministers, the First Minister, the Counsel General, the Assembly Commission, the AGW or the Public Services Ombudsman for Wales are to be paid into the WCF (because all those bodies and office-holders are funded out of that Fund — see subsection (1)).

456. However, there are a number of exceptions to this, namely:

a) where legislation (including this Act) expressly disapplies the general requirement for receipts to be paid into the WCF (see, for an example in this Act, Schedule 8, paragraph 9(3));

b) where the Assembly has resolved that receipts in the relevant category are, in principle, eligible for retention (as opposed to having to be paid into the WCF) by the Welsh Ministers, the First Minister, the Counsel General, the Assembly Commission, the AGW or the Public Services Ombudsman for Wales; a Budget resolution of the Assembly (for which see section 125) must also have authorised the maximum amount, up to which the person in question can retain the resources for the relevant financial year (subsection (2)).

457. In addition, HM Treasury can effectively override a requirement that sums be paid into the WCF. The Treasury can make an Order under subsection (3) designating certain categories of receipt. The consequence of this is that the Welsh Ministers have to pay an amount equivalent to those receipts into the UK Consolidated Fund, via the Secretary of State for Wales. This power of HM Treasury is outside the Assembly Budget process (for which see below), because the sums involved are charged on the WCF by virtue of subsection (6). This means that they are paid automatically out of the WCF, without the need for Assembly approval in a Budget resolution. Subsection (7) provides that these Treasury Orders are to be made by negative resolution procedure in the House of Commons (in accordance with the convention that the Commons alone controls matters relating to the supply of finance to the executive).

**Borrowing**

Sections 121–123

458. Sections 121–123 make provision for the Welsh Ministers to borrow from the Secretary of State, either to cover a short term deficit in the WCF, or to provide a working balance within that Fund (section 121(1)). The total assets borrowed may not exceed £500 million at any given time.
This overall limit includes loans made by the Secretary of State to the National Assembly for Wales as constituted by the Government of Wales Act 1998, and any other loans issued out of the National Loans Fund which the Assembly is liable to repay, to the extent that these are still outstanding when the Welsh Ministers come into existence (Schedule 11, paragraph 57). The £500 million ceiling can be increased by the Secretary of State by order, provided that HM Treasury consent (section 122(3)). Such an Order is subject to affirmative procedure in the House of Commons (section 122(4)), thus preserving the principle that that House should control the supply of money to the executive.

459. The Assembly will not be able to control, by means of its Budget process, the rate at which such loans are repaid to the Secretary of State, as HM Treasury may determine the timing and interest rate of those repayments (section 121(2)), and sums required for the repayments are “charged on” the WCF (section 121(3)) (for which see the note on section 124 below). Sums received by the Secretary of State by way of repayment will be paid into the National Loans Fund, from which they were originally provided (section 122(1) and (5)).

460. Under section 123, the Secretary of State is required to prepare, for each financial year, accounts in respect of loans issued under these provisions. These accounts are to include any outstanding loans or advances made by the Secretary of State to the Assembly as constituted by the Government of Wales Act 1998. The accounts are to be sent to the Comptroller and Auditor General for examination (section 123(2)). The Comptroller and Auditor General must lay copies of those accounts, and the Comptroller and Auditor General's report on them, before each House of Parliament (section 123(3)).

**Expenditure**

Sections 124, 125, 126, 127, 128, 129 and 130

461. Sections 124–130 deal with the processes which must be complied with for expenditure out of the WCF to be regular. The normal process is that sums will only be paid out of the WCF on the authority of a Budget resolution passed by the Assembly (section 124(1)(b) and section 125). There are three sets of exceptions to this norm.

462. The first is that, in a small number of cases, sums will have been “charged on” the Fund by legislation (for an example in this Act, see section 20(5)). Sums so charged are paid out of the Fund automatically, without the need to be approved in a Budget resolution (although the AGW still has to approve the issue of the sum, having been satisfied that it is indeed charged on the WCF (section 129 and the final words of section 124(1)).

463. The second set of exceptions is where the payment out is deemed to have been authorised by a Budget resolution of the Assembly, by virtue of sections 127 or 128 (for more on which, see below).

464. The third exception to the norm applies to sums which were paid into the WCF by mistake — see sections 124(5) and 130.

465. Payments out of the WCF which have been authorised (or deemed authorised) by a Budget resolution of the Assembly, still cannot be made except to meet expenditure of a “relevant person”, or expenditure payable out of the WCF by virtue of legislation (section 124(2)). A “relevant person” for these purposes is defined, in subsection (3), as any of:

- the Welsh Ministers, the First Minister or the Counsel General;
- the Assembly Commission;
c) the AGW, or
d) the Public Services Ombudsman for Wales

466. Sections 125 and 126 set out the process of Budget resolutions. For each financial year, the First Minister or another Welsh Minister must move a Budget motion in the Assembly (section 125(1) and (2)). Normally, the Budget resolution for each financial year will be made by the Assembly in the previous financial year (see section 127(1)). The Budget motion must seek the Assembly's approval for:

a) how much, in terms of resources, can be used on the services and purposes specified in the motion in the financial year to which it relates;
b) how much, in terms of accruing resources, any of the relevant persons (for which see above) can retain (rather than paying those resources into the WCF) for use on the services and purposes specified in the motion; and
c) how much money can be paid out of the WCF in the relevant financial year for use on those services and purposes.

467. The “use of resources”, in accepted accounting terminology, means their expenditure, consumption or reduction in value (section 125(4)). Accruing resources means income, including income from the disposal of capital assets (the latter being known as “non-operating income”).

468. There are thus two aspects to a Budget motion. First, it seeks authorisation for the maximum amount of resources which a relevant person can plan to use on services and purposes approved in the motion. At that point, the income constituting accruing resources may not have materialised in the form of a cash receipt.

469. Secondly, the motion seeks authorisation for the maximum amount of cash that can be issued out of the WCF to be spent on the services and purposes referred to.

470. The Act provides that, as a minimum, there must be one Budget motion per year, known as the “annual Budget motion” (section 125(1)). As stated above, this will normally be moved and passed before the beginning of the financial year to which it relates (section 127(1)). Supplementary Budget motions may also be moved in relation to a financial year (section 126). These may be moved before the beginning of the financial year to which they relate, in the financial year to which they relate, or in a subsequent financial year. They may vary the amounts of resources to be made available for the services and purposes specified in the annual Budget resolution or they may specify new services and purposes, and allocate resources to those. They can also vary the amounts of resources which any of the relevant persons (see above) can retain, or authorise new retentions, rather than paying these into the WCF. And finally, as with annual Budget motions, supplementary Budget motions can seek authority for the AGW to approve the issue of additional sums of cash out of the WCF, or they can vary the amounts of cash which the Assembly has already authorised to be issued out of the WCF.

471. Like annual Budget motions, supplementary Budget motions may be moved only by the First Minister or another Welsh Minister.

472. As referred to above, two of the exceptions to the norm that a Budget resolution of the Assembly is required before sums can be paid out of the WCF are contained in sections 127 and 128. Section 127 deals with the situation where no Budget resolution has been adopted by the Assembly by the beginning of the relevant financial year. In the absence of such a resolution, section 127 provides that resources may be used on services and purposes, and money issued out of the WCF accordingly, up to a specified level. This level is determined as a fixed percentage of the preceding financial
year's provision for each such service or purpose. Likewise, any of the relevant persons (for which see above) can retain resources (rather than paying them into the WCF), up to the same percentage of the amount of resources that they were authorised to retain in the preceding financial year. The percentage in question is 75% up to the end of July in a financial year. Furthermore, if a Budget resolution for the financial year has still not been passed by the end of July, then resources can be used, amounts retained, and cash issued out of the WCF, up to a further 20% of the previous year's authorised amounts; that is, up to 95% overall.

473. Section 128 (Contingencies) is aimed at emergency situations in which:
   a) the Welsh Ministers consider expenditure to be necessary in the public interest;
   b) that expenditure is not authorised under an existing Budget resolution; and
   c) it is not reasonably practicable, for reasons of urgency, for a Budget motion to be put down so as to authorise it.

474. In that situation, section 128 allows resources to be used and cash to be paid out of the WCF, up to a ceiling of 0.5% of the total amount authorised for use by, or 0.5% of the total amount of cash authorised to be issued to, the relevant person, or pursuant to a relevant enactment, for the financial year in question. On current figures, this ceiling would equate to approximately £50 million (in the case of the resource authorisation for the First Minister, Welsh Ministers and Counsel General). Where the Welsh Ministers use this power, they must, as soon as possible, lay a report before the Assembly, setting out the amount of resources and cash involved, and explaining why they considered the action they took to be necessary (subsection (7)).

475. Once payments out of the WCF have been authorised (whether by Budget resolution, by legislative provision “charging” them on the WCF, or under sections 127, 128 or 130), they still cannot be made unless the AGW has granted an approval to draw (section 129). Before doing so, the AGW will need to be satisfied that the conditions laid down in section 124 or section 130 have been met (sections 129(2) and 124(5)). Once an approval to draw has been granted, the Paymaster General, who holds the WCF, must make the funds available to the person entitled to them (section 129(4)).

476. The section makes provision for daily information on payments out of the WCF to be available to the AGW and the principal accounting officer for the Welsh Ministers (subsection (5)).

477. Subsections (6)–(8) make provision concerning the principal accounting officer for the Welsh Ministers. By subsection (6), this is to be the Permanent Secretary to the Welsh Assembly Government — i.e. the most senior civil servant serving the Welsh Assembly Government (see subsection (8)). If there is a temporary vacancy in the post of Permanent Secretary, or the Permanent Secretary is incapable of acting as principal accounting officer to the Welsh Ministers — e.g. because of illness — HM Treasury can appoint a temporary replacement.

Section 131: Welsh Ministers' Accounts

478. Subsection (1) imposes an obligation on the Welsh Ministers to prepare accounts for each financial year in accordance with directions given to them by HM Treasury. By virtue of subsection (2), these accounts are to cover the financial affairs and transactions of the Counsel General. By virtue of subsection (3), the Treasury may direct the Welsh Ministers to include accounts of financial affairs and transactions of other persons.

479. The Treasury's power to direct the form of the Welsh Minister's accounts is based on provisions in the Government of Wales Act 1998. The Treasury does not have an equivalent power under the Scotland Act 1998, because the Scottish Parliament has primary legislative powers which it can
use to dictate the form and content of the accounts of the Scottish Ministers. The power to direct
the form of the Welsh Ministers’ accounts will remain vested in the Treasury unless and until the
Assembly gains the legislative competence to provide otherwise.

480. The Welsh Ministers must submit their accounts to the AGW, who must report on them to the
Assembly (subsections (5) and (6), which also lay down the time-scales within which these actions
must be performed). In examining the accounts, the AGW must be satisfied that the Welsh Ministers’
and the Counsel General’s expenditure, recorded in the accounts, was incurred in accordance with
the law and with the particular authority which governs it (for instance, in accordance with the
provisions of a Budget resolution of the Assembly, in so far as it relates to the Welsh Ministers and
the Counsel General). The AGW must also be satisfied that monies received by the Welsh Ministers
or the Counsel General for a particular purpose or purposes have been used only on that purpose
or purposes.

481. Subsection (8) enables duplication of effort to be avoided, by giving the Treasury a power,
by direction, to relieve the Welsh Ministers of a statutory obligation to prepare accounts dealing
with any matters which the Welsh Ministers would have to include in accounts which the Treasury
have directed them to prepare under this section.

Section 132: Account Relating to Welsh Consolidated Fund

482. As well as accounts of their own transactions, the Welsh Ministers must prepare an account
of all receipts into and payments out of the Welsh Consolidated Fund in any financial year
(subsection (1)). The account must be prepared in accordance with directions given to the Welsh
Ministers by the Treasury (subsection (2)). The account must be submitted to the AGW, who must
report on it to the Assembly (subsections (4) and (5), which also lay down the time-scale within
which these actions must be performed). In examining the account, the AGW must be satisfied that
any payments out of the Welsh Consolidated Fund, referred to in the account, complied with the
conditions laid down in sections 124 or 130, and that any monies received by the Welsh Ministers
were paid into the Welsh Consolidated Fund, unless they did not have to be by law (subsection
(6)).

Section 133: Accounting Officers for Welsh Ministers

483. This section deals with the functions of the principal accounting officer for the Welsh Ministers,
as designated by section 129(6). These functions will also relate to the finances of the Counsel
General.

484. Essentially, principal accounting officers are responsible for the propriety and regularity of
the finances of the body in which they hold that office, and for ensuring that that body uses its
resources with economy, efficiency and effectiveness.

485. The principal accounting officer may designate other members of the staff of the Welsh
Assembly Government as additional accounting officers, to assist in the principal accounting
officer's role.

Section 134: Accounts of Subsidiaries of Welsh Ministers

486. This section ensures that the AGW, when examining any accounts of the Welsh Ministers,
has a right of access to documents and information relating to the accounts of any subsidiary of the
Welsh Ministers. The AGW also has the right to any assistance or explanation, which the AGW
reasonably thinks is necessary in that connection, from any person holding or accountable for any
such document (subsection (1)).
487. In this context, a “subsidiary of the Welsh Ministers” means (subsection (4)):
   a) a body corporate (such as a limited company) or other undertaking in relation to which, if the Welsh Ministers were an undertaking for the purposes of section 259(1) of the Companies Act 1985 (c.6), the Welsh Ministers would be a parent undertaking for the purposes of section 258 of that Act;
   b) a trust of which the Welsh Ministers are settlors; or
   c) a charitable institution of which the Welsh Ministers are founders, but which is neither a body corporate nor a trust.

488. Subsection (2) gives the Treasury a power to direct a subsidiary of the Welsh Ministers to include additional information in its accounts. Such a direction would override any prohibition on the inclusion of that information in accounts of that type (subsection (3)). There are, for instance, legislative rules, which might be relevant here, on the contents of company and charity accounts.

Section 135: Examinations into Welsh Ministers’ Use of Resources

489. This section gives the AGW power to carry out examinations into the economy, efficiency and effectiveness with which the Welsh Ministers and the Counsel General have used their resources in discharging their functions. These are commonly known as “value for money”, or “VFM” examinations. In doing so, the AGW is not entitled to question the merits of the policy objectives being pursued by the Welsh Ministers or the Counsel General (subsection (2)).

490. Before carrying out any such examinations, the AGW must take into account the views of the Audit Committee of the Assembly as to what examinations the AGW should carry out under this provision (subsection (3)). The AGW may, but does not have to, lay a report of the results of any such examination before the Assembly (subsection (4)). The AGW does, however, have to do so where the AGW considers that it is in the public interest so to do (Schedule 8, paragraph 19).

Section 136: Examinations by Comptroller and Auditor General

491. In addition to the AGW’s scrutiny of accounts of payments into and out of the Welsh Consolidated Fund, the Comptroller and Auditor General may carry out examinations into such payments, and report the results to the House of Commons (subsections (1) and (2)). This is because the Welsh Consolidated Fund will be largely made up of monies voted by Parliament to the Secretary of State for Wales, and, in Parliament, the House of Commons controls the supply of finance to the executive.

492. If the Comptroller and Auditor General makes a report to the House of Commons under subsection (2) it must be laid before the Assembly at the same time (subsection (3)).

493. Subsections (4) and (5) deal with the Comptroller and Auditor General’s rights of access to documents, and to assistance, information or explanations, for the purpose of carrying out examinations under this section. These rights extend, not only to the Welsh Ministers, the Counsel General and the Assembly Commission, but to the AGW and to any other person audited by the AGW, other than a Welsh NHS body within the meaning given in section 60 of the Public Audit (Wales) Act 2004 (c.23). The reason for the exclusion of these Welsh NHS bodies is because the Comptroller and Auditor General is not the statutory auditor of the equivalent bodies in England.

494. Subsection (6) seeks to avoid unnecessary duplication of effort, by providing that, before carrying out an examination under this section, the Comptroller and Auditor General must consult the AGW and take into account any relevant work done or being done by the AGW.

Section 137: Assembly Commission’s accounts
495. This section obliges the Assembly Commission to prepare accounts for each financial year. As in the case of the Welsh Ministers, the accounts are to be in a form directed by HM Treasury, which can direct the Assembly Commission to include accounts of financial affairs and transactions of other persons (subsections (1) and (2)).

496. The Assembly Commission must submit the accounts to the AGW, who must report on them to the Assembly (subsections (4) and (5), which also lay down the time-scale within which these actions must be taken). In examining the accounts, the AGW must be satisfied that the Assembly Commission's expenditure, recorded in the accounts, was incurred in accordance with the law and with the particular authority which governs it (for instance, in accordance with the provisions of a Budget resolution of the Assembly, in so far as it relates to the Assembly Commission). The AGW must also be satisfied that monies received by the Assembly Commission for a particular purpose or purposes have been used only on that purpose or purposes.

Section 138: Accounting officers for Assembly Commission

497. This section designates the Clerk of the Assembly (see section 26) as the principal accounting officer for the Assembly Commission (subsection (1)). Accounting officers are essentially responsible for the propriety and regularity of the finances within their remit, and for ensuring that the body of which they are the principal accounting officer uses its resources with economy, efficiency and effectiveness.

498. If there is a temporary vacancy in the office of Clerk, or if the Clerk is incapable as acting as principal accounting officer for the Assembly Commission — e.g. because of illness — HM Treasury can appoint a temporary replacement (subsection (2)).

499. The principal accounting officer may designate other members of the staff of the Assembly as additional accounting officers, to assist in the principal accounting officer's role.

Section 139: Accounts of subsidiaries of Assembly Commission

500. This section ensures that the AGW, when examining any accounts of the Assembly Commission, has a right of access to documents and information relating to the accounts of any subsidiary it may have. It also gives the AGW a right to any assistance or explanation which the AGW reasonably thinks is necessary from any person holding or accountable for such a document (subsection (1)).

501. In this context, a “subsidiary of the Assembly Commission” means (subsection (4)):
   a) a body corporate (such as a company) or other undertaking (as defined in section 259(1) of the Companies Act 1985 (c.6), in relation to which the Assembly Commission is a parent undertaking for the purpose of section 258 of that Act;
   b) a trust of which the Assembly Commission is settlor; or
   c) a charitable institution of which the Assembly Commission is founder, but which is neither a body corporate nor a trust (subsection (4)).

502. Subsection (2) gives the Treasury a power to direct a subsidiary of the Assembly Commission to include additional information in its accounts. Such a direction would override any prohibition on the inclusion, in accounts of that type, of that information (subsection (3)). Legislative rules on company or charity accounts may be relevant here.

Section 140: Examinations into Assembly Commission's use of resources

503. This section gives the AGW power to carry out examinations into the economy, efficiency and effectiveness with which the Assembly Commission has used its resources in discharging its
functions. These are commonly known as “value for money”, or “VFM” examinations. In doing so, the AGW is not entitled to question the merits of the policy objectives being pursued by the Assembly Commission (for example, a policy concerning recruitment or employment of staff) (subsection (2)).

504. Before carrying out any such examinations, the AGW must take into account the views of the Audit Committee of the Assembly as to what examinations the AGW should carry out under this provision (subsection (3)). The AGW may, but does not have to, lay a report of the results of any such examination before the Assembly (subsection (4)). The AGW does, however, have to do so where the AGW considers that it is in the public interest so to do (Schedule 8, paragraph 19).

Section 141: Whole of government accounts: Welsh Ministers, and

Section 142: Functions of Auditor General

505. Section 141 makes provision for the preparation, by the Welsh Ministers, of “Whole of Government accounts” in relation to Wales. This concept was introduced by the Government Resources & Accounts Act 2000 (c.20). It is a set of accounts for a group of bodies, each of which appears to HM Treasury to exercise functions of a public nature or to be entirely or substantially funded from public money (section 9(1), Government Resources & Accounts Act 2000). It can also include information about activities of other persons or bodies, which appear to the Treasury to be activities of a public nature (section 9(2), Government Resources & Accounts Act 2000). Such accounts can, therefore, be used to give a total picture of the financial transactions of the public sector, or a part of the public sector.

506. Under section 10(8) of the Government Resources & Accounts Act 2000, as amended by the Act, the Treasury can make arrangements with the Welsh Ministers to gather information from bodies designated by the Treasury for the purpose of preparing Whole of Government accounts in relation to Wales. Where such an arrangement exists, the Welsh Ministers must prepare a set of accounts for those bodies (subsection (2)). The accounts may include information about activities which are not activities of bodies designated by the Treasury, but which appear to the Welsh Ministers to be activities of a public nature (subsection (3)). Before designating a body, or giving any direction to it, the Treasury must consult the Welsh Ministers where it thinks appropriate. This will normally be where the body has activities relating wholly, or in significant parts, to Wales.

507. The section makes provision as to the form of the accounts (subsections (2), (4) and (6)).

508. The Welsh Ministers must send accounts under this section to the AGW by 30th November in the following financial year, or such other date as they may prescribe by Order after consulting HM Treasury and the AGW. The reason for this power to change the date is that the system of Whole of Government accounts is still relatively new and aspects of it are still being piloted by the Treasury.

509. The AGW must examine accounts sent to the AGW under section 141 with a view to being satisfied that they present a true and fair view (section 142(1)). The AGW must then report on the accounts to the Assembly (subsection (2)). This must be done within four months of the accounts being submitted to the AGW (subsection (2)). The auditors of the bodies included in the Whole of Government accounts must give the AGW such information and explanations as the AGW may reasonably require to carry out functions under section 142 (subsection (3)).

Section 143: Audit Committee Reports
510. The Audit Committee of the Assembly can consider, and report to the Assembly on, any accounts, statement of accounts or report laid before the Assembly by the AGW or the AGW's own auditor (subsection (1)).

511. Thus, in addition to the scrutiny of accounts by the AGW, and the AGW's power to examine and report on the value for money achieved by the Welsh Ministers or the Assembly Commission, the Audit Committee may provide a further level of scrutiny, based on the findings of the AGW. This power of the Audit Committee also extends to other reports and accounts, and reports of examinations, which the AGW will lay before the Assembly. These include examinations into the economy, efficiency and effectiveness with which a body or office specified in Schedule 17 to the Government of Wales Act 1998 has used its resources in discharging its functions, or reports on the accounts of Welsh NHS bodies, as defined in section 60 of the Public Audit (Wales) Act 2004 (c.23).

512. In addition to these powers of the Audit Committee, the Committee can take evidence, if requested to do so, on behalf of the House of Commons Committee of Public Accounts, and report its findings to that Committee. The Committee of Public Accounts can take evidence from devolved Welsh public bodies, and would usually do so on the basis of a report from the Comptroller and Auditor General (see section 136). The persons from whom the Audit Committee can take evidence under this power are:
   a) the principal accounting officer for the Welsh Ministers;
   b) the principal accounting officer for the Assembly Commission, and
   c) any additional accounting officer designated by either of them.

Section 144: Publication of Accounts and Audit Reports etc

513. This section imposes an obligation on the Assembly to publish the documents referred to in subsection (2) as soon after they are laid before the Assembly as is reasonably practicable.

514. The documents in question are:
   a) any accounts, statement of accounts or reports laid before the Assembly by the AGW;
   b) any accounts or reports laid before the Assembly by the AGW's own auditor;
   c) any report laid before the Assembly by the Audit Committee under section 143(1), i.e. a report by the Audit Committee on any accounts, statement of accounts or report laid before the Assembly by the AGW or the AGW's own auditor; and
   d) the annual estimate prepared by the AGW of the income and expenses of the AGW’s office for the following financial year, submitted to the Audit Committee under paragraph 12(1) of Schedule 8 to the Act, as amended by the Audit Committee if applicable.

Section 145: Auditor General

515. This section provides for the continuation of the office of Auditor General for Wales or Archwilydd Cyffredinol Cymru. The office was first established by section 90 of the Government of Wales Act 1998 (c.38).

516. Schedule 8 makes other provision concerning the office of AGW.

PART 6: MISCELLANEOUS AND SUPPLEMENTARY

Overview of Part 6

517. Part 6 of the Act deals with Miscellaneous and Supplementary matters; only some of these are referred to here.
518. The provisions (ss.116–118) in the 1998 Act relating to Welsh public records are carried forward into this Act, with amendments. These take account of the changes being implemented by this Act, together with other changes in public administration in Wales (so for example the records of the newly-created Welsh Centre for Health are included as Welsh public records).

519. In the same way, the existing provisions in Schedule 8 of the 1998 Act on legal proceedings on “Devolution issues” are carried forward into the new Act as Schedule 9, but the provisions are updated to take account of the creation of the Supreme Court by the Constitutional Reform Act 2005.

520. Sections 150, 151 and 153 deal with issues potentially arising as a result of use by the Assembly of its Measure-making or Act-making powers. Section 150 (which is based on s.104 of the Scotland Act 1998) authorises the Secretary of State to make orders amending legislation or any other instrument or document consequential upon an Assembly Measure or Act or another piece of subordinate legislation relating to Wales. The purpose of this is to enable the Secretary of State to ensure that the statute book for England and Wales maintains general consistency and coherence, and that questions as to the meaning of legislation (other than that made by the Assembly) are not inadvertently raised as a result of any Measure adopted by the Assembly. Section 151 is similarly a “tidying-up” power, enabling Her Majesty in Council to make orders to deal with any consequences of possible ultra vires action by the Assembly in exercise of its legislative functions. Section 153 carries forward, with amendments, the existing provision (s. 110) of the 1998 Act, enabling courts or tribunals, in circumstances where they have concluded that either the Assembly or the Welsh Ministers have gone beyond their legislative powers, to make orders limiting or removing the retrospective effect of any such conclusion.

521. Finally, sections 154 and 156 provide guidance to the courts on the interpretation of Assembly legislation. By section 156, and following s.122 of the 1998 Act, the English and Welsh texts of legislation are to be treated as of equal standing. Section 154 authorises a court to “read down” Assembly legislation, so far as that is possible, in order to be able to conclude that a provision in issue is intra vires.

DETAILED COMMENTARY ON SECTIONS IN PART 6

Welsh public records

Section 146: Status of Welsh public records

522. This section carries through, with some amendments, the provision made by section 116 of the Government of Wales Act 1998. The effect of the section is that Welsh public records, as defined by section 148, are governed by the Public Records Act 1958 until such time as the Lord Chancellor makes an order under section 147 imposing or conferring functions in respect of them (for example, a duty to preserve them) on either the Welsh Ministers, or a member of staff of the Welsh Assembly Government. The Public Records Act 1958 provides for the preservation and safe-keeping of public records. Rights of access to such records are now governed by the Freedom of Information Act 2000.

523. However, under the definition in section 148, the records of the Assembly and the Assembly Commission are not Welsh public records. Therefore, the Lord Chancellor cannot make an order under section 147 imposing a duty on the Welsh Ministers or a member of staff of the Welsh Assembly Government to preserve those records. Furthermore, those records are not public records for the purposes of the Public Records Act 1958. Accordingly, in analogy with the position in respect of the records of the UK Parliament and the Scottish Parliament, the Assembly and the
Assembly Commission will be responsible for their own records, and are not subject to a statutory regime in relation to the records' maintenance. However, under this Act, the Assembly and the Assembly Commission will both be subject to the access to information regime in the Freedom of Information Act 2000.

524. Records which are records of the Assembly constituted under the Government of Wales Act 1998, but which are to transfer to the Welsh Ministers, the First Minister or the Counsel General by virtue of paragraphs 38 and 39 of Schedule 11 of this Act (unless an Order in Council makes alternative provision, records connected with a function which is transferred under this Act to the Welsh Ministers, the First Minister or the Counsel General will transfer to the same transferee), are Welsh public records by virtue of section 148(1)(a). Accordingly, by virtue of section 146 they will be subject to the provisions of the Public Records Act 1958 until such time as the Lord Chancellor makes an order under section 147. Records of the Assembly constituted under GoWA which have not transferred to the Welsh Ministers will be the responsibility of the Assembly/Assembly Commission.

Section 147: Transfer of responsibility

525. This section replicates the Lord Chancellor's order-making power under section 117 of the Government of Wales Act 1998 except in so far as post-separation the duty to preserve Welsh public records can only be imposed on the Welsh Assembly Government rather than on the Assembly.

526. It allows the Lord Chancellor (who is otherwise responsible for Welsh public records by virtue of section 146 and the Public Records Act 1958) to confer or impose functions, including responsibility for the preservation and safe-keeping of such records on the Welsh Ministers, or on a member of staff of the Welsh Assembly Government.

527. The Lord Chancellor must consult the Welsh Ministers before making an order under this section.

Section 148: Meaning of “Welsh public records”

528. This section defines “Welsh public records”. The Lord Chancellor can make an order under this section designating other records as “Welsh public records”, but cannot do so in respect of certain records, including those of the Assembly or the Assembly Commission.

Miscellaneous

Section 149: Resolution of devolution issue

529. This section gives effect to Schedule 9, which makes detailed provision about the resolution of devolution issues.

Section 150: Power to make consequential provision

530. This section enables the UK Government to make subordinate legislation to deal with the consequences of provision made by or under ‘Welsh legislation’.

531. The section enables the Secretary of State by order, to make provision which he considers appropriate in consequence of any provision made by or under an Assembly Measure or Act, or any provision of subordinate legislation made, confirmed or approved (or purporting to be made, confirmed or approved) by the Welsh Ministers, the First Minister or the Counsel General, or any provision of subordinate legislation made, confirmed or approved (or purporting to be made,
confirmed or approved) by a person other than a Minister of the Crown under an Act of Parliament
where the statutory instrument is required to be laid before the Assembly.

532. An order under this section can make provision having retrospective effect and may modify
any enactment, prerogative instrument or other instrument or document as is considered appropriate
by the Secretary of State. Orders under this section are subject to negative procedure in Parliament
(i.e. they can be annulled after being made by a resolution of either House of Parliament) unless
they modify an Act, in which case they are subject to affirmative procedure (i.e. they cannot be
made unless they have first been laid before and approved in draft by a resolution of both Houses
of Parliament).

Section 151: Power to remedy ultra vires acts

533. This section enables Her Majesty by Order in Council to make provision in consequence of
an Assembly Measure or Act or an exercise by any person of a function imposed or conferred by
Assembly Measure or Act which is, or is suspected to be, outside the competence of the Assembly
or person. Such provision could be given retrospective effect to enable third parties to be put in the
position they thought they were in before a defect was discovered.

534. An Order in Council under this section can make any modifications as Her Majesty considers
appropriate to remedy any enactment (including an Act of the Scottish Parliament or an instrument
made under such an Act), prerogative instrument or other instrument or document. However, where
the proposed modifications are amendments to or repeals of Acts, a draft statutory instrument has
to be approved by a resolution of both Houses of Parliament before a recommendation can be made
to Her Majesty to make the Order in Council.

535. In circumstances where the Secretary of State has used his power in section 150 to make
modifications of enactments, instruments or documents (see the note to that section), in consequence
of an Assembly Measure, an Act of the Assembly or subordinate legislation made under such
Measure or Act, but it is subsequently considered that the Measure or Act in question (including
the Act or Measure under which the subordinate legislation was made) was outside the Assembly’s
legislative competence, the power in section 151 may be used by Her Majesty to reverse or modify
any consequential modifications made in exercise of the power under section 150. Such reversal
or modification of the modifications may be considered appropriate in consequence of the Measure
or Act which is considered to be beyond competence.

Section 152: Intervention in case of functions relating to water etc.

536. This section allows the Secretary of State to intervene where the exercise of (or failure to
exercise) devolved functions by the First Minister, the Welsh Ministers or the Counsel General, or
by anyone else upon whom such functions have been conferred by an Assembly Measure or Act,
might have a serious adverse impact on water resources, supply or quality in England. The
intervention is to take the form of a notice to the person(s) on whom such functions are conferred.
The Environment Agency and any water or sewerage undertaker concerned in the case must also
be notified that the Secretary of State is intervening. The effect of the notice is to allow that the
Secretary of State to exercise the relevant function instead of the person(s) on whom it is conferred.
The notice must explain why the Secretary of State is intervening. It can also make provision about
the effect of actions previously taken by the person(s) on whom the function is conferred, and
extend the time for the taking of steps in relation to that function by the Secretary of State, or any
other person.

Section 153: Power to vary retrospective decisions
537. This section provides for a court or tribunal to remove, or limit any retrospective effect, or suspend any such effect, of a decision by it that an Assembly Measure or Act or a provision of it is outside the Assembly’s competence, or that a provision of subordinate legislation made (or purported to be made) under an Assembly Measure or Act of the Assembly, or by the Welsh Ministers, the First Minister or the Counsel General is outside the power to make that subordinate legislation.

538. The section also provides that one of the criteria the court or tribunal must take into account when determining whether to use this power is the extent to which third parties would otherwise be adversely affected.

539. The section also provides that if a court or tribunal is considering using this power it must in certain circumstances give notice of that fact to the Attorney General and the Counsel General in relation to proceedings in England and Wales, to the Advocate General for Scotland in relation to proceedings in Scotland and to the Advocate General for Northern Ireland in relation to proceedings in Northern Ireland. The appropriate person may then become a party to the proceedings so far as they relate to the making of the order. The section enables the court or tribunal to take into account and award the whole or part of the additional expense incurred as a result of the participation of an appropriate person to the person who incurred them.

540. Provision for court procedures applying for the purposes of this section can be made under any power to make provision for regulating procedure before any court and tribunal. Such provision would include, for example, how to determine the time within which any notice is to be given.

Section 154: Interpretation of legislation

541. This section makes provision for the interpretation of a proposed Assembly Measure, an Assembly Measure, an Act or Bill of the Assembly, and of subordinate legislation made, confirmed or approved or purporting to be made, confirmed or approved under an Assembly Measure or Act of the Assembly. The purpose of the section is to enable the courts to give effect to such legislation, wherever possible, rather than to invalidate it merely because it could be read in such a way as to be outside the competence or powers under which it was made.

542. It provides that, in such case, the legislation is to be read as narrowly as is required for it to be considered to be within competence or powers (if such a reading is possible) and is to have effect according to that narrow reading.

Section 155: Functions exercisable in relation to Wales

543. This section allows Her Majesty to make Orders in Council specifying functions which are, or are not, for such purposes as the Order may specify:
   a) exercisable by the First Minister, the Welsh Ministers or the Counsel General; or
   b) exercisable in relation to Wales.

544. Orders under this section are subject to negative procedure in Parliament, (i.e. they can be annulled after being made by a resolution of either House of Parliament).

Section 156: English and Welsh texts of legislation

545. This section confers equal validity on the English and Welsh texts of legislation (including Assembly Acts and Measures, and subordinate legislation) made bilingually.

546. It also contains a provision allowing the Welsh Ministers to provide by order (subject to the prior approval of the Assembly by formal resolution) that particular Welsh words and phrases in
Assembly Measures or Acts, or in subordinate legislation made under them or by the Welsh Ministers, are to have the same meaning as the English words and phrases specified in relation to them in the order. The purpose of this provision is to ensure that the legislation has the same effect in both languages.

Section 157: Orders and directions

547. This section contains provision applicable to any power in the Act to make orders. It provides that the Welsh Ministers' and a Minister of the Crown's powers under the Act to make orders are to be exercisable by statutory instrument. It also provides that any power under the Act to give a direction includes a power to vary or revoke the direction.

Section 158: Interpretation

548. This section defines terms used in the Act.

Section 159: Index of defined expressions

549. This section contains a list of expressions which are defined or explained in the Act and notes the provisions where such definitions or explanations are to be found.

Section 160: Minor and consequential amendments

550. This section introduces Schedule 10 which contains minor and consequential amendments to other legislation that follow from the provisions of this Act. It enables the Secretary of State by order to make further amendments, in consequence of this Act, to legislation which was made before, or was made in the same Parliamentary session as, this Act.

551. The section also provides for a mechanism that ensures that the Secretary of State cannot make an order making consequential amendments to another Act, unless the order has been approved by both Houses of Parliament. The mechanism is that the Secretary of State must lay a draft of the order before both Houses of Parliament, and cannot make the order until both Houses have made a resolution approving the draft order. If the order does not contain amendments to Acts, a resolution of either House of Parliament can annul that order after it has been made.

Section 161: Commencement

552. This section provides that, subject to the following exceptions, the provisions of this Act come into force immediately after the Assembly ordinary election in 2007. The exceptions are as follows.

553. Provisions which come into force on the date of Royal Assent:

<table>
<thead>
<tr>
<th>Section</th>
<th>Effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schedule 2, paras 5, 6 and 12</td>
<td>Para 5 allows the Assembly Commission to promote awareness of the Assembly election system, and of the current or any pending system of devolved government in Wales. Para 6 allows the Assembly Commission to provide financial assistance to the Electoral Commission to promote awareness of the Assembly election system and the system of devolved government in Wales. Para 12 allows Her Majesty to make an Order in Council providing for the Assembly Commission to be treated to any extent as a Crown body for the purposes of any enactment.</td>
</tr>
<tr>
<td>Sections 95 and 96, and Schedule 5</td>
<td>Section 95 allows Her Majesty to amend Schedule 5 by Order in Council. Schedule 5 contains the matters in relation to which the Assembly may pass Assembly</td>
</tr>
<tr>
<td>Section</td>
<td>Effect</td>
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<td>------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>Section 96 and Schedule 5</td>
<td>Measures, together with general restrictions on such legislative competence and exceptions from those restrictions. Section 96 permits the Counsel General or the Attorney General to refer a proposed Order under section 95 to the Supreme Court to decide whether any matter that the proposed Order would add to Part 1 of Schedule 5 relates to a field listed in that Part.</td>
</tr>
<tr>
<td>Section 96 and Schedule 5</td>
<td>Section 109 allows Her Majesty to amend Schedule 7 by Order in Council. Schedule 7 contains the subjects (including exceptions from those subjects) in relation to which the Assembly would be able to pass Acts of the Assembly if the majority of voters in a referendum voted for the Assembly to have such powers. The Schedule also contains general restrictions on such legislative competence and exceptions from those restrictions.</td>
</tr>
<tr>
<td>Section 96 and Schedule 5</td>
<td>Requirement for the Secretary of State to make a written estimate to the Assembly of payments to be made into the Welsh Consolidated Fund, and to the Welsh Ministers, First Minister and Counsel General, at least four months before the beginning of the financial year. The purpose of commencing this provision on the date of Royal Assent is to allow the Secretary of State to produce written estimates of payments in sufficient time to enable the &quot;old&quot; Assembly established under GoWA to set the budget for financial year 2007–08. Repeal of antecedent provision under s.81 GoWA.</td>
</tr>
<tr>
<td>Section 109 and Schedule 7</td>
<td>Provision allowing the Treasury to designate by order that, in respect of certain sums received by or on behalf of the Welsh Ministers and others (e.g. the Auditor General) the Welsh Ministers are required to pay an equivalent sum into the UK Consolidated Fund, via the Secretary of State.</td>
</tr>
<tr>
<td>Section 109 and Schedule 7</td>
<td>Requirement for an annual Budget motion, and repeal of provision requiring Assembly constituted under GoWA to make an annual statement of proposed expenditure. The provisions in Section 125 are commenced from Royal Assent to enable the &quot;old&quot; Assembly established under GoWA to set an annual Budget for financial year 2007–08.</td>
</tr>
<tr>
<td>Section 109 and Schedule 7</td>
<td>General provisions about orders and directions; interpretation; and index of defined expressions.</td>
</tr>
<tr>
<td>Section 119, and repeal by Schedule 12 of section 81 of GoWA</td>
<td>The amendment made to section 13 of the Political Parties, Elections and Referendums Act 2000 (PPERA), by paragraph 61 of Schedule 10 Provides for when the provisions of this Act come into force.</td>
</tr>
<tr>
<td>Section 119, and repeal by Schedule 12 of section 81 of GoWA</td>
<td>Power for the Secretary of State to make consequential amendments to other enactments.</td>
</tr>
<tr>
<td>Section 120 (3) and (7)</td>
<td>Provision in relation to financial assistance which may be provided by the Assembly Commission to the Electoral Commission under paragraph 6 of Schedule 2 to this Act.</td>
</tr>
<tr>
<td>Section 120 (3) and (7)</td>
<td>Extent, Financial Provision and short title.</td>
</tr>
<tr>
<td>Section 125 and repeal by Schedule 12 of section 86 of GoWA</td>
<td>Repeal by Schedule 12 of s.12(1)(d) GoWA Repeal of provision disqualifying from Assembly membership anyone who has been disqualified from being a local authority member under ss. 17(2)(b) or 18(7) of the Audit Commission Act 1998. Those sections are now spent.</td>
</tr>
<tr>
<td>Section 125 and repeal by Schedule 12 of section 86 of GoWA</td>
<td>Extent, Financial Provision and short title.</td>
</tr>
</tbody>
</table>
554. Provisions which come into force on 1st April 2007:

<table>
<thead>
<tr>
<th>Provisions</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sections 117 and 118, and repeal by Schedule 12 of s.80 GoWA</td>
<td>Establishing the Welsh Consolidated Fund, and requiring the Secretary of State to make payments into it from time to time. Repeal of antecedent provision under s.80 GoWA.</td>
</tr>
<tr>
<td>Section 120(1) and (2), (4) to (6) and (8) and the repeal by Schedule 12 of section 84 of GoWA</td>
<td>Provisions relating to payments into, and payments chargeable on, the Welsh Consolidated Fund.</td>
</tr>
<tr>
<td>Sections 121 and 122, and repeal by Schedule 12 of s.82 GoWA</td>
<td>Provisions allowing the Welsh Ministers to borrow money from the Secretary of State. Repeal of antecedent provision under s.82 GoWA.</td>
</tr>
<tr>
<td>Section 124, and repeal by Schedule 12 of ss. 85(1) and 89 GoWA</td>
<td>Provisions specifying when payments can be made out of the Welsh Consolidated Fund. Repeal of antecedent provision under s.85(1) and 89 GoWA.</td>
</tr>
<tr>
<td>Section 126Sections 128 and 129Schedule 10</td>
<td>Section 126 allows one or more supplementary Budget motions to be moved in any financial year. Section 128 permits payments to be made out of the Welsh Consolidated Fund without a budget resolution in an emergency situation. Section 129 requires approval to draw from the Auditor General for Wales before any payment can be made out of the Welsh Consolidated Fund. The amendments made to the Local Government, Planning and Land Act 1980, the Local Government Finance Act 1988 and the Housing Act 1988, consequential upon the creation of the Welsh Consolidated Fund.</td>
</tr>
</tbody>
</table>

555. Provisions which come into force immediately after the day on which the first First Minister is appointed under section 46, unless they were brought into force on Royal Assent or on 1st April 2007 as set out above, and subject to section 161 (6), which makes provision as to when certain repeals of GoWA will come into force

   a) Any provision so far as it relates to functions of the First Minister, the Welsh Ministers, the Counsel General or the Assembly Commission,
   b) Any provision so far as it relates to the Auditor General or the Comptroller and Auditor General,
   c) Any other provision which is an amendment to GoWA 1998 made by Schedule 10 to this Act,
   d) Repeals by Schedule 12 of provisions which fall to be repealed as a consequence of provisions which fall within sections 161 (4) (a), (b) or (c).

556. The repeal by Schedule 12 of sections 83, 88, 93(8), 97 and 101A of GoWA, and of other provisions of that Act so far as they relate to those sections, is dealt with by section 161 (6).

557. The repeals come into force when those sections (which make various provisions in relation to the preparation of accounts by the Assembly and by the Secretary of State) have been complied with for the financial year ending 31st March 2007 (and for earlier financial years), and sections 123, 131, 132 and 141 do not apply for that financial year.

558. The Assembly Act provisions and provisions relating to the holding of a referendum on those provisions, come into force as follows:

   a) The “Assembly Act provisions” are defined by section 103(8) as sections 107 and 108, and sections 110 to 115.
   b) Sections 107 and 108 give the Assembly primary legislative powers, its legislative competence being set out in section 108 and Schedule 7. These powers are exercisable by
the passing of Acts of the Assembly. Sections 110 to 115 set out related procedural provisions.

c) Sections 103 and 105 come into force immediately after the Welsh ordinary election in 2007. Section 103 provides for the holding of a referendum on whether the Assembly Act provisions should be brought into force. Section 105 provides that if the majority of voters in such a referendum vote in favour of bringing the Assembly Act provisions into force, then the Welsh Ministers can bring them into force on such date as they may specify by making a commencement order. Section 104, which deals with proposals by the Assembly that a referendum should be held, comes into force on the first appointment of a First Minister under the Act.

Section 162: Transitional etc. provision

559. This section gives effect to Schedule 11, which contains transitional and transitory provisions and savings. It also confers a general power on the Secretary of State to make, by order, any other transitional, transitory or saving provision which appears appropriate, including savings from the effect of amendments, repeals or revocations of legislation made by this Act. This power is not limited by Schedule 11, and orders made under this section can modify that Schedule.

560. The provisions made in Schedule 11 and in any order under this section are subject to sections 16 and 17 of the Interpretation Act 1978. Section 16 of that Act makes general provisions about the effect of repeals, e.g. saving the validity of anything done or any right incurred under a previous enactment prior to its repeal. Section 17 provides that where an Act repeals and re-enacts a previous enactment, unless the contrary intention appears, any reference in any other enactment to the repealed enactment shall be construed as one to the re-enacted provision. It also provides that subordinate legislation, or other things done under the repealed enactment, are to have effect as if made or done under the re-enacted provision.

561. Orders under this section are subject to negative parliamentary procedure, unless they amend or repeal any of paragraphs 30 to 35, 50 and 51 of Schedule 11 to this Act, in which case they are subject to affirmative parliamentary procedure.

Section 163: Repeals and revocations

562. This section introduces Schedule 12.

Section 165: Extent

563. The Act’s substantive provisions extend (with limited exceptions) to the whole of the United Kingdom although its practical application will be confined almost entirely to Wales. The provisions which do not extend to the whole of the United Kingdom are section 36(7) to (9), section 39 and section 40(2) and (3). These provisions create criminal offences and extend only to England and Wales. Where the Act makes consequential amendments, these have the same extent as that of the statutes amended.

Section 166: Short title

564. This section provides the title by which reference may be made to this Act in other legislation.

SCHEDULE 1: ALTERATION OF ASSEMBLY ELECTORAL REGIONS

565. Section 2 of the Act says, among other things, how the Assembly electoral regions are delineated and how many seats will be allocated to each.
566. Alterations may need to be made to those regions, and to the numbers of seats allocated to those regions, as a consequence of changes to parliamentary constituencies.

567. This Schedule deals with making alterations in such circumstances. However, until such time as the functions of the Boundary Commission for Wales are transferred to the Electoral Commission, and functions are conferred on the Boundary Committee for Wales, by the coming into force of section 16 (1) of the Political Parties, Elections and Referendums Act 2000 for those purposes, the Schedule is to have effect with the modifications set out in paragraph 1 of Schedule 11.

**Paragraph 1— Introduction**

Paragraph 1(2)

568. Sub-sections 3(1) and 3(2) of the Parliamentary Constituencies Act 1986 require the Electoral Commission to keep under review the representation of England, Scotland, Wales and Northern Ireland in the House of Commons, and to make regular reports to the Secretary of State about the representation of the whole of each of those parts of the United Kingdom (for example, the whole of Wales).

569. Sub-section 3 (3) of the Parliamentary Constituencies Act 1986 also gives the Electoral Commission the power to report to the Secretary of State on a particular area (for example, a specific area of Wales), showing the constituencies into which it thinks the area should be divided, in order to ensure compliance with rules which are set out in Schedule 2 to the Parliamentary Constituencies Act 1986.

570. The effect of sub-section 3A (1) of the Parliamentary Constituencies Act 1986 is that where the Electoral Commission intends to consider making a report under sub-section 3(1) or sub-section 3(2) of that Act, the Boundary Committee for Wales must carry out a review.

571. The purpose of the review by the Boundary Committee for Wales is to enable it to make recommendations to the Electoral Commission about what it should put in its report to the Secretary of State.

572. Under sub-section 3A(2) of the Parliamentary Constituencies Act 1986, the Boundary Committee for Wales must put its recommendations in a report to the Electoral Commission.

573. Paragraph 1(2) of Schedule 1 to this Act says that Schedule 1 will apply where the Electoral Commission intends to consider making a report in respect of the whole of Wales, or a part of Wales under section 3 of the Parliamentary Constituencies Act 1986 and, therefore, the Boundary Committee for Wales is under a duty to make recommendations to the Electoral Commission about what the report should say.

**Paragraph 2— Assembly electoral region issue**

Paragraphs 2(1) and 2(2)

574. Paragraph 9 of this Schedule sets out rules which must be followed in relation to the delineation of Assembly electoral regions, and the allocation of regional seats to those regions.

575. If the Boundary Committee for Wales has provisionally decided upon some recommendations which it is minded to put in a report to the Electoral Commission, and which would involve altering any parliamentary constituency in Wales, it must also consider whether there needs to be any alteration to the Assembly electoral regions, or to the allocation of seats to those regions, in order to ensure that the rules in paragraph 9 of this Schedule would still be complied with, following those alterations to parliamentary constituencies (“the Assembly electoral region issue”).
Paragraph 3— Notice of Committee's proposed recommendations

576. This paragraph requires the Boundary Committee to publish notice of its recommendations in each electoral region affected.

Paragraph 3(1)

577. For the purposes of this paragraph, a recommendation which “affects” an Assembly electoral region need not be a recommendation that the region should be altered. A recommendation that a region should not be altered also counts as a recommendation that affects a region.

Paragraph 3(2)

578. This says what must be in the notice. The notice must:
   a) say what the effect of the Boundary Committee for Wales' proposed recommendations will be;
   b) if the Boundary Committee is recommending a change to an electoral region, say where the public can inspect a copy of the recommendations. There must be at least one place of inspection in each constituency which falls within the electoral region;
   c) explain that if anyone wishes to express a view about the recommendations they may do so by writing to the Boundary Committee. Their letter must be received by the Committee within one month of the date of publication of the notice.

Paragraph 3(3)

579. The Boundary Committee for Wales must take into account any views which are received by it within the one month time limit.

Paragraph 3(4)

580. This says what must happen if, after the newspaper notice has been published, the Committee changes any of its recommendations in respect of an electoral region (including where it has made the change after taking into account views expressed to it following publication of the newspaper notice).

581. The Committee must publish another notice in a newspaper which is readily available in the electoral region to which the changed recommendations relate. The notice must:
   a) say what the effect of the changed recommendations would be;
   b) if a changed recommendation would have the effect of altering an Assembly electoral region, say where the public can inspect a copy of the recommendation. There must be at least one place of inspection in each constituency which falls within the electoral region;
   c) explain that if anyone wishes to express a view about the changed recommendations they may do so by writing to the Boundary Committee. Their letter must be received by the Committee within one month of the date of publication of the notice.

Paragraph 3(5)

582. However, where the effect of the Boundary Committee's recommendation (original or revised) is only to alter the number of regional seats for a region, and the resulting number of regional seats for all the regions would be exactly divisible by 5, the Committee does not have to publish a newspaper notice.

Paragraph 3(6)
However, if the Boundary Committee’s proposed recommendations (original or revised) would result in the total number of seats for all the Assembly electoral regions not being exactly divisible by 5, then the recommendation will necessarily affect all the electoral regions.

Therefore, the Boundary Committee must publish newspaper notices which comply with paragraph 3(2) of this Schedule in all the electoral regions. The effect on each region must be stated in the notice. The Boundary Committee is under a duty to take into account any views expressed following publication of the notice.

Paragraph 4— Local inquiries

This paragraph enables the Boundary Committee to hold a local inquiry in respect of the Assembly electoral region or regions.

Paragraph 4(6)

The person appointed to hold the local inquiry has the powers to summon witnesses that are set out in sub-section 250(2) of the Local Government Act 1972.

The person holding the inquiry may issue a summons requiring someone to attend the inquiry at a particular time and place, and to give evidence or produce documents of a specified nature. The documents must be ones which are in his custody or control, and which relate to any matter which is in issue at the inquiry.

The person holding the inquiry can take evidence on oath, and may administer the oath.

Witnesses who have been summoned to attend must have their expenses paid.

Sub-section 250(3) of the Local Government Act 1972 also applies to inquiries held under this paragraph, and this creates offences about deliberately disobeying summonses, and deliberately altering, suppressing, concealing, or destroying evidence.

The offences are summary only. The maximum fine for the offences is level 3 on the standard scale, or imprisonment for up to six months, or both.

Paragraph 5— Committee's Report

This paragraph requires the Committee's report to contain the recommendations which they propose should be included in the Electoral Commission's report under paragraph 8 of this Schedule.

Paragraph 6— Consideration of the Committee's Report by the Commission

General

Under section 3A(3) of the Parliamentary Constituencies Act 1986, when the Electoral Commission receives the recommendations of the Boundary Committee in relation to parliamentary constituencies, the Commission may:

a) accept all the Committee's recommendations and include them in its report to the Secretary of State;

b) agree changes to the recommendations with the Committee, and then include the changed recommendations in its report; or

c) reject the recommendations

If it rejects the recommendations, it must either:

a) require the Boundary Committee to reconsider them, with a view to the Committee submitting different recommendations to the Commission; or
b) require the Committee to carry out a fresh review of the whole or part of the area it had originally reviewed; or

c) only in a case where the purpose of the Boundary Committee's review was to enable the Electoral Commission to submit a report under section 3(3) of the Parliamentary Constituencies Act, take no further action.

595. A report under section 3(3) of the Parliamentary Constituencies Act 1986 is the one which the Electoral Commission has power to submit to the Secretary of State in relation to a particular area of the United Kingdom, making recommendations about the division of that area into parliamentary constituencies, in order to ensure that rules set out in Schedule 2 to the Parliamentary Constituencies Act are complied with.

Paragraph 6(1)

596. Paragraph 6(1) says that the Electoral Commission has the same powers (with any necessary modifications) in relation to recommendations by the Boundary Committee about Assembly electoral regions, as it has in relation to recommendations about parliamentary constituencies (i.e., those set out in section 3A(3) of the Parliamentary Constituencies Act 1986 and explained above).

Paragraphs 6(2) to (4)

597. These paragraphs say that if the Electoral Commission is minded to use its powers in section 3A(3)(b) and (c) of the Parliamentary Constituencies Act 1986 (these are the powers of acceptance with agreed changes, or rejection), in relation to recommendations by the Boundary Committee about Assembly electoral regions, then it must have regard to any views expressed in response to the Committee's newspaper notice.

598. If the Commission is minded to use those powers in relation to only part of an electoral region, then the views to which it must have regard are those which relate to that part.

599. It must also have regard to the findings of any local inquiry which was held.

600. If the Commission is minded to use its powers in relation to only part of an electoral region, then the findings of any local inquiry to which it must have regard are those which relate to that part.

Paragraph 7— Directions by Commission to the Committee

601. This applies section 3A(4) of the Parliamentary Constituencies Act 1986 with a modification.

602. When the Boundary Committee is carrying out its duties under the Parliamentary Constituencies Act 1986, it must comply with any directions which the Electoral Commission gives to it.

603. The effect of the modification is that the Boundary Committee must only follow them if it can do so and still ensure compliance with the rules in paragraph 9 of this Schedule (i.e., the rules which must be followed in relation to the delineation of Assembly electoral regions, and the allocation of regional seats to those regions).

Paragraph 8— Commission's Report

604. This paragraph deals with what happens if the Electoral Commission submits to the Secretary of State a report under section 3(1) of the Parliamentary Constituencies Act 1986 which recommends alterations in parliamentary constituencies in Wales, or a report under section 3(3) of that Act which relates to any constituency in Wales.

Paragraph 8(1)
605. The report under section 3 (3) of the Parliamentary Constituencies Act 1986 is one which says what constituencies the Electoral Commission think an area should be divided into, in order to comply with rules that are set out in paragraphs 1 to 6 of Schedule 2 to the Parliamentary Constituencies Act 1986.

Paragraph 9— Rules

General

606. The rules in paragraph 9 apply to the Boundary Committee's consideration of the Assembly electoral region issue and the Electoral Commission's report under section 3 of the Parliamentary Constituencies Act 1986.

Paragraph 9(1)

The rules are as follows:

607. The whole of an Assembly constituency must be contained in the same electoral region. It must not straddle two or more regions.

608. The electoral regions must contain a similar number of electors, so far as is reasonably practicable. There may be special geographical factors which mean that this is not reasonably practicable, and these can be taken into account.

609. The number of regional seats must be half the number of Assembly constituencies. For example, if there are 40 constituencies, there must be 20 regional seats.

610. However, if the number of constituencies can't be divided exactly by 2 (e.g. 39), one is added to the number of constituency seats, and then that number is divided by 2.

611. For example, if there were 39 constituencies, “1” would be added to 39, to give 40, and 40 would then be divided by 2 — so the number of regional seats would be 20.

612. The number of seats in each electoral region will be the total number of regional seats in the Assembly, divided by 5. Therefore, if the total number of regional seats is 20, the number of regional seats in Assembly electoral region “A” will be 4.

Paragraph 9(2)

613. However, if the total number of regional seats cannot be divided exactly by 5 (for example, 19), the next highest number which can be divided exactly by 5 is identified (for example, if the total number of regional seats was 19, that next highest number would be 15.)

614. This is then subtracted from the total number of regional seats (in the above example, 15 would be subtracted from 19, leaving 4).

Paragraph 9(3)

615. The result (4, in the above example) is the number of residual seats.

Paragraph 9(4)

616. Only one residual seat can be allocated to each electoral region.

Paragraph 9(5)
617. The next highest number below the total number of regional seats which can be divided exactly by 5 is then taken again. In the above example of 19 regional seats, it was 15. This is then divided by 5. In this example, the result would be 3.

618. For each electoral region, that number is then added to the number of Assembly constituencies in the region. The result is then divided into the number of electors in that region.

Paragraph 9(6)

619. Taking the above example again, if the number of electors in electoral region A is 130,000, and the number of constituencies in the region is 10, 130,000 is divided by 13 (10 + 3), giving a result of 10,000.

620. The results which this calculation produces for each region are then compared. The residual seats are then allocated. It is desirable that the residual seats are allocated to the regions in respect of which this calculation produced the highest results, and this should be taken into account when the residual seats are allocated.

621. If an electoral region is not allocated a residual seat, the number of regional seats it has will just be one fifth of the next highest figure to the total number of regional seats which can be divided exactly by 5. In the example of 19 regional seats, the next highest number would 15, which when divided by 5 gives 3 regional seats.

Paragraph 10—Orders in Council giving effect to Commission reports

Paragraph 10(1)

622. Recommendations of the Electoral Commission are put into effect by an Order in Council, made under the Parliamentary Constituencies Act 1986.

623. Where parts of the Order relate to parliamentary constituencies, and parts relate to Assembly regions, those parts can come into force on different dates.

Paragraph 10(2)

624. However, where an Order has come into force altering Assembly electoral regions, any constituency by-elections, or the filling of vacancies in regional seats will take place on the basis of the old electoral regions. Voters will only vote on the basis of the new electoral regions at the next general election.

Paragraph 11—Interpretation: the regional electorate

Paragraph 11(1) to 11(3)

625. It is necessary for the Electoral Commission and the Boundary Committee to identify the regional electorate figure for each region, when they are considering whether there needs to be any alteration to the Assembly electoral regions to ensure the rules in paragraph 9 of this Schedule are still complied with.

626. This paragraph defines what the Commission and the Committee should take as the regional electorate figure.

627. For each Assembly electoral region, it is the total number of persons who are on a register of local government electors at addresses which fall within that Assembly electoral region, on a specific date.
628. The specific date (“the enumeration date” referred to in paragraph 11 (2)) is the date on which the notice appeared in the London Gazette, saying that the Electoral Commission intends to issue a report into parliamentary constituencies under the Parliamentary Constituencies Act 1986. The Electoral Commission has a duty to publish the notice under section 5 (1) of that Act.

Paragraph 12: Interpretation: general

Paragraph 12

629. When this Schedule refers to “the Assembly electoral region issue”, it means the question the Boundary Committee are obliged to consider as to whether any recommendations they are making about alterations to parliamentary constituencies require any alterations to Assembly electoral regions, or to the allocation of Assembly regional seats.

630. There is a clarification of the meaning which should be given to the phrase “recommendation” in this Schedule. It can mean both a recommendation that an alteration is made, and a recommendation that no alteration is made, unless it is clear from the context in which it is used that it only means a recommendation that an alteration be made.

631. The effect of this clarification means that, for example, in paragraph 3 (2) (a) of this Schedule “recommendation” would include both a recommendation for a change to an Assembly electoral region, and a recommendation for no change to an electoral region.

632. In contrast, when paragraph 3 (2) (b) refers to “a copy of the recommendations” being open to inspection, it is clear from the first part of that sub-paragraph that “recommendations” is only intended to refer to those recommendations which are for a change to an electoral region.

SCHEDULE 2: ASSEMBLY COMMISSION

633. Schedule 2 makes further detailed provision about the National Assembly for Wales Commission (“the Assembly Commission”), which is established by Section 27. This Schedule covers the membership, property, staff, powers, duties, proceedings and status of the Assembly Commission.

634. The Schedule applies the principles of sustainable development, equality of opportunity and equal treatment of the English and Welsh languages to the exercise of the Assembly Commission’s functions. It also provides a power for the Assembly Commission to promote public awareness of the current or pending system of devolved government in Wales, and the system for the election of Assembly members.

Membership

Paragraph 1

635. Paragraph 1(1) provides that unless the Presiding Officer ceases to be an Assembly member (otherwise than by reason of a dissolution of the Assembly), the Presiding Officer continues to hold office as a member of the Assembly Commission until another person is elected to the office of Presiding Officer (under section 25).

636. Paragraphs 1(2) and (3) provide that the four other members of the Assembly Commission appointed under section 27(3) remain in office, including after a dissolution, until a replacement is appointed. They would only cease to be a member of the Assembly Commission if they died, became disqualified from being an Assembly member, resigned their seat as an Assembly member or their office as a member of the Assembly Commission, or were removed from the Assembly Commission by resolution of the Assembly.
Thus the effect of paragraph 1 is to allow the Assembly Commission to continue to function during a dissolution.

**Property**

Paragraph 2

This provides that the Assembly Commission has the power to acquire, hold and dispose of property.

By virtue of paragraph 28 of Schedule 10 to the Act, which inserts section 166C and 166D into the Copyright, Designs and Patents Act 1988, the Assembly Commission is the first owner of the copyright in proposed Measures and Bills introduced into the Assembly.

**Staff**

Paragraph 3

Paragraph 3(1) gives the Assembly Commission the power to appoint staff.

Paragraph 3(2) provides that staff employed by the Assembly Commission, including the Clerk of the Assembly, are referred to in the Act as the members of the staff of the Assembly.

Paragraph 3(3) provides that staff of the Assembly are not Crown servants, and therefore they are not civil servants. However, paragraph 12(2)(a) (see below) allows Her Majesty by Order in Council to provide for the purposes of any enactment that Assembly Commission employees be treated as Crown servants.

So, for example, an Order in Council could provide for employment by the Assembly Commission to be treated as “Crown employment” for the purposes of certain provisions of the Data Protection Act 1998, as is the case in relation to employees of the Scottish Parliamentary Corporate Body.

Paragraph 3(4) requires the procedures for recruiting and selecting staff of the Assembly, and the terms and conditions on which they are employed (including salaries), to be broadly in line with those for civil servants serving the Welsh Assembly Government.

In general this will require the Assembly Commission to adopt procedures broadly corresponding to the Civil Service Recruitment Code, and the Civil Service Code made under it, so as to ensure fair and open recruitment and selection of staff on merit, and upholding the political impartiality of staff.

However, as is the case with civil service recruitment, there can be exceptions to these principles e.g. in appointing special advisers, in relation to recruitment of disabled persons, or in relation to certain categories of staff with Welsh language qualifications. Thus the Assembly Commission will enjoy a similar degree of flexibility to the Welsh Assembly Government in these matters.

Staff seconded in or out of the Assembly post-separation will retain their pre-existing employment status, i.e. civil servants working for the Welsh Assembly Government who are seconded to work at the Assembly will retain their status as civil servants.

Paragraph 3(5)–(8) deals with salaries, expenses and pensions etc. The Commission is to pay the salaries and expenses of the staff of the Assembly. The Assembly Commission will be able to make arrangements for the payment of pensions, gratuities or allowances to former employees (sub-paragraph (6)), and in particular can make contributions towards such payments (sub-paragraph (7)).
649. The effect of sub-paragraph (8) is that staff of the Assembly can be covered by the Principal Civil Service Pension Scheme (as can staff of the Assembly Commission's Scottish equivalent, the Scottish Parliamentary Corporate Body). Sub-paragraph (9) require payments to the Minister for the Civil Service in respect of Assembly staff members' participation in that scheme to be made by the Assembly Commission.

**Powers**

**Paragraph 4**

650. Paragraph 4(1) and (2) provide that the Assembly Commission can do anything which it considers necessary or appropriate for the purposes of, or in connection with, its functions. The Assembly Commission's functions, as set out in Section 27(4) are the provision of property, staff and services to the Assembly, though the Assembly can confer further functions on the Assembly Commission by Assembly Measure. In particular under sub-paragraph (2) the Assembly Commission has power to enter into contracts; to charge for goods and services; to invest money not immediately required for the discharge of its functions; and to accept gifts. Paragraph 4(3) provides that gifts to the Assembly (e.g. by visiting heads of state) vest in the Assembly Commission.

651. Paragraph 4(4) allows the Assembly Commission to sell goods or provide services to the public, or to make arrangements for doing so.

652. Paragraph 4(5) and (6) allow the Assembly Commission to borrow money (but only in sterling) in order to meet a temporary shortfall in sums available to meet its expenditure. This includes a power to enter into an overdraft arrangement. The Assembly Commission can only borrow money in accordance with special or general directions given by the Assembly under section 27(6). Thus the borrowing power is conditional upon the Assembly's prior approval.

**Promotion of awareness of election system and devolved government**

**Paragraphs 5 and 6**

653. Paragraph 5(1) gives the Assembly Commission its own specific power to promote public awareness of Assembly elections and the system of devolved government in Wales. This includes (by sub-paragraph (2)) a power to promote awareness of any newly enacted systems not yet in force. Paragraph 5(3) gives the Assembly Commission a general discretion as to how it carries out this power, but specifically permits it to carry out public education or information programmes, or to make grants facilitating the production of such programmes by other persons or bodies. The Assembly Commission can impose conditions on such grants as it thinks fit (sub-paragraph (4)).

654. Paragraph 6 allows the Assembly Commission to provide financial assistance to the Electoral Commission so as to promote public awareness of Assembly elections and the system of devolved government in Wales.

655. The powers in paragraphs 5 and 6 would permit, among other things, the promotion of public awareness about Assembly elections and devolved government in Wales through cross-border media (e.g. radio and television transmissions, “mobile” advertisements on trains etc.).

**Delegation**

**Paragraph 7**

656. Paragraph 7 allows the Assembly Commission to delegate any of its functions to the Presiding Officer or to the Clerk of the Assembly. The Presiding Officer can authorise the Deputy Presiding
Officer to exercise these functions (subject to section 25(11) and paragraph 11 of this Schedule). The Clerk can authorise other Assembly staff to exercise his/her functions (section 26(4)).

**Principles in accordance with which functions are to be exercised**

Paragraph 8

657. Paragraph 8(1) requires the Assembly Commission to make appropriate arrangements with a view to securing that its functions are exercised with due regard to the principle of equality of opportunity for all people.

658. Paragraph 8(2) obliges the Assembly Commission to have due regard to the principle of promoting sustainable development in exercising its functions.

659. Paragraph 8(3) requires it to give effect to the principle of equal treatment of the English and Welsh languages in the exercise of its functions, so far as is appropriate and reasonably practicable.

660. These duties are subject to the Assembly's power under section 27(6) to give general and specific directions to the Assembly Commission about the exercise of its functions.

**Annual report**

Paragraph 9

661. Paragraph 9 provides that the Assembly Commission must, after each financial year, publish and lay before the Assembly a report on the exercise of its functions during that financial year.

662. The Assembly can flesh out the detail of this duty through Assembly directions under section 27(6). For example, it can direct what the report is to cover, and give directions so that the timetable for the report's publication and laying before the Assembly ties in with the Assembly's own audit timetable.

**Validity of acts**

Paragraph 10

663. Paragraph 10 preserves the validity of any act of the Assembly Commission against any vacancy among its members, any defect in their appointment or any lack of qualification for their membership. It is intended to preclude legal challenge to the Assembly Commission on these grounds.

**Proceedings**

Paragraph 11

664. Paragraph 11 provides that the Assembly Commission is free to set its own rules of procedure (sub-paragraph (1)), save that its meetings must be presided over by the Presiding Officer, unless that office is vacant or the Presiding Officer is unable to act, in which case the Assembly Commission can appoint another of its members to preside over the meeting (sub-paragraph (2)).

**Crown status**

Paragraph 12

665. The Assembly Commission is not a Crown body as it is exercising functions on behalf of the Assembly, rather than on behalf of the Welsh Assembly Government (whose Ministers exercise functions on behalf of the Crown).
666. Paragraph 12(1) provides that Her Majesty can make Orders in Council that provide for the Assembly Commission to be treated as a Crown body for the purpose of any enactment. In particular the Order in Council may (sub-paragraph (2)) provide for employment by the Assembly Commission to be treated as Crown employment; or for land held, used or managed by the Assembly Commission, or operations carried out by them, to be treated as Crown land or operations. This mirrors provision made in relation to the Parliamentary corporate bodies of the House of Commons and the House of Lords, and that made in relation to the Scottish Parliamentary Corporate Body.

667. The Scottish Parliamentary Corporate Body (Crown Status) Order 1999 (SI 1999/677) is an example of what such an Order in Council may cover. It provides for that Body to be treated as a Crown body for the purposes of various enactments relating to planning, building legislation, fire precautions, VAT and data protection.

668. Paragraph 12(3) provides that “Crown body” means a servant or agent of the Crown and includes a government department.

669. Paragraph 12(4) provides that an Order in Council which requires the Assembly Commission to be treated as a Crown body under any enactment can be annulled by a resolution of either House of Parliament, or by resolution of the Assembly.

SCHEDULE 3: TRANSFER ETC. OF FUNCTIONS: FURTHER PROVISIONS

Part 1: Functions transferable etc.

670. Paragraph 1 provides that an Order in Council under section 58 may make provision about any Ministerial function, including one created after the passing of the Act. However, this does not apply to functions of the Secretary of State under the Act itself, other than the power to vary the date of an Assembly general election under section 4.

671. Paragraph 2 provides that a function of a Minister of the Crown which is exercisable in relation to the Welsh language or to any other aspect of Welsh culture is to be regarded as exercisable in relation to Wales.

672. Paragraph 3 extends the power to make provision by Order in Council under section 58 to include provision about Ministerial functions in relation to cross-border bodies (i.e. bodies exercising functions or carrying on activities in or with respect to Wales or part of Wales but also with respect to other areas) and in relation to English border areas (i.e. parts of England adjoining Wales). In the case of English border areas the power will however only be able to be exercised in relation to functions relating to certain water matters, and only if the Order in Council (or an earlier one) has made corresponding provision about that function so far as exercisable in relation to Wales or part of Wales adjoining England.

673. Paragraph 4 enables an Order in Council under section 58 to impose on Ministers of the Crown a duty to consult the Welsh Ministers before exercising certain functions in relation to that part of the sea adjacent to Wales but beyond the 12-mile limit.

Part 2: Exercise of transferred functions

674. Where a power to make subordinate legislation has been transferred to the Welsh Ministers, paragraph 5 provides that it may still be exercised by the Minister of the Crown from whom it was transferred, for the purpose of implementing, or enabling the implementation of, any European Community obligations of the United Kingdom, enabling UK rights under Community law to be exercised and for ancillary purposes.
675. An Order in Council transferring a function to the Welsh Ministers, the First Minister or the Counsel General in relation to a cross-border body or to an English border area, or providing for such a function to be exercisable concurrently by the Welsh Ministers etc and a Minister of the Crown may, under paragraph 6, provide that the function may only be exercised by the Welsh Ministers etc with the agreement of, or after consulting, a Minister of the Crown.

676. Where a function is transferred to the Welsh Ministers, First Minister or Counsel General, and the Minister of the Crown from whom it is to be transferred was required, before exercising it, to obtain the agreement of, or consult with, another Minister of the Crown or to obtain the authorisation of Parliament, paragraph 7 provides that the requirement in question is not to apply to the Welsh Ministers etc unless the Order in Council transferring the function provides that it should. Where an Order in Council directs that a function is to be exercisable by the Welsh Ministers etc concurrently with a Minister of the Crown, and such a requirement applies to the exercise of that function by the Minister of the Crown, then paragraph 7 provides that the Order in Council may provide that it is to be exercisable by the Welsh Ministers etc free from that requirement.

677. Paragraph 8 provides that an Order in Council under section 58 making a function exercisable by the Welsh Ministers, the First Minister or the Counsel General, may make the exercise of the function subject to consultation with, or authorisation from, the Assembly or the Assembly Commission. It also confirms that an Order in Council under section 58 making a function exercisable by the Welsh Ministers, First Minister or Counsel General, can require the Welsh Ministers etc to lay a report before the Assembly or send documents to the Clerk to the Assembly, in connection with the exercise of that function.

678. Paragraph 9 makes provision for Assembly procedures (and in some cases Parliamentary procedures) to apply to subordinate legislation made (or approved or confirmed) by the Welsh Ministers, First Minister or Counsel General under powers transferred to them or otherwise made exercisable by them under an Order in Council under section 58, in those cases where a Minister of the Crown would have been subject to Parliamentary procedures when making, approving or confirming legislation under those powers.

679. Where an instrument contains provision to be made (etc.) by the Welsh Ministers, First Minister or Counsel General together with a Minister of the Crown, or which relates to an English border area or a cross-border body (other than one which only relates to the functions of that body in relation to Wales), any Parliamentary procedure (i.e. any requirement to lay a draft of the legislation before Parliament and any requirement to obtain the approval of either or each House of Parliament before making it or any power of either or each House to annul it by resolution) is to continue to apply (in addition to any Assembly procedure).

680. Provisions which require instruments made by Ministers of the Crown to be confirmed by Act of Parliament (“provisional orders”) or which apply special parliamentary procedure to an order are not to apply when they are made by the Welsh Ministers, First Minister or Counsel General instead, unless either one of the situations referred to in the previous paragraph above applies or, in the case of a “special parliamentary procedure” order, the Order in Council empowering the Welsh Ministers etc to make the order in question specifically requires it. Equivalent Assembly procedures laid down by Assembly standing orders are to apply instead.

681. Subject to the above, subordinate legislation made by the Welsh Ministers, First Minister or Counsel General under powers conferred on them by an Order in Council under section 58 is to be subject to Assembly procedures equivalent to the Parliamentary procedures which would have applied it been made by a Minister of the Crown, i.e. “affirmative” or “negative” procedure as the
case may be, substituting a requirement for approval or liability to annulment by resolution of the Assembly for approval or annulment by resolution of either or each House of Parliament. The standing orders of the Assembly are to make detailed provision for the relevant procedures.

682. Paragraph 10 provides that where a function of making or receiving a report or statement was subject to a requirement to lay the report before Parliament, and an Order in Council under section 58 makes that function exercisable by the Welsh Ministers, First Minister or Counsel General, the requirement to lay the report before Parliament applies as if it was a requirement to lay the report before the Assembly.

683. Paragraph 11 makes provision about certain powers to lend money which may be transferred to the Welsh Ministers by Order in Council under section 58. Where, prior to transfer, the sums required to make such loans were required to be charged on the National Loans Fund, this paragraph provides that they are instead to be charged on the Welsh Consolidated Fund. Similarly, where the repayments of such loans were formerly paid into the National Loans Fund, they are instead to be paid into the Welsh Consolidated Fund.

684. Paragraph 11 also makes provision in relation to existing loans, made by Ministers of the Crown out of the National Loans Fund prior to transfer. Upon transfer of the power to the Welsh Ministers, repayments of, and payments of interest on, the outstanding loans are to be paid into the Welsh Consolidated Fund, via the Welsh Ministers. The outstanding principal amounts on such loans at the date of transfer are to be treated as loans made by the Secretary of State to the Welsh Ministers, who are obliged to repay these amounts to the Secretary of State for payment into the National Loans Fund. It is at the Treasury's discretion to set the dates and methods of repayment to the Secretary of State, and to set the rates and times at which interest must be paid to the Secretary of State.

Part 3: Supplementary

685. Paragraph 12 makes it clear that where the provisions of section 58 and Schedule 3 refer to Ministers of the Crown the reference includes Ministers of the Crown acting jointly, officers of a Minister of the Crown or of a government department and that functions of such an officer may be transferred to officers of the Welsh Assembly Government.

686. Paragraph 13 makes it clear that a transfer of a function to the Welsh Ministers, First Minister or Counsel General, or the imposition on a Minister or the Crown of a requirement to obtain the agreement of, or to consult, the Welsh Ministers etc before exercising a function does not affect the validity of anything done by or in relation to that Minister of the Crown before the transfer or imposition of that requirement.

SCHEDULE 4: TRANSFERS OF MINISTERIAL PROPERTY, RIGHTS AND LIABILITIES

Transfers of Ministerial Property, Rights and Liabilities

687. This schedule provides that where an Order in Council under section 58 transfers functions from Ministers of the Crown to the First Minister, the Welsh Ministers or the Counsel General, any connected property, rights and liabilities (except employment rights and liabilities relating to Crown employment) are transferred along with those functions, unless the Order in Council provides otherwise.

688. Anything relating to a transferred function, or to property, rights or liabilities transferred along with the function, and which was in the process of being done by or in relation to the Minister of the Crown when the function transferred, may be continued by or in relation to the transferee of
the function. Anything done by Ministers of the Crown in relation to such functions, property, rights and liabilities pre-transfer continues to have effect as if it had been done by the transferee.

689. Instruments, contracts and legal proceedings relating to transferred functions, property, rights and liabilities continue to have effect post-transfer with the transferee of the function substituted for the Minister of the Crown.

690. The Secretary of State can also, by order, make specific transfers of property, rights and liabilities, or make transfers of property, rights and liabilities of a specific description, from Ministers of the Crown to the First Minister, the Welsh Ministers or the Counsel General. Such an order can include provisions creating interests in, or rights over, each other's property, and provisions creating new rights and liabilities between the First Minister, the Welsh Ministers or the Counsel General on the one hand and Ministers of the Crown on the other.

691. The Secretary of State can also make orders to provide for the continuation by, or in relation to, the Welsh Minister, First Minister or Counsel General of things commenced by or in relation to a Minister of the Crown. He may also by order provide that any specific thing done by a Minister of the Crown has effect as if done by the First Minister, the Welsh Ministers or the Counsel General; and can make orders substituting the First Minister, the Welsh Ministers or the Counsel General for Ministers of the Crown in any specific contracts, legal proceedings, or instruments.

692. Paragraph 4 provides that the Secretary of State can issue certificates as conclusive proof that property has been transferred under this Schedule, and provides that transfers of property, rights or liabilities by or under Schedule 4 override any provision which would restrict such transfers.

SCHEDULE 5: ASSEMBLY MEASURES

Part 1: Matters

693. This Part of the Schedule lists the matters, and the fields within which they fall, to which a provision in an Assembly Measure must relate if it is to satisfy the criteria in section 94 (4) (a). Section 95 allows this Schedule to be amended by Order in Council so as to add, remove or change fields and matters. A field cannot be added if the Welsh Ministers, the First Minister or the Counsel General have no functions in that field.

694. The only matters listed at the passing of this Act are ones which fall within the field “the National Assembly for Wales”. The matters are concerned with Assembly Members (for example, remuneration and complaints), conferring certain functions on the Assembly Commission, the interpretation of the Welsh texts of Assembly Measures etc and procedures for the consideration of proposed private Assembly Measures.

Parts 2 and 3: General Restrictions and Exceptions

695. Part 2 of the Schedule lists restrictions which a provision in an Assembly Measure must not breach. If it does breach any of them, then the provision is outside the Assembly's legislative competence and is not law (section 94 (6) (a)). The restrictions are subject to exceptions from the restrictions, and these are set out in Part 3 of this Schedule.

696. In particular, the restrictions, read with the exceptions:
   a) prevent functions of a Minister of the Crown (including functions of the Treasury) being added to, removed or changed by or under a Measure without the Secretary of State’s consent;
   b) limit the penalties which can be imposed for criminal offences created by or under a Measure;
c) protect specified legislation (including certain provisions in this Act), and certain classes of legislative provision from being modified by or under a Measure;
d) protect any functions of the Comptroller and Auditor General from modification by or under an Assembly Measure without the Secretary of State's consent.

SCHEDULE 6: REFERENDUMS ON COMMENCEMENT OF ASSEMBLY ACT PROVISIONS

697. Section 103 allows a referendum to be held in Wales on whether certain sections in this Act, which give the Assembly power to pass Acts, (referred to in this Act as “the Assembly Act provisions”) should come into force.

698. The referendum is initiated by Her Majesty making an Order in Council.

699. This schedule makes detailed provisions in relation to the referendum.

Paragraph 1: Entitlement to vote

700. The persons entitled to vote in a referendum are those who would be entitled to vote in an Assembly General Election which, in turn, are those who would be entitled in local government elections in Wales.

Paragraph 2: Conduct etc of referendums

701. The Order in Council that Her Majesty may make under section 103 initiating the referendum may also contain other provisions relating to the referendum.

702. The Order in Council may, among other things, apply to the referendum other legislation which relates to elections, referendums or donations (gifts to, payments of expenses of registered political parties etc) as defined in Part 4 of the Political Parties, Elections and Referendums Act 2000.

Paragraph 3: Referendum Question and Statement

703. Paragraph 3 requires the Order in Council to set out the question which voters in the referendum are to be asked.

704. In addition, if the question on the ballot paper is going to be preceded by a statement (e.g. an explanation of the effect of bringing the Assembly Act provisions into force), the statement must be set out in the Order in Council.

705. The effect of section 104(4) of the Political Parties, Elections and Referendums Act 2000 is that the Secretary of State must, at the time when the draft Order in Council is laid before both Houses of Parliament for approval, also lay a report which contains any views expressed by the Electoral Commission on how easily the referendum question or preceding statement can be understood.

706. Paragraph 3 (3) requires the Secretary of State to send a copy of the same report to the First Minister before, or at the same time, as the Secretary of State lays it before Parliament. Paragraph 3 (4) requires the First Minister to lay that report before the Assembly as soon as reasonably practicable after he has received it from the Secretary of State.

Paragraph 4: Date of Referendum

707. Paragraph 4(1) requires the Order in Council to specify the date of the referendum.
Paragraph 4(2) gives the Secretary of State the power to change the date of the referendum, provided that the Welsh Ministers consent to the change.

Paragraph 4(4) says that an order made by the Secretary of State changing the date of a referendum is subject to negative Parliamentary procedure.

Paragraph 5: Referendum Period

Paragraph 6: Combination of Polls

Paragraph 7: Encouraging voting

Paragraph 8: Provision of information to voters

Paragraph 9
a) at least one application from a person/organisation campaigning for the Assembly Act provisions coming into force; and
b) at least one application from a person/organisation campaigning against the Assembly Act provisions coming into force, then the appropriate day is the 43rd day of the referendum period.

720. Otherwise, the appropriate day is the 29th day of the referendum period.

Paragraph 9: Referendum Material

721. Section 126 of the Political Parties, Elections and Referendums Act 2000 lays down requirements about what must appear on referendum material.

722. This paragraph says that these requirements do not apply to any material which is required to be published by the Order in Council which initiates the referendum.

Paragraphs 10 and 11: Funding and Accounts

723. Paragraphs 10 and 11 say that the Order in Council must say how the referendum is to be funded. It may say that it is to be charged on or payable out of the Welsh Consolidated Fund. It must also deal with arrangements for the preparation and audit of accounts relating to the funding of the referendum.

Paragraph 12: No legal challenge to referendum result

724. The effect of this paragraph is that proceedings questioning the number of ballot papers counted or votes cast in a referendum must be brought by judicial review. The claim must be filed before the end of the permitted period set out in paragraph 12(2).

SCHEDULE 7: ACTS OF THE ASSEMBLY

Part 1: Subjects

725. This Part of the Schedule lists the subjects to which a provision in an Act of the Assembly must relate if it is to satisfy the criteria in section 108(4)(a). It also lists the exceptions within which a provision in an Act of the Assembly must not fall, if it is to satisfy section 108(4)(a).

Parts 2 and 3: General Restrictions and Exceptions

726. Part 2 of the Schedule lists restrictions which a provision in an Act of the Assembly must not breach (section 108(6)(a)). If it does breach any of them, then the provision is outside the Assembly's legislative competence and is not law. The restrictions are subject to exceptions from the restrictions, and these are set out in Part 3 of this Schedule.

727. In particular, the restrictions, read with the exceptions:

a) prevent functions of a Minister of the Crown which pre-date the coming into force of the Assembly Act provisions, being removed or changed by or under an Act of the Assembly, unless the Secretary of State has given his consent, or the removal or change is incidental to, or consequential on another provision contained in an Act of the Assembly;
b) prevent functions being conferred or imposed upon a Minister of the Crown by or under an Act of the Assembly without the Secretary of State's consent;
c) protect specified legislation (including certain provisions in this Act), and certain classes of legislative provision from being modified by or under an Act;
d) protect functions of the Comptroller and Auditor General from modification without the Secretary of State's consent.
SCHEDULE 8: AUDITOR GENERAL FOR WALES

728. Schedule 8 makes revised provision for the office of Auditor General for Wales ("AGW"). The provisions of the schedule largely replicate the equivalent provisions in the Government of Wales Act 1998 (c.38), which are marked for repeal. However, a notable change is that the AGW is now to be appointed by Her Majesty on the nomination of the Assembly (under the Government of Wales Act 1998, there was no need for any such nomination, although the Assembly was, in practice, consulted informally).

729. Before nominating the prospective AGW, the Assembly must be satisfied that reasonable consultation has been carried out with bodies representing the interests of local government bodies in Wales (as defined in section 12(1) of the Public Audit (Wales) Act 2004 (c.23). This is because of the AGW's functions in relation to those bodies. For instance, under the Public Audit (Wales) Act 2004, the AGW appoints the auditor of the accounts of those bodies, and has functions under the best value regime created by Part 1 of the Local Government Act 1999 (c.27).

730. Paragraph 2 deals with the tenure of the AGW. The length of the appointment is not to a specified age or for a specified term, but is set by Her Majesty when she appoints the AGW. The AGW can resign, by requesting Her Majesty to be relieved from office. Her Majesty can also relieve an AGW from office if She is satisfied that the AGW is medically incapable of performing the functions of the office (and also incapable of asking to be relieved of it). In addition, Her Majesty may remove a person from office as AGW on the grounds of misbehaviour. This cannot be done, however, unless the Assembly has resolved that a recommendation to this effect should be made to Her Majesty. The resolution must be passed by at least two thirds of the total number of Assembly Members (not merely two-thirds of those voting on the motion).

731. Paragraph 3 protects the independence of the AGW, providing that neither the Assembly nor the Welsh Assembly Government can direct or control the manner in which the AGW exercises the functions of the office.

732. Paragraph 3 also provides that the AGW is not to be regarded as a Crown servant, other than for the purposes of the Official Secrets Act 1989 (c.6).

733. Paragraph 4 provides that the AGW is a corporation sole.

734. Paragraph 5 deals with the process for sealing documents by the AGW.

735. Paragraph 6 provides for the AGW’s salary, and the Assembly's contribution to the AGW’s pension provision, as well as the pensions of former AGWs, to be charged on the Welsh Consolidated Fund (that is, these amounts will be governed by the terms of appointment of the AGW and will not be subject to annual approval by the Assembly in Budget resolutions tabled by the Welsh Ministers).

736. Paragraph 7 makes provision regarding staff of the AGW. These provisions are closely based on the equivalent ones in the Government of Wales Act 1998, which are to be repealed.

737. Paragraph 8 is also closely based on equivalent provisions in the Government of Wales Act 1998. It deals with the ability of the AGW to delegate the exercise of functions to members of staff or persons providing services to the AGW. In both cases, the AGW's authorisation will be needed. Such a delegation does not affect the responsibility of the AGW for the manner in which that function is exercised. The AGW cannot, however, delegate the function of certifying or reporting on accounts which are required to be laid before the Assembly, unless the Presiding Officer has certified that AGW is unable to do this in person. Even if the Presiding Officer has so certified, the
delegation ceases when the office of AGW falls vacant; the expectation would be that the new AGW would exercise the remaining aspect of the function in person, once appointed.

738. Paragraph 9 (1) provides that any compensation for breach of a function by the AGW is to be charged on the Welsh Consolidated Fund (i.e. is not to be subject to the approval of the Assembly in a Budget resolution).

739. Sub-paragraphs (3) and (4) provide that income which the AGW has earned through the exercise of functions related to local government in Wales is to be retained by the AGW and ploughed back into carrying out those functions (rather than paid into the Welsh Consolidated Fund or being available for the AGW to use for other purposes).

740. Paragraph 10 continues provision made in the Government of Wales Act 1998 for the AGW to be able to borrow money in order to cover a short-term deficit in funds.

741. Paragraph 11 deals with the AGW's powers to charge fees, which are equivalent to existing provisions in the Government of Wales Act 1998.

742. Paragraph 12 sets out the process whereby the AGW seeks annual funding for his or her Office. This largely replicates provisions of the Government of Wales Act 1998 which are to be repealed; the only change of substance is that the Audit Committee of the Assembly is now able to make modifications to the AGW's estimate without reference to the Secretary of State for Wales. The Audit Committee must, however, consult the AGW before laying an estimate containing such modifications before the Assembly.

743. Paragraph 13 imposes obligations on the AGW in relation to preparing accounts.

744. Paragraph 14 deals with the auditor of the accounts of the AGW.

745. Paragraph 15 sets out the time-scale within which the AGW's accounts must be audited, and also the auditor's rights of access to documents and information.

746. Paragraph 16 provides that the Accounting Officer for the Wales Audit Office is the AGW (“the Wales Audit Office” means the AGW and members of staff). Provision is also made for the appointment of a temporary Accounting Officer.

747. Paragraph 17 sets out the AGW's rights of access to documents, information, assistance and explanation for the purposes of the AGW's functions under the Act. These replace the equivalent provisions of the Government of Wales Act 1998.

748. Paragraph 18 provides that, where the Welsh Ministers have the power to appoint the auditor of a person or body, they can appoint the AGW to be that auditor, even where the AGW would not meet the normal criteria for that position. (But the Welsh Ministers cannot appoint the AGW to audit his or her own accounts). There is also provision for the AGW to audit accounts or carry out value for money examinations under a tripartite agreement between the AGW, the person or body in question, and either the Welsh Ministers or a Minister of the Crown. Further, paragraph 18 provides that where a function of preparing accounts is transferred to the Welsh Ministers by Order in Council under section 58 of the Act, the Secretary of State may by order transfer to the AGW any function of the Comptroller and Auditor General in relation to those accounts.

749. Paragraph 18 (8) deals with the AGW's functions in relation to information provided to the Treasury for the preparation of Whole of Government accounts under section 10 of the Government Resources and Accounts Act 2000 (c. 20).
Paragraph 19 replaces the equivalent provisions of the Government of Wales Act 1998 in respect of the AGW’s power to report to the public on any matter coming to the AGW’s notice while carrying out the AGW’s functions. This power of report does not apply where the AGW is carrying out a function at the request of, or by agreement with, the person or body in question. Such reports must be laid before the Assembly.

Paragraph 20 replaces the equivalent provisions of the Government of Wales Act 1998 in respect of the AGW’s duty to certify certain claims, returns, accounts and calculations at the request of defined public sector bodies in Wales.

Paragraph 21 sets out the ancillary powers of the AGW. Again, these replace the equivalent provisions of the Government of Wales Act 1998.

SCHEDULE 9: DEVOLUTION ISSUES

Part 1

Preliminary

Paragraph 1 defines “devolution issues” to include questions of both the legislative competence of the Assembly in relations to Acts and Measures which it has passed and the executive competence of the Welsh Assembly Government. It also includes alleged failures by the Welsh Assembly Government to comply with its obligations under European Community law, or the European Convention on Human Rights.

Paragraph 2 allows courts and tribunals a discretion not to treat a contention about any of the matters covered by paragraph 1 as a devolution issue, where it appears to the court or tribunal hearing the proceedings that the contention is frivolous or vexatious.

Part 2

Proceedings in England and Wales

Paragraph 4 provides that the Counsel General or the Attorney General can institute proceedings to decide a devolution issue. Where proceedings are brought by the Attorney General, then the Counsel General is entitled to defend them.

This does not prevent other people from bringing or defending such proceedings, but where they do so then the Attorney General and the Counsel General must be notified of the proceedings, and are entitled to take part in them (paragraph 5).

Paragraph 29(2)(a) gives both the Attorney General and the Counsel General a general power to require courts and tribunals to refer devolution issues in proceedings to which they are a party to the Supreme Court.

Paragraphs 6–11 set out further procedures by which devolution issues can be referred upwards from courts of first instance to the higher courts for resolution.

There are different procedures depending on whether the issue arises in criminal proceedings or civil proceedings (by virtue of paragraph 1(2), this includes all non-criminal proceedings), and the court in which proceedings originate.

Civil proceedings in the magistrates’ courts

Paragraph 60. A magistrates' court can refer devolution issues which arise in civil proceedings before it to the High Court (paragraph 6) to decide. Appeals from the High Court's decision on such a reference
lie direct to the Supreme Court (paragraph 11), subject to permission to appeal having been granted by either the High Court or the Supreme Court.

Civil proceedings begun in other courts

761. Where civil proceedings are begun in courts other than a magistrates' court (e.g. the County Court, the High Court), those courts can refer any devolution issues direct to the Court of Appeal (paragraph 7(1)). The Court of Appeal's decision can be appealed to the Supreme Court, subject to permission having been granted by either the Court of Appeal or the Supreme Court (paragraph 11).

762. Paragraph 10 allows the Court of Appeal to refer a devolution issue to the Supreme Court of its own volition, where such an issue has arisen in proceedings before the Court of Appeal other than on a reference under this Part (for example, on an appeal from a first instance decision of the High Court in which the devolution issue was not raised).

Tribunal proceedings

763. Any tribunal (as defined by section 158(1)) can refer a devolution issue direct to the Court of Appeal. Tribunals from which there is no appeal must make such a reference (paragraph 8). In either case, the Court of Appeal's decision can be appealed to the Supreme Court, subject to permission having been granted by either the Court of Appeal or the Supreme Court (paragraph 11).

Criminal proceedings — summary

764. The magistrates' court can refer a devolution issue to the High Court (paragraph 9(a)). An appeal from the High Court's decision lies to the Supreme Court, subject to permission having been granted by either the High Court or the Supreme Court (paragraph 11).

Criminal proceedings — on indictment

765. The Crown court can refer a devolution issue direct to the Court of Appeal (paragraph 9(b)). The Court of Appeal's decision can be appealed to the Supreme Court, subject to permission having been granted by either the Court of Appeal or the Supreme Court (paragraph 11).

Part 3

Proceedings in Scotland

766. Paragraph 13 provides that the Advocate General for Scotland can institute proceedings in Scotland to decide a devolution issue. Where proceedings are brought by the Advocate General, then the Counsel General is entitled to defend them.

767. This does not prevent other people from bringing or defending such proceedings, but where they do so then the Advocate General for Scotland and the Counsel General must be notified of the proceedings, and are entitled to take part in them (paragraph 14).

768. Paragraph 29(2)(b) gives the Advocate General for Scotland a general power to require courts and tribunals to refer devolution issues in proceedings to which the Advocate General is a party to the Supreme Court.

769. Paragraphs 15–21 set out further procedures by which devolution issues can be referred upwards from Scottish courts of first instance to the higher courts for resolution.
770. There are different procedures depending on whether the issue arises in criminal proceedings or civil proceedings (by virtue of paragraph 1(2), this includes all non-criminal proceedings), and the court in which proceedings originate.

**Civil proceedings in a court consisting of three or more judges of the Court of Session**

771. Such a court can refer a devolution issue, which arises in proceedings before it direct to the Supreme Court of its own volition (paragraph 18). If the court does not make such a reference but decides the issue itself, an appeal against its decision lies to the Supreme Court, subject to permission having been granted either by the court whose decision is being appealed or by the Supreme Court (paragraph 21(b)).

**Civil proceedings begun in other courts**

772. Where civil proceedings are begun in other courts, those courts can refer any devolution issues direct to the Inner House of the Court of Session (paragraph 15). An appeal against the Court of Session's decision on such a reference lies to the Supreme Court (paragraph 20).

**Tribunal proceedings**

773. Any tribunal (as defined by section 158(1)) in Scotland can refer a devolution issue direct to the Inner House of the Court of Session. Tribunals from which there is no appeal must make such a reference (paragraph 16). In either case, the Court of Session's decision can be appealed to the Supreme Court (paragraph 20).

**Criminal proceedings in a court consisting of two or more judges of the High Court of Justiciary**

774. Such a court can refer a devolution issue direct to the Supreme Court (paragraph 18), where such an issue has arisen in criminal proceedings before the court other than on a reference under this Part. If the court does not make such a reference in such a case but decides the issue itself, an appeal against its decision lies to the Supreme Court, subject to permission having been granted either by the court whose decision is being appealed or by the Supreme Court (paragraph 21(a)).

**Criminal proceedings — other Scottish courts**

775. Scottish courts which do not consist of two or more judges of the High Court of Justiciary can refer devolution issues to that Court. An appeal against the High Court of Justiciary's decision on such a reference lies to the Supreme Court, subject to permission having been granted either by the High Court of Justiciary or by the Supreme Court (paragraph 21(a)).

Part 4

**Proceedings in Northern Ireland**

776. Paragraph 23 provides that the Advocate General for Northern Ireland can institute proceedings in Northern Ireland to decide a devolution issue. Where proceedings are brought by the Advocate General, then the Counsel General is entitled to defend them.

777. This does not prevent other people from bringing or defending such proceedings, but where they do so then the Advocate General for Northern Ireland and the Counsel General must be notified of the proceedings, and are entitled to take part in them (paragraph 24).

778. Paragraph 29(2)(c) gives the Advocate General for Northern Ireland a general power to require courts and tribunals to refer devolution issues in proceedings to which the Advocate General is a party to the Supreme Court.
Paragraphs 25–28 set out further procedures by which devolution issues can be referred upwards from Northern Irish courts of first instance to the higher courts for resolution.

**Court proceedings (civil and criminal)**

780. Courts below the Court of Appeal in Northern Ireland can refer devolution issues to that Court (paragraph 25). Appeals against the Court of Appeal in Northern Ireland's decisions on such references lie to the Supreme Court, subject to permission to appeal having been granted either by that Court or by the Court of Appeal in Northern Ireland (paragraph 28).

781. Paragraph 27 provides that where a devolution issue has arisen in proceedings before the Court of Appeal in Northern Ireland other than on a reference under this Part, that Court can refer the issue to the Supreme Court of its own volition.

**Tribunal proceedings**

782. Any tribunal (as defined by section 158(1)) in Northern Ireland can refer a devolution issue direct to the Court of Appeal in Northern Ireland. Tribunals from which there is no appeal must make such a reference (paragraph 26). In either case, the Court of Appeal in Northern Ireland's decision can be appealed to the Supreme Court, subject to permission to appeal having been granted either by that Court or by the Court of Appeal in Northern Ireland (paragraph 28).

**Part 5**

**General**

783. Paragraph 30 enables the Attorney General or the Counsel General to refer any devolution issue, which is not being litigated to the Supreme Court.

784. The Attorney General must notify the Counsel General that such a reference has been made where it concerns the proposed exercise of a function by the Welsh Assembly Government, who must then refrain from exercising the function as proposed until the reference has been decided or disposed of.

785. Paragraph 31 provides that in awarding costs to litigants, courts and tribunals can take into account any additional expenses incurred as a result of joining into proceedings the Attorney General, the Counsel General, or the Advocates General for Scotland or Northern Ireland.

786. Paragraph 32 allows general court procedure rules and practice directions to make further provision about the procedure on devolution issues.

**SCHEDULE 10: MINOR AND CONSEQUENTIAL AMENDMENTS**

787. This Schedule contains the minor and consequential amendments to other enactments necessitated by the provisions of this Act.

**SCHEDULE 11: TRANSITIONAL PROVISIONS**

788. This Schedule contains detailed provisions dealing with the arrangements necessary to ensure an effective transition from the exercise of functions by the National Assembly for Wales constituted by the Government of Wales Act 1998 (for the purposes of this Schedule, “the old Assembly”) to the new National Assembly constituted by this Act and to the Welsh Ministers.

**Paragraph 1: Alteration of Assembly electoral regions**

789. Schedule 1 deals with the making of alterations to the Assembly electoral regions and to the numbers of seats allocated to those regions, as a consequence of changes to the parliamentary
constituencies in Wales. The Schedule places requirements on the Electoral Commission and the Boundary Committee for Wales (both of which are established under the Political Parties, Elections and Referendums Act 2000 (PPERA)) in relation to the consideration of the issue of whether any alteration would be required in the Assembly electoral regions, or in the allocation of seats to those regions, as a consequence of alterations to any parliamentary constituencies in Wales which may be made (referred to in Schedule 1 as “the Assembly electoral region issue”).

790. Paragraph 1 of Schedule 11 provides that Schedule 1 is to have effect with certain modifications, until such time as the functions of the Boundary Commission for Wales are transferred to the Electoral Commission, and functions are conferred on the Boundary Committee for Wales, by the coming into force of section 16 (1) of PPERA for those purposes. As applied with the modifications, Schedule 1 will not contain provisions which relate to functions of the Electoral Commission and Boundary Committee for Wales which are not in force, and will impose requirements in relation to the Assembly electoral region issue on the Boundary Commission for Wales.

Paragraph 2: 2007 election to be election to Assembly constituted under this Act

791. Most of the provisions of the Act are to come into force immediately after the Welsh general election to be held in May 2007. This paragraph, (together with those which follow it), enable that election, although generally held under the existing Government of Wales Act 1998, to be an election to the Assembly as newly constituted and to take account of the changes to electoral arrangements, and other associated reforms, for which this Act provides.

Paragraph 3: First meeting after 2007 ordinary election

792. This paragraph provides for the date of the first meeting of this Assembly to be set by order made by the ‘old Assembly’ but that date must be within seven days of the Welsh general election.

Paragraph 4: Date of 2011 election

793. This paragraph provides for the date of the first ordinary Welsh general held after 2007 to be calculated by reference to the 2007 election. That is, that general election will be held in 2011.

Paragraphs 5 and 6: No dual constituency and regional candidacy

794. These paragraphs amend GoWA to prevent dual candidacy (see section 7(5) and (6) of this Act), ensuring that candidates for election to the Assembly in the 2007 election cannot stand for election both as a member for a constituency and as a member for an electoral region. An individual will only be able to be a candidate to be elected to the Assembly to represent either a constituency or a region.

Paragraph 7: Electoral region vacancies before first general election

795. This paragraph provides that, for the period after the 2007 ordinary Welsh general election but before the ordinary Welsh general election to be held in 2011, section 11 (which deals with electoral region vacancies) is to be read as making reference to members elected at the ordinary election of 2007 and to that election.

Paragraph 8: Election orders

796. This paragraph provides for an order made under section 11 of GoWA, which is in force immediately before the repeal of that section, to continue to have effect until it is replaced by an order made under this Act.

Paragraph 9: Term of office of Assembly members
Paragraph 10: Disqualification orders

Paragraph 11: Disqualification of Lords of Appeal in Ordinary

Paragraphs 12 and 13: Remuneration of Assembly members

Paragraph 14: Publication of information about remuneration of Assembly members

Paragraph 15: Assistance to groups of Assembly members

Paragraph 16: First Presiding Officer

Paragraph 17: First Clerk
Paragraph 18: **Promotion of awareness of election system and devolved government**

806. This paragraph provides that paragraphs 5 and 6 of Schedule 2 (which authorise the Assembly Commission to promote awareness of the election system and devolved government either directly or by financial support for the Electoral Commission) have effect until the appointment of a First Minister under this Act as if the reference to the Commission were a reference to the old Assembly.

Paragraph 19: **Crown status of Assembly Commission**

807. This effect of this paragraph is that if, before the first appointment of a First Minister under section 46, Her Majesty makes an Order in Council under paragraph 12 (1) of Schedule 2 providing for the Assembly Commission to be treated as a Crown body for the purposes of an enactment, the statutory instrument containing the Order may be annulled only by either House of Parliament. Where an Order is made after the first appointment under section 46, the statutory instrument in which it is contained may also be annulled by the Assembly.

Paragraph 20: **Standing Orders**

808. This paragraph places a duty on the Secretary of State to make and publish, in English and Welsh, standing orders which are to govern the proceedings of the Assembly constituted under this Act and to do so before the ordinary Welsh general election is held in 2007 (i.e. by 31st March 2007 at the latest).

809. These standing orders will be needed in order to ensure that the Assembly constituted under this Act will, from the very beginning, have a set of standing orders which will enable it to operate the new arrangements made by this Act and which comply with its various mandatory requirements.

810. The aim of the Secretary of State is, however, to ensure that the old Assembly has the greatest practicable role in the process of formulating the standing orders in question and the Act therefore provides that the Secretary of State must give effect to any proposals made by the old Assembly which have been approved by two thirds of the Assembly members voting on the proposal in question and which have reached the Secretary of State no later than 28 February 2007.

811. Once made, the standing orders will be capable of being revised or re-made by the Assembly in accordance with section 31, i.e. with the support of at least two-thirds of Assembly members.

Paragraph 21: **Witnesses and documents: penalties**

812. Sections 39(4) and 40(3)(b) fix the maximum terms of imprisonment which can be imposed for offences under sections 39(1) and 40(2), respectively. These are framed by reference to provisions relating to sentencing which are contained in section 281(5) of the Criminal Justice Act 2003. Since that section is not yet in force, provision has to be made for fixing these maximum terms by reference to the present law, with the effect that until section 281(5) of the 2003 Act comes into force, the maximum is to be 3 months rather than 51 weeks. (The provisions of the 2003 Act mean that the effect of a term of imprisonment of 51 weeks will not, once section 281(5) of that Act is in force, be directly comparable to a term of equal nominal length under the existing law.)

Paragraphs 22 to 25: **Exercise of functions before appointment of first First Minister**

813. These paragraphs ensure that governmental functions of the old Assembly can continue to be exercised during “the initial period”, that is, the period beginning at the start of polling day 2007.
(when all members of the existing Assembly, including Assembly Ministers, would normally cease to be able to exercise those functions) and ending with the appointment of a First Minister.

814. This is done by ensuring that membership of the old Assembly does not, in relation to certain office-holders, cease until the end of the initial period. These office-holders are the Assembly First Secretary, the Assembly Secretaries (i.e. members of the “Assembly Government”) and also the Presiding Officer, provided these persons are candidates for election to the Assembly as constituted under this Act.

815. These persons will however cease to be treated as members of the Assembly if they are not re-elected or if they are disqualified from being members of the Assembly as re-constituted.

816. Paragraph 23 provides that during the initial period, functions of the Assembly constituted under GoWA (other than those which are the subject of paragraph 24) will be exercisable by the person who was First Secretary immediately before the beginning of the initial period, provided he or she is still an Assembly member. If that person is no longer a member of the Assembly, or the office of First Secretary was vacant immediately before the beginning of the initial period, the functions are exercisable by a person who was an Assembly Secretary at that time, is an Assembly member and who has been designated to exercise the functions by the other Secretaries. The First Secretary (or the other Secretary designated to act as such) will be able to delegate functions exercisable to one of the other Secretaries or to staff and functions delegated to Secretaries will be able to be further delegated by them to staff.

817. Where functions are delegated to staff, the head of the Assembly staff (the Permanent Secretary) makes the arrangements for the exercise of those functions. Any condition, restriction or limitation which applied to the exercise of a function before the beginning of election day 2007 applies equally to the exercise of that function during the initial period.

818. Paragraph 24 maintains the distinction between the parliamentary and executive sides of the existing Assembly. It provides that functions of the Assembly constituted under GoWA which were delegated to its House Committee are to be exercisable during the initial period by the person who was the presiding officer immediately before election day or, if that person does not qualify to be treated as continuing in office, or ceases to be so qualified, by the person who was the Clerk of the old Assembly. The presiding officer (or the clerk) will be able to delegate functions to staff of the Assembly. Where functions are delegated to staff, the person who was the Clerk of the Assembly immediately before the beginning of the initial period is to make the arrangements for the exercise of the functions. Any condition, restriction or limitation which applied to the exercise of a function before the beginning of election day applies to the exercise of that function during the initial period.

819. Paragraph 25 provides that subordinate legislation is to be made, confirmed or approved during the initial period by being signed by the person exercising the relevant function. Any such legislation is not subject to the normal Assembly procedures but the Clerk will be required to lay it before the Assembly as soon as reasonably practicable after the end of the initial period.

Paragraphs 26 to 28: **Saving for existing instruments conferring or imposing functions**

820. These paragraphs ensure that transfers of functions to the old Assembly under the provisions of GoWA, and various miscellaneous provisions in relation to those functions, continue in force so as to enable subordinate legislation made under them to be amended or revoked, and other kinds of action to be taken in relation to the exercise of those functions, even though the provisions of GoWA under which the functions in question were conferred on the old Assembly have been repealed by this Act.
Paragraph 29: First nomination of First Minister

821. This paragraph ensures that the Assembly's duty to nominate a person for appointment as First Minister under section 47(2)(a) is triggered by the holding of the Welsh general election in 2007.

Paragraphs 30 to 32: Transfer of Assembly functions

Paragraph 30

822. Sub-paragraph (1) provides that, subject to the important exceptions provided for under paragraph 31, all the functions of the old Assembly are to transfer to the Welsh Ministers at the end of the initial period (i.e. upon appointment of a First Minister).

823. Sub-paragraph (2) provides that the functions which will transfer are functions which were exercisable by the old Assembly by virtue of an Order in Council made under section 22 of GoWA, or as a result of a designation under section 2(2) of the European Communities Act 1972 (by virtue of section 29(1) GoWA), and which were so exercisable immediately before the first appointment of a First Minister. If there are further functions conferred or imposed on the old Assembly which were exercisable by it immediately before the first appointment of a First Minister, these will also be transferred to the Welsh Ministers. For the purposes of this paragraph, a function is “exercisable” even if the statutory provision which transferred the function to, or conferred or imposed it on, the old Assembly has not yet come into force.

Paragraph 31

824. Sub-paragraph (1) provides for functions of the old Assembly to be excepted from the general transfer made by paragraph 30. The mechanism for achieving this is for Her Majesty to make the necessary provision by Order in Council. The kind of provision which can be made includes transfer any of the above functions specifically to the First Minister or the Counsel General instead of to “the Welsh Ministers”. Functions may also be transferred to the Assembly Commission or to the Assembly itself but these may not involve functions of making, confirming or approving subordinate legislation. Such an Order in Council can also provide for functions transferred to be exercisable concurrently with another of these persons or bodies or subject to agreement of or after consultation with the Assembly Commission.

825. Where a function is one of making, confirming or approving subordinate legislation then, although it cannot be left with the Assembly (since “delegated” legislation is the province of the Welsh Ministers), an Order in Council under paragraph 31(2) and (4) can, instead, amend Schedule 5 to the Act so as to enable the Assembly to legislate on the matter by Measure instead. This will enable the subject-matter of any framework powers conferred or imposed on the Assembly in other Acts passed in the same session as this Act to be “converted” into legislative competence so that the Assembly can legislate by way of Measure about the matter. In exercising the power in paragraph 31 (2) and (4) to “convert” such powers into legislative competence, the scheme of Part 3 of this Act be an important factor to take into consideration when determining under paragraph 29(2) what modifications are to be made to the power in the “conversion” process.

826. The paragraph makes detailed provisions for the consents and approvals which must be obtained before an Order in Council under it can be made. For example, an Order “converting” a function of the Assembly constituted under GoWA to make secondary legislation, into a power of the Assembly to pass Measures on the matter, would require the approval of the Assembly constituted
under GoWA, and would also have to be laid before Parliament and be subject to annulment in pursuance of a resolution of either House.

Paragraph 32

827. This paragraph provides that references in enactments, prerogative instruments and other documents to the Assembly constituted under GoWA, are to be construed as references to the Welsh Ministers, First Minister, the Counsel General, the Assembly Commission or the Assembly constituted under this Act, as appropriate, to the extent necessary for the purpose or in consequence of the exercise by those persons of a function which they have as a result of paragraph 30 or 31 of this Schedule.

Paragraph 33: Functions transferred by Order in Council under GOWA 1998: Parliamentary and Assembly procedures

828. Ministerial functions of making subordinate legislation conferred by Act of Parliament are, with some exceptions, subject to Parliamentary procedures. These may either be affirmative (requiring specific Parliamentary endorsement) or negative (subject to annulment if a Parliamentary motion requires this).

829. Subject to limited exceptions, the old Assembly, where such functions were transferred to it by Order in Council under section 22 of GoWA, is required to give specific approval to subordinate legislation made in its name. Under this Act, these functions of making subordinate legislation under Act of Parliament will transfer to the Welsh Ministers. The Act therefore needs to make provision for imposing on such functions equivalent Assembly procedures (affirmative or negative) or to make it clear that no such procedure at all is to apply (for example in relation to certain local or temporary orders). This is the function of this paragraph.

830. Generally, an equivalent procedure is to apply — the Assembly equivalent of the Parliamentary procedures which applied immediately before the function was transferred to the old Assembly — to the making of subordinate legislation by a Minister of the Crown. So, if a Minister of the Crown is required by the Act of Parliament in question to obtain approval of Parliament before making subordinate legislation under a particular provision of that Act, the Welsh Ministers are to be required to obtain Assembly approval instead.

831. In some cases Parliamentary procedures will still apply, as is the case under GoWA, to certain legislation made by the Welsh Ministers, in addition to any relevant Assembly procedures. So, where an instrument contains legislation relating to an English border area or to a cross border body (if, in the latter case, the legislation relates to functions other than solely in relation to Wales) Parliamentary procedures apply. Additionally, if an Order in Council transferred a legislation making function to the old Assembly and expressly made it subject to special Parliamentary procedure or to a requirement that the order be confirmed by Act of Parliament, the exercise of that function by the Welsh Ministers etc. will continue to be subject to that procedure.

Paragraphs 34 and 35: Functions conferred or imposed by pre-commencement enactment: Parliamentary and Assembly procedures

832. These paragraphs deal with the different situation of functions of making subordinate legislation which were directly conferred (or imposed) on the ‘old Assembly’ by an enactment (usually an Act of Parliament) before the commencement of this Act, and which are now to be exercisable by the Welsh Ministers, the First Minister or the Counsel General. They cover two distinct kinds of situations: firstly those where a Minister of the Crown has a corresponding function in relation to
England to that which will be exercisable by the Welsh Ministers in relation to Wales and secondly where this is not the case, i.e. the function is unique to Wales.

833. If there is a particular Parliamentary procedure which applies to subordinate legislation made by a Minister of the Crown in relation to England, and a corresponding function is exercisable in relation to Wales by the Welsh Ministers, then the equivalent Assembly procedure to that Parliamentary procedure (affirmative or negative as the case may be or, sometimes, the equivalent under Assembly procedures of “special Parliamentary procedure”) is to apply.

834. If Parliamentary procedures applied to a legislation making function of a Minister of the Crown and to the exercise of the corresponding function by the Welsh Ministers, the First Minister and the Counsel General, both the Parliamentary procedure and an equivalent Assembly procedure will apply when the Welsh Ministers, the First Minister or the Counsel General exercise the function.

835. Paragraph 35 provides for the procedures applying to a function of making subordinate legislation which falls into the other category of those directly conferred (or imposed) on the ‘old Assembly’ namely those where no Minister of the Crown has a corresponding function in relation to England.

836. The paragraph specifies what Assembly procedures are to apply in such a case.

837. Unless a procedure is specified in relation to such function, none is to apply.

838. If subordinate legislation is to be made by virtue of a function listed in Table 1, it is subject to being laid before and approved by a resolution of the Assembly before it is made.

839. If subordinate legislation is made by virtue of a function listed in Table 2, it must be laid before the Assembly and can be annulled in pursuance of a resolution of the Assembly.

840. However, the provisions made in paragraphs 34 and 35 do not apply where functions of making subordinate legislation have been transferred to the Welsh Ministers, which were formerly functions of the Assembly constituted under GoWA as the result of a designation made under section 2 (2) of the European Communities Act 1972. In those circumstances, section 59 of this Act determines Assembly procedure in relation to the making of subordinate legislation.

Paragraphs 36 and 37: Transfers of Assembly functions: laying of reports and statements

841. Paragraphs 36 and 37 apply in relation to former Assembly functions of making or receiving reports or statements which are now exercisable by the Welsh Ministers, the First Minister, the Counsel General or the Assembly Commission, because those functions have been transferred to one of the latter group by paragraph 30 of this Schedule, or by an Order in Council under paragraph 31. Where such functions are ones which were made exercisable by the old Assembly by an Order in Council under section 22 of GoWA and, prior to that, were subject to a statutory requirement to lay the report or statement before Parliament, then that requirement applies to the Welsh Ministers etc as if the reference to Parliament was a reference to the Assembly constituted under this Act.

842. Where such functions are ones which were conferred or imposed on the old Assembly by legislation which was passed or made prior to the first appointment of a First Minister under this Act, and that legislation required the old Assembly to publish the report or statement, then a copy of the report or statement must be laid before the Assembly.

Paragraph 38 to 42: Transfers of Assembly functions: property, rights and liabilities
843. These paragraphs make provision for the transfer of property, rights and liabilities of the old Assembly in connection with those functions which transfer to (or are conferred or imposed on) the Welsh Ministers, the First Minister, the Counsel General or the Assembly Commission.

844. Generally, property, rights and liabilities in connection with a function vest in the person or body in whom the relevant function is vested. This includes any instruments, contracts or legal proceedings (made or commenced before the transfer) in relation to a function or to property, rights and liabilities in connection with a function, except rights and liabilities under a contract of employment of a member of staff of the old Assembly.

845. Paragraph 40 makes provision for Her Majesty, by Order in Council, to provide for the general rule above not to apply in relation to some cases, or to apply only in some cases or to apply with modifications. No recommendation can be made to Her Majesty to make such an order unless a draft of the order has been laid before and approved by a resolution of each House of Parliament and the Assembly.

846. Paragraph 41 makes provision for the Secretary of State, by order, to provide for the transfer of specified property, rights or liabilities of the ‘old Assembly’ (but not property, rights or liabilities under a contract of employment of a member of staff of that Assembly) to the Welsh Ministers etc. or to the Assembly Commission. Either House of Parliament can, by resolution, annul an order made under this paragraph.

847. Paragraph 42 provides that a certificate of the Secretary of State that any property has been transferred by paragraph 39 or 41 is conclusive evidence of the transfer.

848. The paragraph further provides that transfers under paragraphs 39 and 41 have effect in relation to property, rights or liabilities to which they apply despite any provision which would otherwise prevent, penalise or restrict the transfer of the property or liabilities and that a right of pre-emption, right of return or other similar right is not to operate or become exercisable as a result of any such transfer of property or rights. Further, any such right has effect in the case of any such transfer as if the transferee were the same person in law as the transferor and as if no transfer of property had taken place.

849. Additionally, paragraph 42 provides for just compensation to be paid to any person in respect of a right which would have operated in favour of (or be exercisable by) that person but which in consequence of paragraph 40(3) cannot subsequently operate in the person's favour (or be exercisable by the person). Any compensation payable is to be paid by the transferor, transferee or both.

850. The Secretary of State can, by order, provide for the determination of any disputes as to whether, to whom or by whom such compensation is to be paid, and how much that compensation should be. Any such order can be annulled by a resolution of either House of Parliament.

Paragraph 43: Staff of the Assembly

851. This paragraph provides that from the beginning of the day after the appointment of a First Minister, staff of the old Assembly are to be deemed to have been appointed as members of staff of the Welsh Assembly Government. This is subject to a power of the Secretary of State, by order, to make a scheme for the transfer of staff to the Assembly, by transferring to the Assembly Commission the rights and liabilities of listed employees under their contracts of employment.

852. Any such transfer does not break the relevant employee’s employment and the transfer scheme must provide for the terms and conditions of the employee's employment with the Commission to be no less favourable to the employee than they were immediately before the transfer.
853. If an employee listed in the scheme objects to becoming employed by the Assembly Commission, there will be no transfer of that employee but the employee's contract will be terminated at the beginning of the day after a First Minister is appointed. However, the employee will not be treated for any purpose as having been dismissed.

854. Before making an order under this paragraph, the Secretary of State must consult the old Assembly and such an order can be annulled by a resolution of either House of Parliament.

Paragraph 44: **Powers to lend money**

855. This paragraph deals with a power to lend money which was transferred to the old Assembly by an Order in Council under s. 22 GoWA and which is transferred to the Welsh Ministers under paragraph 30 of this Schedule.

856. The paragraph provides that any sums which would be required for the purpose of, or as a result of, the exercise of such a power to be issued by the Treasury out of, or to be paid into, the National Loans Fund are to be instead charged on the Welsh Consolidated Fund (WCF) or to be paid into that Fund.

857. Where a power was exercised by a Minister of the Crown before its transfer to the old Assembly, or was exercised by the old Assembly after transfer and the sums required were issued by the Treasury out of the National Loans Fund, the paragraph further provides that repayment of a loan is to be paid to the Welsh Ministers and by them into the WCF. However, amounts received by the Welsh Ministers in repayment of principal are treated (on the date of transfer of the power to them) as loans made to the Welsh Ministers by the Secretary of State and have to be repaid to the Secretary of State at such rates and times as the Treasury may determine. The amounts paid are to be charged on the WCF and corresponding receipts by the Secretary of State are to be paid into the National Loans Fund.

858. There is a power for Her Majesty, by Order in Council, to disapply this paragraph in relation to any power to lend money but no recommendation to Her Majesty to make an order can be made unless a copy of the statutory instrument has been laid and approved by a resolution of each House of Parliament.

Paragraph 45: **Local Government scheme**

859. This paragraph provides for the local government scheme made by the old Assembly under section 113(1) of GoWA to continue to have effect (with appropriate modifications) as if made under this Act.

Paragraph 46: **Voluntary sector scheme**

860. This paragraph provides for the voluntary sector scheme made by the old Assembly under section 114(1) of GoWA to continue to have effect (with appropriate modifications) as if made under this Act.

Paragraph 47: **Equality of opportunity arrangements**

861. This paragraph provides for equality of opportunity arrangements made by the old Assembly under section 120(1) of GoWA to continue to have effect (with appropriate modifications) as if made under this Act.

Paragraph 48: **Welsh Language Strategy and Scheme**
862. Section 78(1) requires the Welsh Ministers to adopt a Welsh Language strategy, which must set out how the Welsh Ministers propose to promote and facilitate the use of the Welsh language. Paragraph 48 provides that when section 78 comes into force (which will be immediately after the first appointment of a First Minister under section 46), then the National Action Plan for a Bilingual Wales (or Iaith Pawb), in whatever form it exists at that time, is to operate with appropriate modifications from then on as if it were a Welsh Language strategy adopted under section 78(1). In addition, any Welsh language scheme which the Assembly constituted under GoWA has adopted under section 21 of the Welsh Language Act 1993 and which is in force when section 78 comes into force, is to operate with appropriate modifications from then on as if it were a Welsh language scheme adopted under section 78(2).

863. The effect of paragraph 48(3) is that the Welsh Ministers are not required to re-publish the National Action Plan for a Bilingual Wales, nor any Welsh language scheme, which is operating as if made under section 78. The effect of paragraph 48(4) is that the Welsh Ministers are not required to publish a report under section 78(8) in relation to the financial year ending 31 March 2007.

Paragraph 49: Sustainable development scheme

864. This paragraph provides for the sustainable development scheme made by the old Assembly under section 121(1) of GoWA to continue to have effect (with appropriate modifications) as if made under this Act.

Paragraph 50 and 51: Orders in Council amending Schedule 5

865. These paragraphs provide for sections 95 and 96 to have effect with modifications until the beginning of the day after the day in which a First Minister is appointed. Sections 95 and 96 come into force on Royal Assent, in order to allow Schedule 5 (and therefore the Assembly's legislative competence to pass Assembly Measures) to be modified between Royal Assent and the Act coming fully into effect in May 2007. The modifications which this paragraph applies are necessary to allow sections 95 and 96 to operate in advance of May 2007.

Paragraph 52: Assembly Measures: criminal penalties

866. This paragraph provides that, until the coming into force of sections 281(5) and 154(1) of the Criminal Justice Act 2003, the maximum term of imprisonment which can be imposed on conviction of an offence (whether summary or triable either way) under an Assembly Measure is six months (again making provision for the different rules in relation to sentencing which apply until those provisions of the 2003 Act come into force).

Paragraph 53: Welsh Consolidated Fund

867. This paragraph imposes a duty on the old Assembly to pay, on 2 April 2007, all monies standing to its credit immediately before that day into the Welsh Consolidated Fund.

Paragraph 54: Grants

868. This paragraph ensures that section 118(2), that is, the power of Ministers of the Crown to make payments to the Welsh Ministers, has effect as a power to make payments to the old Assembly (including that Assembly as it continues in existence by virtue of Schedule 11, paragraph 22) until the first First Minister is appointed under the Act.

Paragraph 55: Statement of estimated payments
869. This paragraph provides that in relation to the financial year beginning on 1 April 2007, section 119 has effect also in relation to the old Assembly, so that the Secretary of State is required to lay a written statement of estimated payments before that Assembly, and to include, in that statement, estimated payments destined for the old Assembly.

Paragraph 56: **Destination of receipts**

870. This paragraph provides that section 120 (which governs which sums need to be paid into the Welsh Consolidated Fund and which do not) has effect, until the first First Minister is appointed under the Act, as if references to the Welsh Ministers etc. and to the Assembly Commission were references to the old Assembly. It also allows the old Assembly to make the initial decision as to which receipts can be retained, rather than paid into the Welsh Consolidated Fund.

Paragraph 57: **Borrowing**

871. This paragraph provides that section 121 has effect, until the first First Minister is appointed under the Act, as if the references to the Welsh Ministers were references to the old Assembly. This allows the old Assembly to continue to borrow from the Secretary of State, if necessary, until it completely ceases to exist. It further makes provision for relevant amounts outstanding immediately before 1 April 2007 to be treated as outstanding (and therefore counting towards the maximum that can be borrowed from the Secretary of State) as if borrowed under the section.

Paragraphs 58 and 59: **Payments out of the Welsh Consolidated Fund**

872. Paragraph 58 provides that section 124 has effect, until the first First Minister is appointed under the Act, as if the reference to the Welsh Ministers etc. or the Assembly Commission were references to the old Assembly. This gives a legal basis for sums to be paid out of the Welsh Consolidated Fund to meet expenditure of the old Assembly.

873. Paragraph 59 makes transitional provision in respect of certain minor amendments made to other Acts, in Schedule 10 of the Act. Those amendments come into force on 1st April 2007. They provide that, where the Welsh Ministers are guaranteeing certain loans, the sums required for fulfilling the guarantee will be charged on the Welsh Consolidated Fund, rather than on the UK Consolidated Fund, and that sums required by the Welsh Ministers for the making of payments under Part 3 (Non-Domestic Rating: Distribution) of Schedule 8 to the Local Government Finance Act 1988 will be charged on the Welsh Consolidated Fund. Paragraph 59 operates so that, until the Welsh Ministers come into existence at the end of the initial period, sums required for fulfilling guarantees given by the old Assembly under the provisions in question, or for making payments which that Assembly is required to make under Part 3 of Schedule 8 to the Local Government Finance Act 1988 will also be charged on the Welsh Consolidated Fund.

Paragraph 60: **Annual Budget motions**

874. This paragraph provides that the requirement that a Budget resolution of the Assembly be passed before sums can be paid out of the Welsh Consolidated Fund etc. can be satisfied by a resolution of the old Assembly so far as section 125 has effect in relation to the financial year beginning on 1 April 2007.

Paragraph 61: **Supplementary Budget motions**

875. This paragraph ensures that in so far as section 126 has effect in relation to the financial year beginning on 1 April 2007, supplementary Budget motions can be moved in the old Assembly (except as it continues in existence during the initial period). Where a supplementary Budget motion
under the Act is moved in the old Assembly, references to the First Minister or a Welsh Minister are to members of the “executive committee” under GoWA.

Paragraph 62: Contingencies

876. This paragraph provides that the power to use resources or to have cash paid out of the Welsh Consolidated Fund for an emergency situation (any such amounts not having been approved under a Budget resolution), applies to the old Assembly until the first First Minister is appointed under the Act. Paragraph 62 limits to £50 million the total amount that can be used during that period. The overall ceiling for the financial year, set down in section 128, still applies.

Paragraph 63: Approvals to draw

877. This paragraph provides that the provisions in section 129, requiring the approval of the Auditor General before payments can be made out of the Welsh Consolidated Fund, apply to the old Assembly until the first First Minister is appointed under the Act.

Paragraph 64: Auditor General

878. This paragraph provides that the person who immediately before the repeal of section 90 GoWA is the Auditor General for Wales, is to be taken, after such repeal, to have been appointed under paragraph 1 of Schedule 8.

Paragraph 65: Advocate General for Northern Ireland

879. This paragraph makes provision necessary for the period before the coming into force of section 27 (1) the Justice (Northern Ireland) Act 2002.

Paragraphs 66 and 67: The Supreme Court

880. These paragraphs make provision necessary for the period before the coming into force of section 23(1) of the Constitutional Reform Act 2005.

SCHEDULE 12: REPEALS AND REVOCATIONS

881. This Schedule makes the usual provision for repeals and revocations of other enactments consequent upon this Act.

COMMENCEMENT

882. The provisions of the Act when enacted will be brought into effect immediately after the Welsh general election in 2007, except the following sections which are the subject of special commencement provisions:

Provisions which come into force on Royal Assent:

883. Schedule 2, paragraphs 5, 6 and 12 (promotion of awareness of Assembly elections etc.); Sections 95 and 96, and Schedule 5 (power to amend Schedule 5, which details the extent of the Measure-making competence); Section 109 and Schedule 7 (power to amend Schedule 7 which details the extent of primary legislative competence); Section 119 (requires written estimate of payments to be made by Secretary of State); Section 120 (3) and (7) (designation by Treasury of receipts); Section 125 (requirement of annual Budget motion); Sections 157–159, 160(2)–(4), 161–162, 164–166, the amendment made by paragraph 61 of Schedule 10 in section 13 of the Political Parties, Elections and Referendums Act 2000, Schedule 11 (various transitional etc provisions), and various consequential repeals under Schedule 12.

Provisions which come into force on 1st April 2007:
884. Sections 117, 118, 120(1) and (2), (4) to (6) and (8), 121, 122, and 124 all of which make provisions in relation to the Welsh Consolidated Fund.

885. Section 126, which allows one or more supplementary Budget motions to be moved in any financial year, and sections 128 and 129.


887. The repeal by Schedule 12 of sections 80, 82, 84, 85 (1) and 89 of GoWA.

**Provisions which come into force immediately after the first appointment of a First Minister under section 46:**

888. Unless already brought into force on Royal Assent or on 1st April 2007 by section 161, and subject to section 161(6), which makes provision as to when certain repeals of GoWA will come into force, any provision which relates to functions of the First Minister, the Welsh Ministers, the Counsel General or the Assembly Commission, any provision relating to the Auditor General or the Comptroller and Auditor General, provisions which consist of an amendment to GoWA by schedule 10 and any repeals by Schedule 12 of provisions which fall to be repealed as consequence of provisions which fall within sections 161 (a), (b) or (c).

**Repeal by Schedule 12 of sections 83, 88, 93(8), 97 and 101AGoWA:**

889. These repeals come into force when those sections (which make various provisions in relation to the preparation of accounts by the Assembly and by the Secretary of State) have been complied with for the financial year ending 31st March 2007 (and for earlier financial years), and sections 123, 131, 132 and 141 do not apply for that financial year.

**Assembly Act provisions:**

890. Sections 103 and 105 come into force immediately after the Welsh general election in 2007. Section 103 provides for the holding of a referendum on whether the Assembly Act provisions (Sections 107–108 and Sections 110–115) should be brought into force. Section 105 provides that if the majority of voters in such a referendum vote in favour of bringing the Assembly Act provisions into force, then the Welsh Ministers can bring them into force on such date as they may specify by making a commencement order. Section 104 comes into force (by virtue of section 161 (4) (a)) on the first appointment of a First Minister under the Act.

**GLOSSARY OF TERMS**

891. In these Explanatory Notes, the terms set out in the left-hand column of the table below have the meanings attributed to them in the right-hand column of the table.

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<tr>
<th>Term</th>
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<tr>
<td>AGW</td>
<td>the Auditor General for Wales</td>
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<tr>
<td>Assembly</td>
<td>the National Assembly for Wales</td>
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<tr>
<td>Clerk</td>
<td>the Clerk of the Assembly as described in section 26 of the Act</td>
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<tr>
<td>First Minister</td>
<td>as described in sections 46 and 47 of the Act</td>
</tr>
<tr>
<td>GoWA</td>
<td>Government of Wales Act 1998</td>
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<tr>
<td>Supreme Court</td>
<td>As established by section 23 of the Constitutional Reform Act 2005, once that section is brought into force by an order made by the Secretary of State under section 148 of that Act.</td>
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Until section 23 of the Constitutional Reform Act 2005 is brought into force, references to the Supreme Court shall be modified as set out in paragraphs 66 and 67 of Schedule 11.

as described in section 48 of the Act

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The following table sets out the dates and Hansard references for each stage of this Act’s passage through Parliament.

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