



# Government of Wales Act 2006

## 2006 CHAPTER 32

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.

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- (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.

## **2 Assembly constituencies and electoral regions**

- (1) The Assembly constituencies are the parliamentary constituencies in Wales (as specified in the Parliamentary Constituencies and Assembly Electoral Regions (Wales) Order 2006 ([S.I. 2006/1041](#))).
- (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) For provision about alterations in the Assembly electoral regions and in the allocation of seats to those regions see Schedule 1.
- (6) Subsections (1), (3) and (4) are subject to any Order in Council under the Parliamentary Constituencies Act 1986 ([c. 56](#)), as that Act has effect as extended by that Schedule.

### *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.

#### **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.

#### **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

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- (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.

## **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).

## **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.

## **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.

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## **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.

### *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.

## **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

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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.

### *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.

## **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,



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- (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.

#### *Duration of membership*

### **14 Term of office of Assembly members**

The term of office of an Assembly member—

- (a) begins when the Assembly member is declared to be returned, and
- (b) ends with the dissolution of the Assembly.

### **15 Resignation of members**

An Assembly member may at any time resign by giving notice in writing to the Presiding Officer.

## *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.

### **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.

## **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.

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## **19 Judicial proceedings as to disqualification**

- (1) Any person who claims that a person purporting to be an Assembly member is, or at any time since being returned as an Assembly member has been, disqualified from being—
  - (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.

*Remuneration, oaths etc.*

## **20 Remuneration of Assembly members**

- (1) The Assembly must make provision for the payment of salaries to Assembly members.
- (2) The Assembly may make provision for the payment of allowances to Assembly members.
- (3) The Assembly may make provision 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 may be made by—
- (a) the standing orders, or
  - (b) resolutions of the Assembly,
- and may include provision conferring functions on the Assembly Commission.

## **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—
- (a) pursuant to a resolution (or combination of resolutions) of either House of Parliament 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)(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.

## **22 Remuneration: supplementary**

- (1) Different provision may be made under section 20 or 21 for different cases.
- (2) The Assembly 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 (and may, in particular, do so by requiring it to be published by the Assembly Commission).
- (3) If the Assembly has exercised the power under section 20 to confer on the Assembly Commission the function of determining any salaries, allowances, pensions or gratuities of the kind mentioned in that section, the Assembly Commission must publish every such determination as soon as is reasonably practicable after it is made.
- (4) For the purposes of sections 20 and 21 a person who—

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(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.

## **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.

## **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 Assembly 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) If a motion making a determination under subsection (1) is passed on a vote it has no effect unless at least two-thirds of the Assembly members voting support it.
- (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 standing orders must include provision—
- (a) for the publication of every determination under this section, and
  - (b) for the publication for each financial year of information about the sums paid under this section in the financial year.

### *Presiding Officer and administration*

## **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”).
- (2) 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.

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- (3) The Presiding Officer holds office until the conclusion of the next election of a Presiding Officer under subsection (1).
- (4) The Deputy Presiding Officer holds office until the Assembly is dissolved.
- (5) 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.
- (6) 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.
- (7) 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.
- (8) 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.
- (9) 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.
- (10) 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.
- (11) The Presiding Officer may (subject to the standing orders) authorise the Deputy Presiding Officer to exercise functions of the Presiding Officer.
- (12) 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.
- (13) 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).
- (14) 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.
- (15) 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.

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## *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 sub-committee 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.

### **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.

### **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—

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- (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.

*Proceedings 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.

### **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.

### **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.

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### **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.

### **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.

### **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.

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- (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.

#### *Witnesses and documents*

### **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.
- (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.

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- (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.

### **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.

### **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.

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- (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.

#### **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.

### *Legal issues*

#### **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.

#### **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).

#### **43 Contempt of court**

- (1) The strict liability rule does not apply in relation to any publication—

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- (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”,

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

#### **44 Corrupt practices**

The Assembly and the Assembly Commission are public bodies for the purposes of the Prevention of Corruption Acts 1889 to 1916.

## **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 Cyffredinol 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.

*Ministers, staff etc.*

#### **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.

#### **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).

#### **48 Welsh Ministers**

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

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- (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.

#### **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.

#### **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 Home Civil Service.
- (3) Subsection (1) and any other enactment about the appointment of persons as members of the staff of the Welsh Assembly Government are subject to any provision made in relation to the Home Civil Service by or under any Order in Council.
- (4) Any Civil Service management function is exercisable by the Minister for the Civil Service in relation to members of the staff of the Welsh Assembly Government as in relation to other members of the Home Civil Service; and, accordingly, section 1 of the Civil Service (Management Functions) Act 1992 (c. 61) (delegation of functions by Ministers) applies to any such function as extended by this subsection (so as to allow functions to be delegated to the Welsh Ministers, the First Minister or the Counsel General).
- (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—

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- (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 Home Civil Service 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) In this section—
- “Civil Service management function” means any function to which section 1 of the Civil Service (Management Functions) Act 1992 (c. 61) applies and which is vested in the Minister for the Civil Service, and
  - “the Home Civil Service” means Her Majesty’s Home Civil Service.

*Remuneration, oaths etc.*

**53 Remuneration**

- (1) The Assembly must make provision for the payment of salaries to persons to whom this section applies.
- (2) The Assembly may make provision for the payment of allowances to persons to whom this section applies.
- (3) The Assembly may make provision 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 may be made by—
  - (a) the standing orders, or
  - (b) resolutions of the Assembly,



and may include provision conferring functions on the Assembly Commission.

#### **54 Remuneration: supplementary**

- (1) Different provision may be made under section 53 for different cases.
- (2) The Assembly 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 (and may, in particular, do so by requiring it to be published by the Assembly Commission).
- (3) If the Assembly has exercised the power under section 53 to confer on the Assembly Commission the function of determining any salaries, allowances, pensions or gratuities of the kind mentioned in that section, the Assembly Commission must publish every such determination as soon as is reasonably practicable after it is made.
- (4) Provision made under section 53(3) does not affect pensions or allowances in payment before the provision was made.

#### **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.

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## 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.

### 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,
  - (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 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.
- (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.
- (5) For further provision in connection with the transfer etc. of functions by Orders in Council under this section see Schedule 3.

## **59 Implementation of Community 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 or a part of Wales).
- (5) The power conferred by section 56 of the Finance Act 1973 (c. 51) (services provided in pursuance of a Community 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.

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- (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 either 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 or a part of Wales).

## **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.

## **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.

## **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

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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.

## **65 Private bills**

- (1) The Welsh Ministers may promote private bills in Parliament and may oppose any private bill in Parliament.
- (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).

## **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.

## **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.

## **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.

## **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.

## **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.

## **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.

*“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.

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- (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.

### **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.

### **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.

## **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.

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- (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).

## **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).
- (6) 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.

## **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.

## **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

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- (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.

## **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.

*Community law, human rights and international obligations etc.*

## **80 Community 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 a Community 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).

- (3) But if such a Community 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 Community 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 a Community obligation, to the extent that the Community 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 Community 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.

## **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

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- (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).
- (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.

*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.

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

#### **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.

#### **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.

## **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.

### *Property, rights and liabilities*

## **87 Property, rights and liabilities of Welsh Ministers etc.**

- (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.

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- (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.

## **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.

### *Supplementary*

## **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.

## **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).

## **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.

**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.

**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.

**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
  - (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 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 Community 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 is to be determined by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances.

## **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.

## **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.

### *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.

## **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.

## **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.

## **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.

### **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,
  - (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.

### **102 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.

#### **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.

#### **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.

### **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 the continuing operation on and after that day of any Assembly Measure enacted before that day.

### *Power*

### **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.

### **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 Community 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.

## **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.

## 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.

### 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.

## **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.

## **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 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.

#### **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.

#### **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.
- (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.
- (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).

#### **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.

### **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.

### *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.

#### **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.

#### **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).

### *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.

#### **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.

### **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—
  - (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.

### *Expenditure*

### **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.

## **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%.

## 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.

**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).

**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.

*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.

### **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.

### **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.

### **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 259(1) of the Companies Act 1985 (c. 6), and
  - “parent undertaking” is to be construed in accordance with section 258 of that Act.

### **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.

*Financial accountability of Assembly Commission*

**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.

### **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.

### **139 Accounts of subsidiaries of Assembly Commission**

- (1) For the purposes of the examination by the Auditor General of any accounts of the Assembly Commission 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 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 259(1) of the Companies Act 1985 (c. 6), and

“parent undertaking” is to be construed in accordance with section 258 of that Act.

#### **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.

#### *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 256 of the Companies Act 1985 (accounting standards) or to international accounting standards (as defined in section 262 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.

## **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.
- (3) 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.

*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.

**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.

*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).



## PART 6

### MISCELLANEOUS AND SUPPLEMENTARY

#### *Welsh public records*

#### **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.

#### **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.

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- (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.

#### **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 Act 1977 (c. 49), 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.

### *Miscellaneous*

#### **149 Resolution of devolution issues**

For provision about the resolution of devolution issues see Schedule 9.

#### **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.

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- (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.

### **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.

### **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,

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- (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.

### **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.

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- (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.

## **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.

### **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.
- (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.

### **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.

### *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

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- (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.

## 158 Interpretation

- (1) In this Act (except where the context otherwise requires)—
- “Community 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 Community 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, and
 “Wales” includes the sea adjacent to Wales out as far as the seaward boundary of the territorial sea.
  - (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 definition of “Wales” any boundary between—
    - (a) the parts of the sea which are to be treated as adjacent to Wales, and
    - (b) 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.
- (6) 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.

## 159 Index of defined expressions

In this Act the following expressions are defined or otherwise explained by the provisions indicated—

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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) and Schedule 1
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)
Community law	section 158(1)
constituency vote	section 6(2)
the Convention rights	section 158(1)
the Counsel General	section 45(1)(c)
cross-border body	section 158(1)

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the Deputy Presiding Officer	section 25(1)(b)
Deputy Welsh Minister	section 50
electoral region figure	section 8(5)
electoral region vote	section 6(3)
enactment	section 158(1) and (2)
English border area	section 158(1)
financial year	section 158(1)
the First Minister	sections 46 and 47
function	section 158(1)
government department	section 158(1)
the initial period	section 161(5)
international obligations	section 158(1)
member of the staff of the Assembly	paragraph 3(2) of Schedule 2
member of the staff of the Welsh Assembly Government	section 52
Minister of the Crown	section 158(1)
modifications	section 158(1)
political group	section 24(5)
political group with an executive role	section 25(8)
the Presiding Officer	section 25(1)(a)
the principal accounting officer for the Assembly Commission	section 138(1) and (2)
the principal accounting officer for the Welsh Ministers	section 129(6) and (7)
regional returning officer	section 7(7)
registered political party	section 6(6)
relevant enactment (in sections 124 to 128)	section 124(4)
the relevant persons (in sections 124 to 128)	section 124(3)
the standing orders	section 31(1)
subordinate legislation	section 158(1)
supplementary Budget motion	section 126(1)
tribunal	section 158(1)
use of resources	section 125(4)
Wales	section 158(1), (3) and (4)
Welsh Assembly Government	section 45(1)

Welsh Consolidated Fund	section 117
the Welsh Ministers	section 45(2)

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## **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.

## **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,

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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.

## **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.

### **163 Repeals and revocations**

For repeals and revocations of enactments (including some spent enactments) see Schedule 12.

### **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).

### **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.

### **166 Short title**

This Act may be cited as the Government of Wales Act 2006.

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## SCHEDULES

### SCHEDULE 1

Section 2

#### ALTERATION OF ASSEMBLY ELECTORAL REGIONS

##### *Introduction*

- 1 (1) This Schedule makes provision for alterations—
  - (a) in the Assembly electoral regions, and
  - (b) in the allocation of seats to the Assembly electoral regions.
- (2) It applies in relation to cases where—
  - (a) the Electoral Commission (“the Commission”) intend to consider making a report under section 3 of the Parliamentary Constituencies Act 1986 (c. 56) (“the 1986 Act”) with respect to Wales or any area comprised in Wales, and
  - (b) accordingly, the Boundary Committee for Wales (“the Committee”) are required to submit a report to the Commission under section 3A(2) of the 1986 Act containing the recommendations which the Committee propose should be included in the Commission’s report.
- (3) In this paragraph “the Boundary Committee for Wales” means the Committee of that name established by the Commission under section 14 of the Political Parties, Elections and Referendums Act 2000 (c. 41).

##### *Assembly electoral region issue*

- 2 (1) This paragraph applies if the Committee provisionally determine proposed recommendations which—
  - (a) they are minded to include in a report under section 3A(2) of the 1986 Act, and
  - (b) would involve any alterations in any parliamentary constituencies in Wales.
- (2) The Committee must consider the issue of whether, to give effect to the rules in paragraph 9, any alteration is required—
  - (a) in the Assembly electoral regions, or
  - (b) in the allocation of seats to the Assembly electoral regions.
- (3) In this Schedule that issue is referred to as “the Assembly electoral region issue”.

##### *Notice of Committee’s proposed recommendations*

- 3 (1) If, having considered the Assembly electoral region issue, the Committee have provisionally determined to propose recommendations affecting any Assembly electoral region, they must publish a notice in at least one newspaper circulating in that region.
- (2) The notice must state—

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- (a) the effect of the proposed recommendations,
  - (b) (except where the effect of the recommendations is that no alteration affecting the Assembly electoral region be made) that a copy of the recommendations is open to inspection at one or more specified places within each Assembly constituency included in the Assembly electoral region, and
  - (c) that representations with respect to the recommendations may be made to the Committee within one month after the publication of the notice.
- (3) The Committee must take into consideration any representations duly made in accordance with the notice.
- (4) If the Committee revise any proposed recommendations after publishing a notice of them under sub-paragraph (1), they must comply again with sub-paragraphs (1) to (3) in relation to the revised proposed recommendations as if no earlier notice had been published.
- (5) The Committee need not comply with sub-paragraph (1) or (4) if—
- (a) the proposed recommendations (or the revised proposed recommendations) are only for an alteration in the number of seats for the Assembly electoral region, and
  - (b) the proposed (or revised proposed) total number of seats for the Assembly electoral regions is exactly divisible by five.
- (6) If the Committee's proposed (or revised proposed) total number of seats for the Assembly electoral regions is not exactly divisible by five, a recommendation for an alteration in the number of seats for any Assembly electoral region is (for the purposes of this paragraph and paragraph 4) a recommendation which also affects all the other Assembly electoral regions.

#### *Local inquiries*

- 4 (1) For the purposes of this Schedule the Committee may, if they think fit, cause a local inquiry to be held in respect of any Assembly electoral region or regions.
- (2) Sub-paragraph (3) applies if, having published a notice under paragraph 3(1) of a proposed recommendation for an alteration affecting any Assembly electoral regions, the Committee receive any representations objecting to the proposed recommendation from—
- (a) an interested local authority, or
  - (b) a body of electors numbering 500 or more.
- (3) The Committee may not proceed with the proposed recommendation unless, since the publication of the notice, a local inquiry has been held in respect of the Assembly electoral regions.
- (4) But sub-paragraph (3) does not apply if—
- (a) a local inquiry was held in respect of the Assembly electoral regions before the publication of the notice, and
  - (b) the Committee think that a further local inquiry would not be justified, having regard to the matters discussed at the previous local inquiry, the nature of the representations received on the publication of the notice and any other relevant circumstances.

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- (5) The Committee must take into consideration the findings of any local inquiry held under this paragraph.
- (6) Section 250(2) and (3) of the Local Government Act 1972 (c. 70) (witnesses at local inquiries) applies in relation to a local inquiry which the Committee cause to be held under this paragraph.
- (7) In this paragraph—
  - “interested local authority” means the council of a county or county borough whose area is wholly or partly included in the Assembly electoral regions affected by the proposed recommendation, and
  - “elector” means a person who, at the time when the representations are made, is registered in the register of local government electors at an address within any of the Assembly constituencies included in any of those Assembly electoral regions.

#### *Committee’s report*

- 5 (1) The Committee’s report under section 3A(2) of the 1986 Act must contain the recommendations which, in the light of—
  - (a) their consideration of the Assembly electoral region issue,
  - (b) any representations duly made with respect to the recommendations in accordance with any notice published under paragraph 3, and
  - (c) the findings of any inquiry held under paragraph 4 in respect of the Assembly electoral regions affected by the recommendations,
 they propose should be included in the Commission’s section 3 report in pursuance of paragraph 8.
- (2) In sub-paragraph (1) “the Commission’s section 3 report” means the report of the Commission under section 3 of the 1986 Act for the purposes of which the Committee’s proposed recommendations are made.

#### *Consideration of Committee’s report by Commission*

- 6 (1) Section 3A(3) of the 1986 Act (powers of the Commission in relation to the Committee’s proposed recommendations) applies (with any necessary modifications) in relation to the Committee’s proposed recommendations under paragraph 5(1) as it applies in relation to any proposed recommendations of the Committee under section 3A(2) of the 1986 Act.
- (2) Sub-paragraphs (3) and (4) apply if the Commission are minded to exercise any of the powers conferred by section 3A(3)(b) and (c) of the 1986 Act in relation to the Committee’s proposed recommendations under paragraph 5(1).
- (3) The Commission must have regard to—
  - (a) any representations duly made with respect to the recommendations in accordance with any notice published under paragraph 3, or
  - (b) (where they are minded to exercise any of the powers mentioned in sub-paragraph (2) in relation to part only of an Assembly electoral region) any representations so made with respect to the recommendations so far as relating to that part of the region.
- (4) The Commission must have regard to—



- (a) the findings of any inquiry held under paragraph 4 in respect of the Assembly electoral regions affected by the recommendations, or
  - (b) (where, in the case of an Assembly electoral region in respect of which any such inquiry was held, they are minded to exercise any of the powers mentioned in sub-paragraph (2) in relation to part only of the region) the findings of the inquiry so far as relating to that part of the region.
- (5) If the Committee's proposed recommendations under paragraph 5(1) are modified by the Commission under section 3A(3)(b) of the 1986 Act, the Committee must publish in at least one newspaper circulating in the Assembly electoral region affected by the recommendations a notice stating their effect as so modified.

#### *Directions by Commission to Committee*

- 7 In section 3A(4) of the 1986 Act (directions by the Commission to the Committee)—
- (a) the first reference to that Act includes a reference to this Schedule, and
  - (b) the reference to the rules mentioned in that subsection includes a reference to the rules in paragraph 9.

#### *Commission's report*

- 8 (1) This paragraph applies if the Commission submit to the Secretary of State—
- (a) a report under subsection (1) of section 3 of the 1986 Act recommending alterations in parliamentary constituencies in Wales, or
  - (b) a report under subsection (3) of that section relating to any constituency or constituencies in Wales.
- (2) The report must show any alteration—
- (a) in the Assembly electoral regions, or
  - (b) in the allocation of seats to the Assembly electoral regions,
- which the Commission recommend in order to give effect to the rules set out in paragraph 9.
- (3) If in the opinion of the Commission no alteration is required for that purpose, they must state that in the report.
- (4) If the report recommends any alteration in any Assembly electoral regions, it must state the name (in English and in Welsh) by which the Commission recommend that the Assembly electoral regions (as proposed to be altered) should be known.
- (5) The Commission must lay a copy of the report before the Assembly.

#### *Rules*

- 9 (1) The rules are—
- (1) Each Assembly constituency must be wholly included in one Assembly electoral region.
  - (2) The regional electorate for an Assembly electoral region must be as near the regional electorate for each other Assembly electoral region as is reasonably practicable, having regard (where appropriate) to special geographical considerations.
  - (3) The total number of seats for the Assembly electoral regions must be—

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- (a) one half of the total number of the Assembly constituencies, or
- (b) (if that total number is not exactly divisible by two) one half of the number produced by adding one to that total number.
- (4) The number of seats for an Assembly electoral region must be—
  - (a) one fifth of the total number of seats for the Assembly electoral regions, or
  - (b) (if that total number is not exactly divisible by five) either one fifth of the highest number which is less than that total number and exactly divisible by five, or the number produced by adding one to one fifth of that highest number, as provided by sub-paragraphs (2) to (6).
- (2) If the total number of seats for the Assembly electoral regions is not exactly divisible by five, there is to be calculated the difference between—
  - (a) the total number of seats for the Assembly electoral regions, and
  - (b) the highest number which is less than that total number and exactly divisible by five.
- (3) That difference is the number of residual seats.
- (4) No more than one residual seat may be allocated to an Assembly electoral region.
- (5) The regional electorate for each Assembly electoral region is to be divided by the aggregate of—
  - (a) the number of Assembly constituencies in the Assembly electoral region, and
  - (b) one fifth of the highest number which is less than the total number of seats for the Assembly electoral regions and exactly divisible by five.
- (6) In allocating the residual seat or seats to an Assembly electoral region or regions, regard must be had to the desirability of allocating the residual seat or seats to the Assembly electoral region or regions for which the calculation in sub-paragraph (5) produces the highest number or numbers.

*Orders in Council giving effect to Commission reports*

- 10 (1) An Order in Council under the 1986 Act for giving effect to the recommendations contained in a report of the Commission may specify different dates for its coming into force—
  - (a) for the purposes of elections to the House of Commons, and
  - (b) for the purposes of the return of Assembly members.
- (2) The coming into force of an Order in Council under the 1986 Act does not affect the operation of section 10 or 11, or the constitution of the Assembly, at any time before the next general election.

*Interpretation: the regional electorate*

- 11 (1) For the purposes of any report of the Commission, the regional electorate for an Assembly electoral region is the number of persons who, on the enumeration date, are registered in the register of local government electors at addresses within any of the Assembly constituencies included in the Assembly electoral region.

- (2) In sub-paragraph (1) “the enumeration date” means the date on which notice that the Commission intended to consider making the report was published in accordance with section 5(1) of the 1986 Act.
- (3) Sub-paragraphs (1) and (2) also apply for construing references to the regional electorate for an Assembly electoral region in relation to any report of the Committee made for the purposes of any such report of the Commission.

*Interpretation: general*

- 12 In this Schedule—
- “the 1986 Act” has the meaning given by paragraph 1(2)(a),
  - “the Assembly electoral region issue” has the meaning given by paragraph 2(3),
  - “the Commission” has the meaning given by paragraph 1(2)(a),
  - “the Committee” has the meaning given by paragraph 1(2)(b), and
  - “recommendations” includes (unless the context otherwise requires) a recommendation that no alteration is required.

SCHEDULE 2

Section 27

ASSEMBLY COMMISSION

*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.

*Property*

- 2 The Assembly Commission may acquire, hold and dispose of property.

*Staff*

- 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.

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- (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.

#### *Powers*

- 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

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- (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*

- 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.
- 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*

- 7 The Assembly Commission may delegate any of its functions to—
  - (a) the Presiding Officer, or
  - (b) the Clerk.

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*Principles in accordance with which functions are to be exercised*

- 8 (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.

*Annual report*

- 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.

*Validity of acts*

- 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.

*Proceedings*

- 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.

*Crown status*

- 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

Section 58

### TRANSFER ETC. OF FUNCTIONS: FURTHER PROVISIONS

#### PART 1

##### FUNCTIONS TRANSFERABLE ETC.

###### *Existing and future functions*

- 1 (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.

###### *Functions relating to culture*

- 2 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.

###### *Cross-border functions*

- 3 (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.

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- (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.

*Functions exercisable beyond the territorial sea*

- 4 (1) The power conferred by section 58(1)(c) includes power to direct that any function under—
- (a) Part 2 of the Food and Environment Protection Act 1985 (c. 48) (deposits in the sea), or
  - (b) Part 4 of the Petroleum Act 1998 (c. 17) (abandonment of offshore installations),
- 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.
- (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.

## 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 Community 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).

*Agreement or consultation: Ministers and Parliament*

- 6 An Order in Council under section 58 which includes provision—



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- (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.

- 7 (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.

*Agreement or consultation etc.: Assembly and Assembly Commission*

- 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.

*Parliamentary and Assembly procedure*

- 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 subparagraph (3) applied to its exercise by a Minister of the Crown—

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- (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.

#### *Laying of reports and statements*

- 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).

#### *Powers to lend money*

- 11 (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

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- (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.

### PART 3

#### SUPPLEMENTARY

#### *References to Minister of the Crown etc.*

- 12 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.

#### *Saving*

- 13 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.

## SCHEDULE 4

Section 88

### TRANSFERS OF MINISTERIAL PROPERTY, RIGHTS AND LIABILITIES

#### *General transfer of property, rights and liabilities*

- 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.
- 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

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- (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)).

*Power to make specific transfers etc.*

- 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.

*Supplementary*

- 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.

SCHEDULE 5

Section 94

ASSEMBLY MEASURES

**PART 1**

MATTERS

*Field 1: agriculture, fisheries, forestry and rural development*

*Field 2: ancient monuments and historic buildings*

*Field 3: culture*

*Field 4: economic development*

*Field 5: education and training*

*Field 6: environment*

*Field 7: fire and rescue services and promotion of fire safety*

*Field 8: food*

*Field 9: health and health services*

*Field 10: highways and transport*

*Field 11: housing*

*Field 12: local government*

*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

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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*

*Field 15: social welfare*

*Field 16: sport and recreation*

*Field 17: tourism*

*Field 18: town and country planning*

*Field 19: water and flood defence*

*Field 20: Welsh language*

## PART 2

### GENERAL RESTRICTIONS

#### *Functions of Ministers of the Crown*

- 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.



*Criminal offences*

- 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.

*Enactments other than this Act*

- 3 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

<i>Enactment</i>	<i>Provisions protected from modification</i>
European Communities Act 1972 (c. 68)	The whole Act
Data Protection Act 1998 (c. 29)	The whole Act
Government of Wales Act 1998 (c. 38)	Sections 144(7), 145, 145A and 146A(1)
Human Rights Act 1998 (c. 42)	The whole Act
Civil Contingencies Act 2004 (c. 36)	The whole Act
Re-Use of Public Sector Information Regulations 2005 (S.I. 2005/1505)	The whole set of Regulations

- 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.
- 5 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.

*This Act*

- 6 (1) A provision of an Assembly Measure 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 sections 20, 22, 24, 36(1) to (5) and (7) to (11), 53, 54 and 156(2) to (5).

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- (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 Assembly Measure.

### **PART 3**

#### EXCEPTIONS FROM PART 2

##### *Functions of Ministers of the Crown*

- 7 Part 2 does 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.

##### *Comptroller and Auditor General*

- 8 Part 2 does 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 if the Secretary of State consents to the provision.

##### *Restatement*

- 9 Part 2 does 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.

##### *Subordinate legislation*

- 10 Part 2 does 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.

## SCHEDULE 6

Section 103

### REFERENDUMS ON COMMENCEMENT OF ASSEMBLY ACT PROVISIONS

#### *Entitlement to vote*

- 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.

#### *Conduct etc. of referendum*

- 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).

#### *Referendum question and statement*

- 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.

#### *Date of referendum*

- 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.

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- (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.

#### *Referendum period*

- 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.

#### *Combination of polls*

- 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*

- 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*

- 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.

#### *Referendum material*

- 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.

#### *Funding and accounts*

- 10 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).
- 11 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.

#### *No legal challenge to referendum result*

- 12 (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.

#### *Supplementary*

- 13 An Order in Council under section 103(1) may include provision creating criminal offences.

#### *Interpretation*

- 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.

## SCHEDULE 7

Section 108

## ACTS OF THE ASSEMBLY

**PART 1**

## SUBJECTS

*Agriculture, fisheries, forestry and rural development*

- 1 Agriculture, including animal health and welfare. Plant health. Plant varieties and seeds. Horticulture. Fisheries. Fish health. Forestry. Rural development.

*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, plants, plant products and other things related to them for the purposes of protecting human, animal or plant 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, fertilisers and pesticides (or things treated by virtue of any enactment as pesticides) for the purposes of protecting human, animal or plant health or the environment.

Authorisations of veterinary medicines and medicinal products.

*Ancient monuments and historic buildings*

- 2 Archaeological remains. Ancient monuments. Buildings and places of historical or architectural interest. Historic wrecks.

*Culture*

- 3 Arts and crafts. Museums and galleries. Libraries. Archives and historical records. Cultural activities and projects.

*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.

### *Economic development*

- 4 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, fish and fish 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, fish and fish 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.  
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, apart from pollution.  
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, apart from pollution.  
Units and standards of weights and measurement and the regulation of trade so far as involving weighing, measuring and quantities.  
Industrial Development Advisory Board.

### *Education and training*

- 5 Education, vocational, social and physical training and the careers service. Promotion of advancement and application of knowledge.

*Exception—*

Research Councils.

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### *Environment*

- 6 Environmental protection, including pollution, nuisances and hazardous substances. Collection, management and disposal of waste. Land drainage and land improvement. Countryside and open spaces (including the designation and regulation of national parks and areas of outstanding natural beauty). Nature conservation and sites of special scientific interest. Protection of natural habitats, coast and marine environment (including seabed). Biodiversity. Genetically modified organisms. Smallholdings and allotments. Common land. Town and village greens. Burial and cremation.

### *Fire and rescue services and promotion of fire safety*

- 7 Fire and rescue services. Promotion of fire safety otherwise than by prohibition or regulation.

### *Food*

- 8 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.

### *Health and health services*

- 9 Promotion of health. Prevention, treatment and alleviation of disease, illness, injury, disability and mental disorder. Control of disease. Family planning. Provision of health services, including medical, dental, ophthalmic, pharmaceutical and ancillary services and facilities. Clinical governance and standards of health care. Organisation and funding of national health service.

#### *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.

Health and Safety Commission, Health and Safety Executive and Employment Medical Advisory Service and provision made by health and safety regulations.

### *Highways and transport*

- 10 Highways, including bridges and tunnels. Streetworks. Traffic management and regulation. Transport facilities and services.

#### *Exceptions—*



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Road freight transport services, including goods vehicles operating licensing.  
Regulation of use of motor vehicles and trailers on roads, their construction and equipment and conditions under which they may be so used, apart from regulation of use of vehicles carrying animals for purpose of protecting human, animal or plant health, animal welfare or the environment.

Road traffic offences.

Driver licensing.

Driving instruction.

Insurance of motor vehicles.

Drivers' hours.

Traffic regulation on special roads, pedestrian crossings, traffic signs and speed limits.

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 Council Regulation (EEC) No. 1893/91 on public service obligations in transport.

Rail transport security.

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 purpose 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 purpose 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 those used or required wholly or mainly for the fishing or agricultural industries, for recreation or for communications between places in Wales.

Carriage of dangerous goods (including transport of radioactive material).

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### *Housing*

- 11 Housing and housing finance. Encouragement of home energy efficiency and conservation, otherwise than by prohibition or regulation. Regulation of rent. Homelessness. Residential caravans and mobile homes.

### *Local government*

- 12 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.

### *National Assembly for Wales*

- 13 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. Private legislation in the Assembly. Financial assistance for political groups to which Assembly members belong. 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.

### *Public administration*

- 14 Public Services Ombudsman for Wales. Audit, examination, regulation and inspection of auditable public authorities. Inquiries. 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,

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- (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.

### *Social welfare*

- 15 Social welfare including social services. Protection and well-being of children (including adoption and fostering). Care of 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.

Tax credits.

Child benefit and guardian’s allowance.

Social security.

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.

### *Sport and recreation*

- 16 Sport and recreational activities.

*Exception—*

Betting, gaming and lotteries.

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*Tourism*

17 Tourism.

*Town and country planning*

18 Town and country planning, including listed buildings, conservation areas, hazardous substances. Caravan sites. Spatial planning. Mineral workings. Urban development. New towns. Protection of visual amenity.

*Water and flood defence*

19 Water supply and sewerage, including abstraction and impounding of water, water resources management, water quality, water industry, water charges and representation of consumers of water. Safety of reservoirs and other inland water. Management and protection of watercourses and flood prevention.

*Exceptions—*

Appointment of water undertakers or sewerage undertakers for any area most of which is in England.

Licensing of water suppliers.

*Welsh language*

20 Welsh language

*Exception—*

Use of the Welsh language in courts.

**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*

- 2 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—

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TABLE

<i>Enactment</i>	<i>Provisions protected from modification</i>
European Communities Act 1972 (c. 68)	The whole Act
Data Protection Act 1998 (c. 29)	The whole Act
Government of Wales Act 1998 (c. 38)	Sections 144(7), 145, 145A and 146A(1)
Human Rights Act 1998 (c. 42)	The whole Act
Civil Contingencies Act 2004 (c. 36)	The whole Act
Re-Use of Public Sector Information Regulations 2005 (S.I. 2005/1505)	The whole set of Regulations

3 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.

4 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.

*This Act*

- 5 (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 sections 20, 22, 24, 36(1) to (5) and (7) to (11), 53, 54, 146, 147, 148 and 156(2) to (5).
- (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.

**PART 3**

EXCEPTIONS FROM PART 2

*Functions of Ministers of the Crown*

- 6 (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—

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- (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.

#### *Comptroller and Auditor General*

- 7 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 if the Secretary of State consents to the provision.

#### *Restatement*

- 8 Part 2 does not prevent an Act of the Assembly—
- (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.

#### *Subordinate legislation*

- 9 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.

## SCHEDULE 8

Section 145

### AUDITOR GENERAL FOR WALES

#### *Appointment*

- 1 (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.

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- (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.

#### *Tenure*

- 2 (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.

#### *Independence and status*

- 3 (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).

#### *Corporation sole*

- 4 The person for the time being holding the office of Auditor General shall by the name of that office be a corporation sole.

#### *Documents*

- 5 (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.

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- (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.

### *Remuneration*

- 6 (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.

### *Staff*

- 7 (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).



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- (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)

*Exercise of functions by staff etc.*

- 8 (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.

*Special finance provisions*

- 9 (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

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- (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), or
  - (b) Part 2 of the Public Audit (Wales) Act 2004 (c. 23) (local government audit).
- (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, and
  - (c) fees charged by the Auditor General by virtue of Part 2 of the Public Audit (Wales) Act 2004 (including those charged as a result of paragraph 11(3)(c)).

#### *Borrowing*

- 10 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.

#### *Fees*

- 11 (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 (c. 38) (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.

#### *Estimates*

- 12 (1) For each financial year the Auditor General must—
- (a) prepare an estimate of the income and expenses of the office of Auditor General, and
  - (b) submit the estimate to the Audit Committee.

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- (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), or
  - (c) Part 2 of the Public Audit (Wales) Act 2004 (c. 23) (local government audit), apart from section 44.

### *Accounts*

- 13 (1) The Auditor General must, for each financial year, prepare accounts in accordance with directions given to the Auditor General by the Treasury.
- (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.

### *Auditor*

- 14 (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 a company auditor under section 25 of the Companies Act 1989 (c. 40), 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

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- (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.

#### *Audit of accounts*

- 15
- (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 the Auditor General to provide the auditor, at times specified by the auditor, with accounts of such of the transactions of the Auditor General as the auditor may specify.
  - (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

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- (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.

#### *Accounting officer*

- 16 (1) The accounting officer for the Wales Audit Office is the Auditor General.
- (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.

#### *Access to documents*

- 17 (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 subparagraph (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 sub-contract, and

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- (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 sub-contract 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,
  - (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.

*Other powers*

- 18 (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.

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- (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.

*Reports in public interest*

- 19 (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.

*Certification of claims, returns etc.*

- 20 (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—



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“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)).

### *Ancillary powers*

21 (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 2 of the Companies Act 1989 (c. 40), 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,

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“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.

## SCHEDULE 9

Section 149

### DEVOLUTION ISSUES

#### 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.
- 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.

#### *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.

#### *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.
- 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.
- 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.
- 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.

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#### *References from Court of Appeal to Supreme Court*

- 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.

#### *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.

### **PART 3**

#### PROCEEDINGS IN SCOTLAND

#### *Application of Part 3*

- 12 This Part applies in relation to devolution issues in proceedings in Scotland.

#### *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.

#### *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.

#### *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.
- 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.

- 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.

*References from superior courts to Supreme Court*

- 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.
- 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.

*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.
- 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.

## **PART 4**

### **PROCEEDINGS IN NORTHERN IRELAND**

*Application of Part 4*

- 22 This Part applies in relation to devolution issues in proceedings in Northern Ireland.

*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.

*Notice of devolution issue*

- 24 (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).

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- (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.

*Reference of devolution issue to Court of Appeal*

- 25 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.
- 26 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.

*References from Court of Appeal to Supreme Court*

- 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.

*Appeals from Court of Appeal to Supreme Court*

- 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.

**PART 5**

GENERAL

*Direct references to Supreme Court*

- 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.
- 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

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- (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.

#### *Costs*

- 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.

#### *Procedure of courts and tribunals*

- 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.

#### *References to be for decision*

- 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.

## SCHEDULE 10

Section 160

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### *Statutory Instruments Act 1946 (c. 36)*

- 1 The Statutory Instruments Act 1946 is amended as follows.
- 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.”

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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



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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.”

*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.”

*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,”.

*Defamation Act (Northern Ireland) 1955 (c. 11 (N.I.))*

- 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”.

*Public Records Act 1958 (c. 51)*

- 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).

*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”.

*Pensions (Increase) Act 1971 (c. 56)*

- 9 In Part 2 of Schedule 2 to the Pensions (Increase) Act 1971 (official pensions), in paragraph 38B, for “section 18(2)(b) of the Government of Wales Act 1998”

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substitute “section 20(4)(b) or section 53(4)(b) of the Government of Wales Act 2006”.

*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”.

*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.”

*Local Government, Planning and Land Act 1980 (c. 65)*

- 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.”

*Mental Health Act 1983 (c. 20)*

- 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”.

*National Audit Act 1983 (c. 44)*

- 14 The National Audit Act 1983 is amended as follows.
- 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.”
- 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

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(b) take into account any relevant work done or being done by the Auditor General for Wales.”

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.”

*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”.

*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”.

*Finance Act 1987 (c. 16)*

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”.

*Local Government Finance Act 1988 (c. 41)*

21 In Schedule 8 to the Local Government Finance Act 1988 (non-domestic rating: pooling), after paragraph 15 insert—

*“Source of payments by Welsh Ministers*

16 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.

23 In section 12(9) (duration of copyright in literary, dramatic, musical or artistic works), for “166B” substitute “166D”.

24 In section 49 (public records), for “the Government of Wales Act 1998” substitute “the Government of Wales Act 2006”.

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- 25 In section 153(2) (qualification for copyright protection), for “166B” substitute “166D”.
- 26 (1) Section 163 (Crown copyright) is amended as follows.
- (2) Omit subsection (1A).
- (3) In subsection (6), for “166B” substitute “166D”.
- 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.”
- 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.

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- (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.”
- 29 (1) Section 178 (minor definitions) is amended as follows.
- (2) In the definition of “the Crown”, after “the Scottish Administration” insert “, of the Welsh Assembly Government”.
  - (3) In the definition of “parliamentary proceedings”, after “European Parliament” insert “and Assembly proceedings within the meaning of section 1(5) of the Government of Wales Act 2006”.
- 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)”.
- 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”.
- 32 In paragraph 10(1) of Schedule 2 (public records), for “the Government of Wales Act 1998” substitute “the Government of Wales Act 2006”.

*Housing Act 1988 (c. 50)*

- 33 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.”

*Official Secrets Act 1989 (c. 6)*

- 34 In section 12 of the Official Secrets Act 1989 (meaning of “Crown servant” and “government contractor”)—

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- (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).

*Town and Country Planning Act 1990 (c. 8)*

- 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).

*Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9)*

- 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).

*Planning (Hazardous Substances) Act 1990 (c. 10)*

- 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).

*Tribunals and Inquiries Act 1992 (c. 53)*

- 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”.

*Value Added Tax Act 1994 (c. 23)*

- 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”.

*Defamation Act 1996 (c. 31)*

- 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”.

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*Government of Wales Act 1998 (c. 38)*

- 41 The Government of Wales Act 1998 is amended as follows.
- 42 (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.”
- 43 (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”.
- (8) Omit subsection (5).
- 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”.
- 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



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- (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),”.
- 46 (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)”.

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- (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)”.
- 47 In section 145A(5) (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;”.
- 48 (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”.
- (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”.
- 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”.
- 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”.
- 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”.
- 52 In section 151(2) (power to make consequential amendments), for “22” substitute “58 of the Government of Wales Act 2006”.
- 53 (1) Section 154 (orders and directions) is amended as follows.

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- (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),” and
    - (iii) omit “or paragraph 17(9) of Schedule 9”, and
  - (b) omit paragraph (b).
- (6) Omit subsection (7).
- 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 “Community 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.
- 55 (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,

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- (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)*

- 56 (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,”.

*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”.

*Political Parties, Elections and Referendums Act 2000 (c. 41)*

- 58 The Political Parties, Elections and Referendums Act 2000 is amended as follows.
- 59 In section 8(3)(b) (functions exercisable only on recommendation of Electoral Commission), for “11 of the Government of Wales Act 1998” substitute “13 of the Government of Wales Act 2006”.
- 60 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;”.
- 61 In section 13 (power of Electoral Commission to promote public awareness of electoral and democratic systems), after subsection (11) insert—

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“(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.”

*Finance Act 2003 (c. 14)*

- 62 The Finance Act 2003 is amended as follows.
- 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”.
- 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”.
- 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”.

*Planning and Compulsory Purchase Act 2004 (c. 5)*

- 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.”

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(7) Omit subsection (7).

*Public Services Ombudsman (Wales) Act 2005 (c. 10)*

- 67 The Public Services Ombudsman (Wales) Act 2005 is amended as follows.
- 68 In section 7(3)(b) (relevant action: Welsh health service bodies), for “Assembly” substitute “Welsh Ministers”.
- 69 In section 8(2) (exclusion from investigation for matters not relating to Wales: exception for Assembly), for “Assembly” substitute “Welsh Assembly Government”.
- 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”.
- 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.”
- 72 In section 12 (decisions not to investigate etc.), omit subsection (9).
- 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).
- 74 In section 21 (reports: alternative procedure), omit subsection (11).
- 75 In section 23 (special reports: supplementary), omit subsection (6).
- 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).

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- (6) In the side-note, for “Assembly” substitute “Welsh Assembly Government etc.”.
- 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”.
- (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.”
- 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.”
- 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”.
- 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)—

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- (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”.
- 81 In section 40 (commencement), for “Assembly” substitute “Welsh Ministers”.
- 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.”
- 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—



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“(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.”

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.”

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).

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.”

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- (5) In paragraph 5(1)(d) (disqualification from being Ombudsman or acting Ombudsman), for “section 12(1)(ca) of the Government of Wales Act 1998 (c. 38)” substitute “section 16(1)(d) of the Government of Wales Act 2006”.
- (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—

*“Special financial provisions*

- 10 (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,

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- (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”.
- 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”.
- 88 In Schedule 3 (listed authorities), under the heading “Government of Wales”, for the entry relating to the Assembly substitute—  
“The Welsh Assembly Government.  
The National Assembly for Wales Commission.”

*Inquiries Act 2005 (c. 12)*

- 89 The Inquiries Act 2005 is amended as follows.
- 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).
- 91 (1) Section 27 (United Kingdom inquiries) is amended as follows.

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- (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”.
- 92 In section 28(4) (Scottish inquiries), for “National Assembly for Wales” substitute “Welsh Ministers”.
- 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”.
- 94 In section 30(5) (Northern Ireland inquiries), for “National Assembly for Wales” substitute “Welsh Ministers”.
- 95 (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;”.
- 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”.
- 97 In section 51(2) (commencement), for “National Assembly for Wales” substitute “Welsh Ministers”.

## SCHEDULE 11

Section 162

### TRANSITIONAL PROVISIONS

#### *Alteration of Assembly electoral regions*

- 1 (1) Until the coming into force of section 16(1) of the Political Parties, Elections and Referendums Act 2000 (c. 41) for the purpose of transferring the functions of the Boundary Commission for Wales to the Electoral Commission and conferring functions on the Boundary Committee for Wales, Schedule 1 has effect subject to the following modifications.
- (2) In paragraph 1, omit sub-paragraphs (2) and (3).
- (3) In paragraph 2, for sub-paragraph (1) substitute—

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“(1) This paragraph applies if the Boundary Commission for Wales (“the Commission”) provisionally determine (in pursuance of section 3 of the Parliamentary Constituencies Act 1986 (“the 1986 Act”)) to recommend the making of alterations affecting any parliamentary constituencies in Wales.”, and, in sub-paragraph (2), for “Committee” substitute “Commission”.

(4) In paragraph 3—

- (a) in sub-paragraph (1), for “Committee have provisionally determined to propose” substitute “Commission have provisionally determined to make”,
  - (b) in sub-paragraph (2)(b), for “effect of the recommendations is” substitute “Commission propose to recommend”,
  - (c) in sub-paragraphs (2)(c), (3), (4) and (5), for “Committee” substitute “Commission”, and
  - (d) in sub-paragraph (6), for “Committee's” substitute “Commission's”,
- and in the heading before that paragraph, for “Committee's” substitute “Commission's”.

(5) In paragraph 4—

- (a) in sub-paragraphs (1) and (2), for “Committee” substitute “Commission”,
- (b) in sub-paragraph (3), for “Committee may not proceed with the proposed” substitute “Commission may not make the”, and
- (c) in sub-paragraphs (4), (5) and (6), for “Committee” substitute “Commission”.

(6) Omit paragraphs 5 to 7.

(7) In paragraph 10(1), after “effect” insert “, with or without modifications,”.

(8) Omit paragraph 11(3).

(9) In paragraph 12—

- (a) in the definitions of “the 1986 Act” and “the Commission”, for “1(2)(a)” substitute “2(1)”, and
- (b) omit the definition of “the Committee”.

#### *2007 election to be election to Assembly constituted by this Act*

- 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)).

#### *First meeting after 2007 election*

- 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.

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*Date of 2011 election*

- 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.

*No dual constituency and regional candidacy*

- 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 “or
- (c) who is a candidate to be the Assembly member for an Assembly constituency.”
- (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.”
- 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).

*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.

*Election orders*

- 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.

*Term of office of Assembly members*

- 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.

### *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.

### *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.

### *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 office-holders.

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- 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.

*Publication of information about remuneration of Assembly members*

- 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.

*Assistance to groups of Assembly members*

- 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.

*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.

*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.

*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).

*Crown status of Assembly Commission*

- 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).



### *Standing orders*

- 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.

### *Witnesses and documents: penalties*

- 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.

### *Exercise of functions before appointment of first First Minister*

- 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.

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- (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.
- 23 (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.

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- (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.
- 24 (1) This paragraph applies to functions of the Assembly constituted by the Government of Wales Act 1998 which, immediately before the beginning of the initial period, were delegated under section 62 of that Act to the committee of the Assembly referred to in the standing orders made under that Act as the House Committee.
- (2) Functions to which this paragraph applies are exercisable—
- (a) by the person who, immediately before the beginning of the initial period, held office as the presiding officer of the Assembly constituted by the Government of Wales Act 1998, if that person is a member of that Assembly, or
  - (b) by the person who, at that time, held the post referred to in the standing orders made under that Act as the Clerk to the Assembly, if the person mentioned in paragraph (a) is not a member of that Assembly (or if the office of presiding officer was vacant at that time).
- (3) 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 members of the staff of the Assembly constituted by the Government of Wales Act 1998.
- (4) Where a function is delegated under sub-paragraph (3), arrangements for the exercise of the function are to be made by the person who, immediately before the beginning of the initial period, held the post referred to in the standing orders made under the Government of Wales Act 1998 as the Clerk to the Assembly.
- (5) The delegation of any function under sub-paragraph (3) does not prevent the exercise of the function by the person by whom the delegation is made.
- (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.
- 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.

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*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).
- 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.
- 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.

*First nomination of First Minister*

- 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.

*Transfer of Assembly functions*

- 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.
- 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

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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.
- 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*

- 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.
- (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,

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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 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.
- (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.

*Functions conferred or imposed by pre-commencement enactment: Parliamentary and Assembly procedure*

- 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



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(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) If, 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.

(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,

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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).
- 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

<i>Function</i>	<i>Description</i>
Section 45B(1) of the Environmental Protection Act 1990 (c. 43).	Power to apply section 45A to Welsh waste collection authorities.
Section 45D of the School Standards and Framework Act 1998 (c. 31).	Power to repeal school funding provisions.
Section 8(3) of the Care Standards Act 2000 (c. 14).	Power to confer functions in relation to Part 2 services in Wales.
Section 72B(2) of that Act.	Power to amend list of persons reviewable by Commissioner.

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<i>Function</i>	<i>Description</i>
Section 73(5A) of that Act.	Power to amend list of arrangements reviewable by Commissioner.
Section 76(4) of that Act.	Power to confer further functions on Commissioner.
Section 78(1A) of that Act.	Power to provide that person aged 18 or over is a child for the purposes of Part 5.
Section 78(6) of that Act.	Power to make provision about persons to whom Part 5 applies.
Paragraph 2 of Schedule 2 to that Act.	Power to make provision about the appointment etc. of Commissioner.
Section 68(1) of the Local Government Act 2000 (c. 22), if exercised to amend or repeal any enactment contained in an Act.	Power to confer functions on Public Services Ombudsman for Wales.
Section 68(3) of that Act, if exercised to amend or repeal any enactment contained in an Act.	Power to make provision relating to Ombudsman's functions and expenses.
Section 70(1) of that Act.	Power to make provision about investigations by Ombudsman.
Section 3(4) of the Health (Wales) Act 2003 (c. 4).	Power to transfer functions of Wales Centre for Health to Welsh Minister.
Section 4(1) of that Act.	Power to establish Health Professions Wales (HPW).
Section 4(3) of that Act.	Power to provide for HPW to carry out Welsh Ministers' functions.
Section 5(8) of that Act.	Power to abolish HPW.
Section 83(2) of the Local Government Act 2003 (c. 26).	Power to make fire authorities in Wales major precepting authorities.
Section 92(2) of that Act.	Power to repeal section 24(3) of the Housing Act 1985 (c. 68).
Section 23(9) of the Anti-social Behaviour Act 2003 (c. 38).	Power to apply to Wales provisions about penalty notices in cases of truancy.
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.	Power to require prescribed persons to provide explanation of documents etc.
Section 96 of that Act, if exercised to amend or repeal any part of the text of an Act.	Power to confer additional functions in relation to Welsh local authority social services.

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*Status: This is the original version (as it was originally enacted).*

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<i>Function</i>	<i>Description</i>
Section 101(1) of that Act, if exercised to amend or repeal any part of the text of an Act.	Power to require prescribed persons to provide explanation of documents etc.
Section 33(3)(a)(ii) of the Higher Education Act 2004 (c. 8).	Power to require institutions' plans to include provision relating to promotion of higher education.
Section 12(2) of the Public Audit (Wales) Act 2004 (c. 23).	Power to add to definition of “local government body in Wales”.
Section 39(1) of that Act, if exercised so as to include a declaration that a contravention is an offence.	Power to make provision about publication etc. of accounts.
Section 46(2) of that Act.	Power to apply sections 47 to 49 to other local government bodies.
Section 47(5) of that Act.	Power to shorten period within which body must publish information.
Section 62(1) of the Education Act 2005 (c. 18), if exercised to amend or repeal an enactment.	Power to change inspection framework for Wales.
Section 103(3) of that Act.	Power to repeal certain provisions in the Education Act 2002 (c. 32).
Section 124(1) of that Act, if exercised to amend or repeal an enactment.	Power to make consequential etc. provision.

- (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

<i>Function</i>	<i>Description</i>
Section 16BA(1), (2) and (3) of the National Health Service Act 1977 (c. 49).	Power to establish Local Health Boards.
Section 16BB(1) of that Act.	Power to direct Local Health Board to exercise functions.
Section 16BB(2) of that Act.	Power to direct Local Health Board to exercise functions.
Section 16BB(4) of that Act.	Power to direct Local Health Board about functions.
Section 16BC(2) and (3) of that Act.	Power to direct Local Health Board about functions.

*Status: This is the original version (as it was originally enacted).*

<i>Function</i>	<i>Description</i>
Section 20A(2)(a) of that Act.	Power to rename Community Health Councils.
Section 20A(2)(b) of that Act.	Power to abolish etc. Community Health Councils.
Paragraph 6 of Schedule 5B to that Act.	Power to make provision about constitution of Local Health Boards.
Paragraph 9(3) of Schedule 5B to that Act.	Power to make provision about officers of Local Health Boards.
Paragraph 17 of Schedule 5B to that Act.	Power to make provision about reports etc. of Local Health Boards.
Paragraph 2 of Schedule 7A to that Act.	Power to make provision about Community Health Councils.
Paragraph 3 of Schedule 7A to that Act.	Power to make provision about access for Community Health Councils.
Paragraph 4 of Schedule 7A to that Act.	Power to provide for advisory body for Community Health Councils.
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.
Paragraph 5(2) of Schedule 7 to the School Standards and Framework Act 1998 (c. 31).	Power to prescribe content and form of publication of proposals.
Paragraph 12(2)(d) of Schedule 7 to that Act.	Power to prescribe period within which objections to proposals may be made.
Paragraph 17(2) of Schedule 7 to that Act.	Power to make transitional exemption order relating to proposal for school to cease to be single sex.
Paragraph 13B(1) of Schedule 26 to that Act.	Power to prescribe period within which nursery inspection report must be made.
Section 73(5) of the Care Standards Act 2000 (c. 14).	Power to confer power on the Commissioner to require information.
Section 74(1) of that Act.	Power to provide for examination by Commissioner of particular cases.
Section 76(1) of that Act.	Power to confer power on Commissioner to assist children.
Paragraph 6(4) of Schedule 2 to that Act.	Power to specify the financial years of Commissioner.

*Status: This is the original version (as it was originally enacted).*

<i>Function</i>	<i>Description</i>
Paragraph 8 of that Schedule.	Power to require Commissioner to make reports to Assembly.
Paragraph 17 of that Schedule.	Power to add Commissioner to the Superannuation Act 1972 (c. 11).
Section 77(4) of the Learning and Skills Act 2000 (c. 21).	Power to prescribe period within which report must be made.
Section 83(7) of that Act.	Power to make further provision about obligation to provide information.
Section 128(4)(b) and (c) of that Act.	Power about statement of proposed action.
Section 68(1) of the Local Government Act 2000 (c. 22), unless exercised to amend or repeal any enactment contained in an Act.	Power to confer functions on Public Services Ombudsman for Wales.
Section 68(3) of that Act, unless exercised to amend or repeal any enactment contained in an Act.	Power to make provision relating to Ombudsman's functions and expenses.
Section 109(6)(b) of the Transport Act 2000 (c. 38).	Power to specify date by which deemed local transport plan to be replaced.
Section 24(4) and (5) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17).	Power relating to health and well-being strategies.
Section 102 of the Education Act 2002 (c. 32).	Power to specify period which is foundation stage.
Section 108(2)(a) of that Act.	Power to specify areas of learning in respect of foundation stage.
Section 139(1) of that Act.	Power to approve institutions to provide course of higher education etc.
Section 192 of that Act.	Power to prescribe content and manner of publication of proposals to secure regional provision.
Section 193 of that Act.	Power to make provision about proposals to secure regional provision.
Section 197 of that Act.	Power relating to partnership agreements and statements.
Section 198 of that Act.	Power relating to transition from primary to secondary school.
Section 207(4) of that Act.	Power relating to adjustments between local education authorities.
Section 3(3) of the Health (Wales) Act 2003 (c. 4).	Power to make provision about functions of Wales Centre for Health.

*Status: This is the original version (as it was originally enacted).*

<i>Function</i>	<i>Description</i>
Section 4(4) of that Act.	Power to make provision for HPW to make arrangements about functions.
Section 4(7) of that Act.	Power to make provision about constitution of HPW.
Section 5(1) of that Act.	Power to permit HPW to charge for services.
Section 5(2) of that Act.	Power to transfer property etc. and personnel to HPW.
Section 5(7) of that Act.	Power to make provision about accounts and audit of HPW.
Section 5(9) of that Act.	Power to transfer property etc. and staff from HPW.
Paragraph 10 of Schedule 2 to that Act.	Power to make provision about Wales Centre for Health.
Paragraph 27 of Schedule 2 to that Act.	Power to make provision about accounts and audit of Centre.
Section 29(1) of the Waste and Emissions Trading Act 2003 (c. 33)	Power to require Welsh local authority to have waste management strategy.
Section 30(1) of that Act.	Power to require Welsh local authority to provide information about waste.
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.	Power to require prescribed persons to provide explanation of documents etc.
Section 94(6) of that Act.	Power to require Welsh local authority to pay fee in relation to review of adoption and fostering functions.
Section 96 of that Act, unless exercised to amend or repeal any part of the text of an Act.	Power to confer additional functions in relation to Welsh local authority social services.
Section 101(1) of that Act, unless exercised to amend or repeal any part of the text of an Act.	Power to require prescribed persons to provide explanation of documents etc.
Section 62(4) of the Planning and Compulsory Purchase Act 2004 (c. 5).	Power to prescribe form and content of local development plan.
Section 63(3)(a) of that Act.	Power to prescribe persons to be included in community involvement scheme.
Section 63(7) of that Act.	Power to prescribe requirements in relation to that scheme and local development plan.

*Status: This is the original version (as it was originally enacted).*

<i>Function</i>	<i>Description</i>
Section 69(1) of that Act.	Power to prescribe times for review of local development plan.
Section 69(3) of that Act.	Power to prescribe form of, and publication requirements for, review.
Section 76(2) of that Act.	Power to prescribe information to be contained in annual monitoring report.
Section 76(3) of that Act.	Power to prescribe timing, form and content of report.
Section 77 of that Act.	Power to make provision about functions conferred by Part 6.
Section 30(1)(b) of the Higher Education Act 2004 (c. 8).	Power to designate “relevant authority”.
Section 38(2) of that Act.	Power to prescribe maximum period during which relevant authority can refuse to approve institution’s new plan.
Section 18(2)(c) of the Public Audit (Wales) Act 2004 (c. 23).	Power to specify documents to which right of access applies.
Section 21(1) of that Act.	Power to replace scale of audit fees.
Section 39(1) of that Act, unless exercised so as to include a declaration that a contravention is an offence.	Power to make provision about publication etc. of accounts.
Section 52(2)(c) of that Act.	Power to specify documents to which right of access applies.
Section 26(2)(f) of the Children Act 2004 (c. 31).	Power to make provision about implementation of children and young people’s plans.
Section 26(4) of that Act.	Power to require approval of such plans.
Section 22(1) of the Education Act 2005 (c. 18).	Power to establish panel to advise on Chief Inspector’s functions.
Section 25(2) of that Act.	Power to prescribe categories of persons who may be registered inspectors.
Section 25(3)(b) of that Act.	Power to prescribe fees for applications for registration.
Section 36(2) of that Act.	Power to make provision as to timing of inspections and reports.
Section 38(3)(e) and (4)(b) and (c) of that Act.	Power to make provision relating to destination of reports about maintained schools.



*Status: This is the original version (as it was originally enacted).*

<i>Function</i>	<i>Description</i>
Section 39(2)(a), (3), (5) and (7)(b) of that Act.	Power to make provision relating to statement prepared by appropriate authority for school.
Section 40(3)(a) of that Act.	Power to make provision relating to statement prepared by local education authority.
Section 41(4)(b) and (c) of that Act.	Power to make provision relating to destination of reports about non-maintained schools.
Section 42(2)(a), (3), (4) and (5)(b) of that Act.	Power to make provision relating to statement prepared by proprietor of school.
Section 52(5) of that Act.	Power to make provision about provision of inspection services by LEAs.
Section 55(4) of that Act.	Power to prescribe intervals at which careers services are inspected.
Section 56(3) of that Act.	Power to prescribe intervals at which related services are inspected.
Section 57(7)(a), (b) and (c) of that Act.	Power to require a person inspected to prepare written statement in response.
Section 57(9) of that Act.	Power to make provision about inspection reports.
Section 62(1) of that Act, unless exercised to amend or repeal an enactment.	Power to change inspection framework for Wales.
Section 85(3)(d) of that Act.	Power to designate institutions eligible for HEFCW funding.
Section 90(1) of that Act.	Power to confer functions on HEFCW.
Section 91(1) of that Act.	Power to give directions to HEFCW.
Section 92(4) of that Act.	Power to authorise joint exercise of HEFCW functions.
Section 100(2) of that Act.	Power to make provision as to meaning of “governing body”.
Section 124(1) of that Act, unless exercised to amend or repeal an enactment.	Power to make consequential etc. provision.
Paragraph 2 of Schedule 3 to that Act.	Power to make provision about appeals to, and procedure of, tribunals.
Paragraph 3(2)(b) of Schedule 4 to that Act.	Power to prescribe persons who may not be members of inspection team.

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<i>Function</i>	<i>Description</i>
Paragraph 4(3) of Schedule 4 to that Act.	Power to waive fees for applications to be on the list of inspection team members.
Paragraph 6(b) of Schedule 4 to that Act.	Power to make provisions about meetings between inspectors and pupils.

- (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).

*Transfers of Assembly functions: laying of reports and statements*

- 36 (1) This paragraph applies where—
- 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,
  - 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
  - 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).
- 37 (1) This paragraph applies where—
- 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,
  - 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
  - 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.

*Transfers of Assembly functions: property, rights and liabilities*

- 38 (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 re-enacts (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.
- 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,

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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.

- 40 (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.
- 41 (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

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- (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.
- 42 (1) A certificate issued by the Secretary of State that any property has been transferred by—
- (a) paragraph 39, or
  - (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.

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- (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.

#### *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*

- 44 (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.

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- (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.

#### *Local government scheme*

- 45 (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.

#### *Voluntary sector scheme*

- 46 (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.

#### *Equality of opportunity arrangements*

- 47
- (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.

#### *Welsh language strategy and scheme*

- 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.

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*Sustainable development scheme*

- 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.

*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).
- 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”.

*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.

### *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.

### *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.

### *Statement of estimated payments*

- 55 In its application for the financial year beginning on 1st April 2007 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.

### *Destination of receipts*

- 56 Until the end of the initial period 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.

### *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).
- 59 Until the end of the initial period—

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- (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.

#### *Annual Budget motions*

- 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.

#### *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.

#### *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.

#### *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.

#### *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.

#### *Advocate General for Northern Ireland*

- 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”.

#### *The Supreme Court*

- 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”.

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- (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”,

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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—

*“Proceedings in the House of Lords*

28A 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.”

- 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 Appellate Jurisdiction Act 1887 (c. 70)).
- (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,

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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.

## SCHEDULE 12

Section 163

## REPEALS AND REVOCATIONS

<i>Short title or title</i>	<i>Extent of repeal or revocation</i>
Copyright, Designs and Patents Act 1988 (c. 48)	Section 163(1A).
Official Secrets Act 1989 (c. 6)	Section 12(2)(aa).
Town and Country Planning Act 1990 (c. 8)	Section 321B(5).
Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9)	In Schedule 3, paragraph 8(5).
Planning (Hazardous Substances) Act 1990 (c. 10)	In the Schedule, paragraph 8(5).
Government of Wales Act 1998 (c. 38)	Sections 1 to 26. Section 27(1) to (5) and (8) to (10). Sections 29 to 103. Section 104(5). Sections 106 to 124. Section 144(6) and (8A). In section 145(3), the words “(or, before the first ordinary election, the views of the Secretary of State)”. In section 154— (a) in subsection (3), paragraph (a) and, in paragraph (b), the words “96(5), 117,” and the words “144(1) or (4),”, (b) subsection (4), (c) in subsection (6), in paragraph (a), the words from “3” to “118(1)(f),”, the words “144(1) or (4),” and the words



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<i>Short title or title</i>	<i>Extent of repeal or revocation</i>
	“or paragraph 17(9) of Schedule 9” and paragraph (b) and the word “and” preceding it, and (d) subsection (7). In section 155— (a) in subsection (1), the definitions of “Community law” and “delegate”, (b) subsection (2), and (c) in subsection (3), the words from “; and the” to the end. Section 156. Schedules 1 to 3. Schedule 5. Schedule 8. Schedule 11. In Schedule 12— (a) paragraph 2, (b) paragraph 7, (c) paragraph 8(2)(a), (3) and (4), (d) paragraph 12, (e) paragraph 13, (f) paragraph 15, (g) paragraph 17(3)(a), (h) paragraph 28, and (i) paragraph 30
Northern Ireland Act 1998 (c. 47)	In Schedule 13, paragraph 8(2) to (4).
Pollution Prevention and Control Act 1999 (c. 24)	In Schedule 2, paragraph 20.
Care Standards Act 2000 (c. 14)	In Schedule 1, paragraph 27(a).
Government Resources and Accounts Act 2000 (c. 20)	In Schedule 1, paragraphs 22, 23(a) and 24.
Learning and Skills Act 2000 (c. 21)	In Schedule 9, paragraph 93.
Political Parties, Elections and Referendums Act 2000 (c. 41)	In Schedule 3, paragraphs 8 to 16. In Schedule 21, paragraph 12.
House of Commons (Removal of Clergy Disqualification) Act 2001 (c. 13)	In Schedule 1, paragraph 3.
European Parliamentary Elections Act 2002 (c. 24)	In Schedule 3, paragraph 6.
Justice (Northern Ireland) Act 2002 (c. 26)	In Schedule 7, paragraphs 3, 6 and 9.
Health (Wales) Act 2003 (c. 4)	In Schedule 3, paragraph 10.
Local Government Act 2003 (c. 26)	In Schedule 7, paragraph 67.

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<i>Short title or title</i>	<i>Extent of repeal or revocation</i>
Criminal Justice Act 2003 (c. 44)	In Schedule 26, paragraph 50.
Copyright and Related Rights Regulations 2003 (S.I. 2003/2498)	In Schedule 1, paragraph 11(a).
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.
Local Authorities (Capital Finance) (Consequential, Transitional and Saving Provisions) Order 2004 (S.I. 2004/533)	Article 6.
Companies Act 1985 (Inter—national Accounting Standards and Other Accounting Amendments) Regulations 2004 (S.I. 2004/2947)	In Schedule 7, paragraph 13.
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 subsection (3). (b) In section 41(1), the definition of “Assembly Cabinet”. 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).

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