



# Wales Act 2017

## 2017 CHAPTER 4

### PART 1

#### CONSTITUTIONAL ARRANGEMENTS

##### *Permanence of the National Assembly for Wales and Welsh Government*

#### **1 Permanence of the National Assembly for Wales and Welsh Government**

In the Government of Wales Act 2006, before Part 1 (National Assembly for Wales) insert—

#### **“PART A1**

#### PERMANENCE OF THE ASSEMBLY AND WELSH GOVERNMENT

##### **A1 Permanence of the Assembly and Welsh Government**

- (1) The Assembly established by Part 1 and the Welsh Government established by Part 2 are a permanent part of the United Kingdom's constitutional arrangements.
- (2) The purpose of this section is, with due regard to the other provisions of this Act, to signify the commitment of the Parliament and Government of the United Kingdom to the Assembly and the Welsh Government.
- (3) In view of that commitment it is declared that the Assembly and the Welsh Government are not to be abolished except on the basis of a decision of the people of Wales voting in a referendum.

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*Status:* Point in time view as at 01/09/2021. This version of this Act contains provisions that are prospective.

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## A2 Recognition of Welsh law

- (1) The law that applies in Wales includes a body of Welsh law made by the Assembly and the Welsh Ministers.
- (2) The purpose of this section is, with due regard to the other provisions of this Act, to recognise the ability of the Assembly and the Welsh Ministers to make law forming part of the law of England and Wales.”

*Convention about Parliament legislating on devolved matters*

## 2 Convention about Parliament legislating on devolved matters

In section 107 of the Government of Wales Act 2006 (Acts of the National Assembly for Wales), after subsection (5) insert—

“(6) But it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Assembly.”

*Legislative competence*

## 3 Legislative competence

- (1) For section 108 of the Government of Wales Act 2006 (legislative competence) substitute—

### “108A Legislative competence

- (1) An Act of the Assembly is not law so far as any provision of the Act is outside the Assembly's legislative competence.
- (2) A provision is outside that competence so far as any of the following paragraphs apply—
  - (a) it extends otherwise than only to England and Wales;
  - (b) it applies otherwise than in relation to Wales or confers, imposes, modifies or removes (or gives power to confer, impose, modify or remove) functions exercisable otherwise than in relation to Wales;
  - (c) it relates to reserved matters (see Schedule 7A);
  - (d) it breaches any of the restrictions in Part 1 of Schedule 7B, having regard to any exception in Part 2 of that Schedule from those restrictions;
  - (e) it is incompatible with the Convention rights or with EU law.
- (3) But subsection (2)(b) does not apply to a provision that—
  - (a) is ancillary to a provision of any Act of the Assembly or Assembly Measure or to a devolved provision of an Act of Parliament, and
  - (b) has no greater effect otherwise than in relation to Wales, or in relation to functions exercisable otherwise than in relation to Wales, than is necessary to give effect to the purpose of that provision.

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- (4) For this purpose, a provision of an Act of Parliament is ““devolved”” if it would be within the Assembly's legislative competence if it were contained in an Act of the Assembly (ignoring any requirement for consent or consultation imposed under paragraph 8, 10 or 11 of Schedule 7B or otherwise).
  - (5) In determining what is necessary for the purposes of subsection (3), any power to make laws other than that of the Assembly is disregarded.
  - (6) The question whether a provision of an Act of the Assembly relates to a reserved matter is determined by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances.
  - (7) For the purposes of this Act a provision is ancillary to another provision if it—
    - (a) provides for the enforcement of the other provision or is otherwise appropriate for making that provision effective, or
    - (b) is otherwise incidental to, or consequential on, that provision.”
- (2) For Schedule 7 to that Act (Acts of the Assembly) substitute—
- (a) the Schedule 7A set out in Schedule 1 to this Act, and
  - (b) the Schedule 7B set out in Schedule 2 to this Act.

#### Commencement Information

**II** S. 3 in force at 1.4.2018 by [S.I. 2017/1179](#), reg. 2

## 4 Devolved Welsh authorities

- (1) After section 157 of the Government of Wales Act 2006 insert—

### “157A Devolved Welsh authority”

- (1) In this Act ““devolved Welsh authority”” means—
- (a) a public authority that meets the conditions in subsection (2),
  - (b) a public authority that is specified, or is of a description specified, in Schedule 9A (whether or not it meets those conditions), or
  - (c) the governing body of an institution within the higher education sector (within the meaning of section 91(5) of the Further and Higher Education Act 1992) whose activities are carried on, or principally carried on, in Wales.
- (2) A public authority meets the conditions in this section if its functions—
- (a) are exercisable only in relation to Wales, and
  - (b) are wholly or mainly functions that do not relate to reserved matters.
- (3) In determining for the purposes of this section whether functions of a public authority are exercisable only in relation to Wales, no account is taken of any function that—
- (a) is exercisable otherwise than in relation to Wales, and
  - (b) could (apart from this paragraph) be conferred or imposed by provision falling within the Assembly's legislative competence (by virtue of section 108A(3)).

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- (4) Where the conditions in subsection (2) are relevant to determining whether a provision of an Act of the Assembly is within the Assembly's legislative competence, the time for assessing whether those conditions are met is the time when the Act is passed.
- (5) Her Majesty may by Order in Council amend Schedule 9A—
- (a) so as to remove or revise an entry, or
  - (b) so as to add or substitute a public authority whose functions—
    - (i) are exercisable wholly or mainly in relation to Wales, and
    - (ii) are wholly or mainly functions that do not relate to reserved matters.
- (6) 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 has been laid before, and approved by a resolution of, each House of Parliament and the Assembly.
- (7) Subsection (6) does not apply to a statutory instrument containing an Order in Council that only makes provision for—
- (a) the omission of an entry where the authority concerned has ceased to exist, or
  - (b) the variation of an entry in consequence of a change of name or transfer of functions.
- Such an Order in Council is subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) In this section “public authority” means a body, office or holder of an office that has functions of a public nature.”

(2) After Schedule 9 to that Act insert the Schedule 9A set out in Schedule 3 to this Act.

**Commencement Information**

**I2** S. 4 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(a)

*Elections*

**5 Power to make provision about elections**

- (1) For section 13 of the Government of Wales Act 2006 (power to make provision about elections etc) substitute—

**“13 Power of the Welsh Ministers to make provision about elections etc**

- (1) The Welsh Ministers may by order make provision that would be within the legislative competence of the Assembly, if included in an Act of the Assembly, as to—
- (a) the conduct of elections of Assembly members,
  - (b) the questioning of an election of Assembly members and the consequences of irregularities, and

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- (c) the return of an Assembly member otherwise than at an election.
- (2) The provision that may be made under subsection (1)(a) includes, in particular, provision—
- (a) about the registration of electors,
  - (b) for disregarding alterations in a register of electors,
  - (c) about the limitation of the election expenses of candidates (and the creation of criminal offences in connection with the limitation of such expenses),
  - (d) for the combination of polls,
  - (e) for modifying the application of sections 6 and 8(2) where the poll at an election for the return of an Assembly constituency member is abandoned (or notice of it is countermanded), and
  - (f) for modifying section 9(7) to ensure the allocation of the correct number of seats for the region.
- (3) The provision that may be made under subsection (1)(c) includes, in particular, provision modifying 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, and
  - (b) so far as may be necessary in consequence of any provision made by 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) the European Parliamentary Elections Act 2002, 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 as applied 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, the Assembly.

### **13A Power of the Secretary of State to make provision about the combination of polls**

- (1) The Secretary of State may by regulations make provision for—
- (a) the combination of polls at ordinary general elections of Assembly members with polls at the elections listed in subsection (2), and
  - (b) the combination of polls at extraordinary general elections of Assembly members, and by-elections for the return of Assembly members, with polls at the elections listed in subsections (2) and (3).

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- (2) The elections are—
  - (a) early parliamentary general elections,
  - (b) parliamentary by-elections, and
  - (c) European Parliamentary by-elections.
- (3) The elections are—
  - (a) parliamentary general elections, and
  - (b) European Parliamentary general elections.
- (4) The Secretary of State may not make regulations under this section without the agreement of the Welsh Ministers.
- (5) Regulations under this section may—
  - (a) apply or incorporate, with or without modifications or exceptions, any provision made by or under the election enactments, and
  - (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 of Assembly members.
- (6) In subsection (5)(a) “the election enactments” has the meaning given by section 13(5).
- (7) 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, each House of Parliament.”
- (2) In section 15 of the Representation of the People Act 1985 (combination of polls), after subsection (5C) insert—
 

“(5D) Before making provision under subsection (5) in connection with the combination of polls where one of the elections is a local government election in Wales, the Secretary of State must consult the Welsh Ministers.”
- (3) In section 7 of the Political Parties, Elections and Referendums Act 2000 (Commission to be consulted on changes to electoral law), in subsection (2)(f), after “64(3)” insert “or regulations under section 13A”.

#### Commencement Information

**I3** S. 5 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(b)

## 6 Timing of elections

- (1) Section 3 of the Government of Wales Act 2006 (ordinary general elections) is amended as set out in subsections (2) to (5).
- (2) In subsection (1), for the words after “was held,” substitute “unless—
  - (a) subsection (1A) prevents the poll being held on that day, or
  - (b) the day of the poll is determined by a proclamation under section 4.”
- (3) After subsection (1) insert—

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“(1A) The poll is not to be held on the same date as the date of the poll at—

- (a) a parliamentary general election (other than an early parliamentary general election), or
- (b) a European Parliamentary general election.

(1B) Where subsection (1A) prevents the poll being held on the day specified in subsection (1), the poll is to be held on such day, subject to subsection (1A), as the Welsh Ministers may by order specify unless the day of the poll is determined by a proclamation under section 4(2) as modified by section 4(2A).”

(4) In subsection (2), after ““May”” insert “ or on the day specified by an order under subsection (1B) ”.

(5) After subsection (4) insert—

“(5) No order is to be made under subsection (1B) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Assembly.”

(6) Section 4 of that Act (power to vary date of ordinary general election) is amended in as set out in subsections (7) to (11).

(7) For subsections (1) and (2) substitute—

“(1) Subject to section 3(1A), the Presiding Officer may propose, for the holding of the poll at an ordinary general election, a day which is not more than one month earlier, nor more than one month later, than the first Thursday in May.

(2) If the Presiding Officer proposes a day under subsection (1), Her Majesty may by proclamation under the Welsh Seal—

- (a) dissolve the Assembly,
- (b) require the poll at the election to be held on the day proposed, and
- (c) require the Assembly to meet within the period of seven days beginning immediately after the day of the poll.

(2A) Where a day is specified by an order under section 3(1B), subsection (1) applies as if the reference to the first Thursday in May were a reference to that day.”

(8) In subsection (3), for ““(2)(b)”” substitute “ (2)(c) ”.

(9) In subsection (4)—

- (a) for ““An order under this section may”” substitute “ The Welsh Ministers may by order ”;
- (b) for ““Secretary of State considers”” substitute “ Welsh Ministers consider ”;
- (c) after ““poll”” insert “ under this section ”.

(10) Omit subsection (5).

(11) In subsection (6), for ““either House of Parliament”” substitute “ the Assembly ”.

(12) Section 5 of that Act (extraordinary general elections) is amended as set out in subsections (13) and (14).

(13) In subsection (1), for ““Secretary of State”” substitute “ Presiding Officer ”.

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- (14) In subsection (4)—
- (a) for ““Secretary of State”” substitute “ Presiding Officer ”;
  - (b) for ““Order in Council”” substitute “ proclamation under the Welsh Seal ”.
- (15) The Representation of the People Act 1983 is amended as set out in subsections (16) to (20).
- (16) In section 37 (ordinary day of local elections in England and Wales)—
- (a) in subsection (1), and in the heading, omit ““and Wales””;
  - (b) in subsection (2A), for the words after ““under”” substitute “ section 37A. ”
- (17) After that section insert—

**“37ZA Ordinary day of local elections in Wales**

- (1) In every year the ordinary day of election of councillors is the same for all local government areas in Wales and, subject to section 37B, and unless subsection (2) applies, is—
    - (a) the first Thursday in May;
    - (b) such other day as may be fixed by the Welsh Ministers by order made not later than 1st February in the year preceding the year (or, in the case of an order affecting more than one year, the first year) in which the order is to take effect.
  - (2) The ordinary day of election of councillors is not the day specified in or fixed under subsection (1) if that day is the day of the poll at an ordinary general election of members of the National Assembly for Wales.
  - (3) Where under subsection (2) the ordinary day of election of councillors is not the day specified in or fixed under subsection (1), it is such other day as the Welsh Ministers may by order specify.
  - (4) The power to make an order under subsection (1)(b) or (3) is exercisable by statutory instrument.
  - (5) A statutory instrument containing an order under subsection (3) may not be made unless a draft of the instrument has been laid before and approved by a resolution of the National Assembly for Wales.”
- (18) Section 37B (power to change date of local elections to date of European Parliamentary general election: Wales) is amended as follows.
- (19) After subsection (1) insert—
- “(1A) The Welsh Ministers may not make an order under this section if the date of the poll at the European Parliamentary general election is the same date as the poll at an ordinary general election of members of the National Assembly for Wales.”
- (20) In subsection (4)(b), for ““37(1)(b)”” substitute “ 37ZA(1)(b) ”.

**Commencement Information**

**I4** S. 6 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(b)



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## 7 Electoral registration: the digital service

- (1) Section 10ZC of the Representation of the People Act 1983 (registration of electors in Great Britain) is amended as set out in subsections (2) to (4).
- (2) In subsection (4)—
  - (a) for ““this section, so far as”” substitute “this section—
    - (a) so far as”;
    - (b) at the end insert “, and
      - (b) so far as it is exercisable by a Minister of the Crown to make provision about a UK digital service in relation to elections in Wales, is exercisable by the Welsh Ministers concurrently with that Minister.”
- (3) After subsection (5) insert—
  - (5A) The power of the Welsh Ministers to make regulations by virtue of subsection (4) is not exercisable without the agreement of a Minister of the Crown.
  - (5B) A statutory instrument containing regulations made by the Welsh Ministers by virtue of subsection (4) is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”
- (4) In subsection (6), after the definition of ““election in Scotland”” insert—
  - ““election in Wales”” means—
    - (a) an election of Assembly members, or
    - (b) a local government election in Wales;”.
- (5) Section 10ZD of that Act (registration of electors in Great Britain: alterations) is amended as set out in subsections (6) to (8).
- (6) In subsection (4)—
  - (a) for ““this section, so far as”” substitute “this section—
    - (a) so far as”;
    - (b) at the end insert “, and
      - (b) so far as it is exercisable by a Minister of the Crown to make provision about a UK digital service in relation to elections in Wales, is exercisable by the Welsh Ministers concurrently with that Minister.”
- (7) After subsection (5) insert—
  - (5A) The power of the Welsh Ministers to make regulations by virtue of subsection (4) is not exercisable without the agreement of a Minister of the Crown.
  - (5B) A statutory instrument containing regulations made by the Welsh Ministers by virtue of subsection (4) is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”
- (8) In subsection (6), after ““election in Scotland”” insert “, election in Wales ”.
- (9) Section 53 of that Act (power to make regulations about registration etc) is amended as set out in subsections (10) to (12).

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(10) In subsection (9)—

- (a) for ““this section, so far as”” substitute “this section—
  - (a) so far as”;
  - (b) at the end insert “, and
    - (b) so far as it is exercisable by a Minister of the Crown to make provision about a UK digital service in relation to elections in Wales, is exercisable by the Welsh Ministers concurrently with that Minister.”

(11) After subsection (10) insert—

“(10A) The power of the Welsh Ministers to make regulations by virtue of subsection (9) is not exercisable without the agreement of a Minister of the Crown.

(10B) A statutory instrument containing regulations made by the Welsh Ministers by virtue of subsection (9) is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”

(12) In subsection (11), after the definition of ““election in Scotland”” insert—

““election in Wales”” means—

- (a) an election of Assembly members, or
- (b) a local government election in Wales;”.

#### Commencement Information

**I5** S. 7 in force at 1.4.2018 by [S.I. 2017/1179](#), [reg. 3\(b\)](#)

## 8 Elections of police and crime commissioners

(1) Section 50 of the Police Reform and Social Responsibility Act 2011 (timing of ordinary election of police and crime commissioners) is amended as set out in subsections (2) to (4).

(2) In subsection (3), for ““the ordinary day of election”” substitute “ the first Thursday in May ”.

(3) In subsection (5)—

- (a) in paragraph (a), for ““the ordinary day of election”” substitute “ the first Thursday in May ”;
- (b) in paragraph (b), for the words from ““the ordinary day of election”” to ““in relation to Wales,”” substitute “ the first Thursday in May ”.

(4) Omit subsection (6).

(5) In section 51 of that Act (election to fill vacancy in office of commissioner), for subsection (6) substitute—

“(6) A person is a relevant elector for the purposes of subsection (5) in relation to a police area in England if the person is registered in a register of local government electors in respect of an address within the police area.

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- (6A) A person is a relevant elector for the purposes of subsection (5) in relation to a police area in Wales if subsection (6B) or (6C) applies.
- (6B) This subsection applies if—
- (a) the person is registered in a register of parliamentary electors in respect of an address within the police area, and
  - (b) the registration is not in pursuance of an overseas elector's declaration.
- (6C) This subsection applies if—
- (a) the person is disqualified as a peer from voting as an elector at parliamentary elections, or is a relevant citizen of the Union, and
  - (b) the person is registered in a register of local government electors in respect of an address within the police area.”
- (6) Section 52 of that Act (persons entitled to vote) is amended as set out in subsections (7) and (8).
- (7) In subsection (1), after ““a police area”” insert “ in England ”.
- (8) After subsection (1) insert—
- “(1A) A person is entitled to vote as an elector at an election of a police and crime commissioner for a police area in Wales if subsection (1B) or (1C) applies.
- (1B) This subsection applies if on the date of the poll—
- (a) the person would be entitled to vote as an elector at a parliamentary election in a constituency wholly or partly comprised in the police area,
  - (b) the address in respect of which the person is registered in the register of parliamentary electors for that constituency is within the police area, and
  - (c) the registration is not in pursuance of an overseas elector's declaration.
- (1C) This subsection applies if on the date of the poll—
- (a) the person is disqualified as a peer from voting as an elector at parliamentary elections, or is a relevant citizen of the Union who has attained the age of 18,
  - (b) the person would be entitled to vote as an elector at a local government election in an electoral area wholly or partly comprised in the police area, and
  - (c) the address in respect of which the person is registered in the register of local government electors for that electoral area is within the police area.”
- (9) Section 64 of that Act (disqualification for election as police and crime commissioner) is amended as set out in subsections (10) and (11).
- (10) In subsection (1), after ““a police area”” insert “ in England ”.
- (11) After subsection (1) insert—

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“(1A) A person is disqualified from being elected to the office of police and crime commissioner for a police area in Wales at any election unless—

- (a) the person has attained the age of 18 when nominated as a candidate at the election, and
- (b) on each relevant day subsection (1B) or (1C) applies.

(1B) This subsection applies if—

- (a) the person is registered in a register of parliamentary electors in respect of an address within the police area, and
- (b) the registration is not in pursuance of an overseas elector's declaration.

(1C) This subsection applies if—

- (a) the person is disqualified as a peer from voting as an elector at parliamentary elections, or is a relevant citizen of the Union, and
- (b) the person is registered in a register of local government electors in respect of an address within the police area.”

(12) In section 102 of that Act (interpretation of Part 1), in subsection (1), at the appropriate places insert—

“““overseas elector's declaration”” has the meaning given by section 2 of the Representation of the People Act 1985;”;

“““relevant citizen of the Union”” has the meaning given by section 202(1) of the Representation of the People Act 1983;”.

#### Commencement Information

**16** S. 8 in force at 1.4.2018 by [S.I. 2017/1179](#), reg. 3(b)

*Other provision about legislation by the Assembly*

## 9 Super-majority requirement for certain legislation

In the Government of Wales Act 2006, after section 111 insert—

### “111A Bills with protected subject-matter: super-majority requirement

(1) For the purposes of this Part a provision of a Bill relates to a protected subject-matter if it would modify, or confer power to modify, any of the matters listed in subsection (2) (but not if the provision is incidental to or consequential on another provision of the Bill).

(2) The matters are—

- (a) the name of the Assembly,
- (b) the persons entitled to vote as electors at an election for membership of the Assembly,
- (c) the system by which members of the Assembly are returned,
- (d) the specification or number of constituencies, regions or any equivalent electoral area,

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- (e) the number of members to be returned for each constituency, region or equivalent electoral area, and
  - (f) the number of persons who may hold the office of Welsh Minister appointed under section 48 or the office of Deputy Welsh Minister.
- (3) The Presiding Officer must, after the last time when a Bill may be amended but before the decision whether to pass or reject it—
- (a) decide whether or not, in the view of the Presiding Officer, any provision of the Bill relates to a protected subject-matter, and
  - (b) state that decision.
- (4) If the Presiding Officer decides that any provision of the Bill relates to a protected subject-matter, the Bill is not passed unless the number of Assembly members voting in favour of it at the final stage is at least two-thirds of the total number of Assembly seats.

#### **111B Scrutiny of Bills by the Supreme Court (protected subject-matter)**

- (1) The Counsel General or the Attorney General may refer the question whether any provision of a Bill relates to a protected subject-matter 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—
- (a) at any time during the period of four weeks beginning with the rejection of the Bill, if the Presiding Officer has decided under section 111A(3) that a provision of the Bill relates to a protected subject-matter, or
  - (b) at any time during the period of four weeks beginning with the passing of the Bill, if the Presiding Officer has decided under section 111A(3) that no provision of the Bill relates to a protected subject-matter, unless the number of Assembly members voting in favour of the Bill at its passing is at least two-thirds of the total number of Assembly seats.
- (3) No reference may be made in relation to a Bill—
- (a) by the Counsel General if the Counsel General has notified the Presiding Officer 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 Presiding Officer 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, since the notification, been approved or rejected in accordance with standing orders made by virtue of section 111(7).”

#### **Commencement Information**

**I7** S. 9 in force for specified purposes at 31.3.2017, see s. 71(2)(c)

**I8** S. 9 in force at 1.4.2018 in so far as not already in force by S.I. 2017/1179, reg. 3(c)

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## 10 Super-majority requirement: amendments relating to procedure etc

(1) Section 111 of the Government of Wales Act 2006 (proceedings on Bills) is amended as set out in subsections (2) to (5).

(2) In subsection (6), before paragraph (a) insert—

“(za) the Supreme Court decides on a reference made in relation to the Bill under section 111B(2)(b) (reference following Presiding Officer's decision that Bill does not contain protected subject-matter) that any provision of the Bill relates to a protected subject-matter.”

(3) After subsection (6) insert—

“(6A) The standing orders must provide for an opportunity for the reconsideration of a Bill after its rejection if (and only if), on a reference made in relation to the Bill under section 111B(2)(a) (reference following Presiding Officer's decision that Bill contains protected subject-matter), the Supreme Court decides that no provision that is subject to the reference relates to a protected subject-matter.”

(4) For subsection (7) substitute—

“(7) The standing orders must, in particular, ensure that—

- (a) any Bill amended on reconsideration in accordance with standing orders made by virtue of subsection (6)(a), (b) or (c), and
- (b) any Bill reconsidered in accordance with standing orders made by virtue of subsection (6)(za) or (6A),

is subject to a final stage at which it can be approved or rejected.”

(5) In subsection (8)—

- (a) after ““109(5)”” insert “, 111A(3) and (4), 111B(2)(b) ”;
- (b) for ““which has been amended on reconsideration”” substitute “ to which subsection (7)(a) or (b) applies ”.

(6) In section 112 of that Act—

- (a) in the heading, at the end insert “ (legislative competence) ”;
- (b) in subsection (2)(b) omit ““subsequent””.

(7) In section 114 of that Act (power of Secretary of State to intervene), in subsection (4)

- (a) in paragraph (b) omit ““subsequent””;
- (b) in paragraph (c), after ““section”” insert “ 111B or ”.

(8) In section 115 of that Act (Royal Assent)—

- (a) in subsection (2)(a), after ““section”” insert “ 111B or ”;
- (b) after subsection (3) insert—

“(3A) The Presiding Officer may not submit a Bill for Royal Assent if the Supreme Court has decided on a reference made in relation to the Bill under section 111B(2)(b) (reference following Presiding Officer's decision that Bill does not contain protected subject-matter) that any provision of the Bill relates to a protected subject-matter unless, since the decision, the Bill has been approved in accordance with standing orders made by virtue of section 111(7).”

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**Commencement Information**

- I9** S. 10 in force for specified purposes at 31.3.2017, see s. 71(2)(c)
- I10** S. 10 in force at 1.4.2018 in so far as not already in force by S.I. 2017/1179, reg. 3(c)

**11 Introduction of Bills: justice impact assessment**

After section 110 of the Government of Wales Act 2006 insert—

**“110A Introduction of Bills: justice impact assessment**

- (1) The standing orders must include provision requiring the person in charge of a Bill, on or before the introduction of the Bill, to make a written statement setting out the potential impact (if any) on the justice system in England and Wales of the provisions of the Bill (a “justice impact assessment”).
- (2) The form of the justice impact assessment and the manner in which it is to be made are to be determined under the standing orders.
- (3) The standing orders must provide for the justice impact assessment to be published.”

**Commencement Information**

- I11** S. 11 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(c)

**12 Submission of Bills for Royal Assent: role of Presiding Officer**

- (1) In section 115 of the Government of Wales Act 2006, in subsections (1), (2) and (3), for “Clerk” substitute “ Presiding Officer ”.
- (2) In consequence of the amendments made by subsection (1)—
  - (a) in section 112(3) of that Act (scrutiny of Bills by Supreme Court for legislative competence: notification of lack of reference), in paragraphs (a) and (b), for “Clerk” substitute “ Presiding Officer ”;
  - <sup>F1</sup>(b) .....
  - (c) in section 114 of that Act (power of Secretary of State to intervene), in subsections (2) and (5), for “Clerk” substitute “ Presiding Officer ”.

**Textual Amendments**

- F1** S. 12(2)(b) repealed (31.12.2020) by The European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020 (S.I. 2020/1447), reg. 1(3), Sch. (with reg. 9(2))

**Commencement Information**

- I12** S. 12 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(c)

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*Other provision about the Assembly*

**13 Financial control, accounts and audit**

- (1) Omit section 119 of the Government of Wales Act 2006 (statement of estimated payments).
- (2) In section 124 of that Act (payments out of Welsh Consolidated Fund), after subsection (4) insert—
 

“(4A) A sum paid out of the Welsh Consolidated Fund may not be applied for any purpose other than that for which it was charged or (as the case may be) paid out.”
- (3) After section 130 of that Act insert—

**“130A Financial control, accounts and audit**

- (1) Welsh legislation must provide—
  - (a) for proper accounts to be prepared by the First Minister, the Welsh Ministers, the Counsel General, the Assembly Commission and by other persons to whom sums are paid out of the Welsh Consolidated Fund, of their expenditure and receipts,
  - (b) for the Welsh Ministers to prepare an account of payments into and out of the Fund,
  - (c) for the Auditor General for Wales to exercise, or ensure the exercise by other persons of, the functions mentioned in subsection (2),
  - (d) for access by persons exercising those functions to such documents as they may reasonably require,
  - (e) for members of the staff of the Welsh Government and Assembly Commission designated for the purpose to be answerable to the Assembly in respect of the expenditure and receipts of each part of the Welsh Government or Assembly Commission, and
  - (f) for the publication of Assembly accounts and of reports on such accounts and for the laying of such accounts and reports before the Assembly.
- (2) The functions referred to in subsection (1)(c) are—
  - (a) issuing credits for the payment of sums out of the Fund;
  - (b) examining Assembly accounts (which includes determining whether sums paid out of the Fund have been paid out and applied in accordance with section 124), and certifying and reporting on them;
  - (c) carrying out examinations into the economy, efficiency and effectiveness with which the First Minister, the Welsh Ministers, the Counsel General, the Assembly Commission and other persons to whom sums are paid out of the Welsh Consolidated Fund have used their resources in discharging their functions.
- (3) Standing orders must provide for the consideration by the Assembly of accounts and reports laid before it in pursuance of subsection (1)(f).



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- (4) Welsh legislation may make further provision for the purpose of ensuring that devolved Welsh authorities that receive sums derived from the Fund are accountable.

That provision may, in particular, include provision for a devolved Welsh authority to which subsection (1)(a) does not apply to be accountable for its expenditure and receipts in respect of functions for which it receives sums derived from the Fund.

- (5) Persons (other than the Auditor General for Wales) charged with the exercise of any function mentioned in subsection (2) or other like function conferred by Welsh legislation are not subject, in the exercise of that or any ancillary function, to the direction or control of any member of the Welsh Government or of the Assembly.

- (6) Subsection (2)(b) does not apply to accounts prepared by the Auditor General for Wales.

- (7) This section does not require Welsh legislation to impose any requirement that is imposed by any other legislation.

- (8) In this section—

“Assembly accounts” means any accounts prepared in pursuance of subsection (1)(a) or (b);

“Welsh legislation” means provision made by or under an Act of the Assembly, and “other legislation” means provision made by any other enactment.”

- (4) Omit section 136 of that Act (examinations by Comptroller and Auditor General).

- (5) Sections 6 and 7 of the National Audit Act 1983 (value for money studies) do not apply in relation to a devolved Welsh authority.

#### Commencement Information

**I13** S. 13 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(d)

## 14 Composition of Assembly committees

In the Government of Wales Act 2006 omit section 29 (composition of committees).

## 15 Assembly proceedings: participation by UK Ministers etc

In the Government of Wales Act 2006—

- (a) omit section 32 (participation by UK Ministers etc);  
(b) omit section 33 (consultation about UK Government's legislative programme).

## 16 Change of name of the Assembly etc: translation of references

- (1) After section 150 of the Government of Wales Act 2006 insert—

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### **“150A Change of name of the Assembly etc: translation of references**

- (1) Subsection (2) applies if an Act of the Assembly, or subordinate legislation made under an Act of the Assembly, changes the name of—
- (a) the National Assembly for Wales (Cynulliad Cenedlaethol Cymru),
  - (b) the National Assembly for Wales Commission (Comisiwn Cynulliad Cenedlaethol Cymru), or
  - (c) Acts of the National Assembly for Wales (Deddfau Cynulliad Cenedlaethol Cymru).

(See paragraph 7(2)(a)(i) and (xi) and paragraph 7(2)(c)(i) of Schedule 7B.)

- (2) Unless the context requires otherwise, a reference to the National Assembly for Wales, the National Assembly for Wales Commission or an Act of the National Assembly for Wales (as the case may be), or the Welsh equivalent shown in subsection (1), in—
- (a) any enactment (including any enactment comprised in or made under this Act) or prerogative instrument, or
  - (b) any other instrument or document,
- is to be read as, or as including, a reference to the new name.”

- (2) In section 158 of that Act (interpretation), in subsection (2), after ““116C(2)”” insert “ , 150A(2) ”.

### *Taxation and borrowing*

## **17 Welsh rates of income tax: removal of referendum requirement**

- (1) The Wales Act 2014 is amended as follows.
- (2) Omit—
- (a) section 12 and Schedule 1 (referendum about commencement of income tax provisions),
  - (b) section 13 (proposal for referendum by Assembly), and
  - (c) the italic heading before section 12.
- (3) In section 14 (commencement of income tax provisions etc if majority in favour)—
- (a) omit subsection (1);
  - (b) in the heading omit ““etc if majority in favour””.
- (4) In section 23 (reports on the implementation and operation of Part 2) omit subsection (8).
- (5) In section 29 (commencement)—
- (a) in subsection (2)(b), for ““referendum-related”” substitute “ income tax ”;
  - (b) in subsection (4)—
    - (i) for “ “referendum-related”” substitute “ “income tax””;
    - (ii) omit ““(commencement if majority in favour at referendum)””.

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## 18 Lending for capital expenditure

In section 122A of the Government of Wales Act 2006 (lending for capital expenditure), in subsections (1) and (3), for “£500 million” substitute “ £1,000 million ”.

*Executive competence etc*

## 19 Functions of Welsh Ministers

(1) After section 58 of the Government of Wales Act 2006 insert—

### “58A Executive ministerial functions

- (1) Executive ministerial functions, so far as exercisable within devolved competence, are exercisable by the Welsh Ministers.
- (2) Executive ministerial functions that are ancillary to a function of the Welsh Ministers exercised outside devolved competence are also exercisable by the Welsh Ministers.
- (3) Functions exercisable by the Welsh Ministers under subsection (1) or (2) are not exercisable by a Minister of the Crown unless they are functions to which subsection (4) applies.

If they are functions to which subsection (4) applies, they are exercisable by the Welsh Ministers concurrently with any relevant Minister of the Crown.

- (4) This subsection applies to—
  - (a) functions ancillary to a function of the Welsh Ministers that is exercisable concurrently or jointly with a Minister of the Crown;
  - (b) functions ancillary to a function of a Minister of the Crown;
  - (c) functions that are not ancillary to another function;
  - (d) functions in relation to observing and implementing obligations under EU law.

(5) In this section—

“executive ministerial function” means a function of Her Majesty of a kind that is exercisable on Her behalf by a Minister of the Crown (including a function involving expenditure or other financial matters), but not a function conferred or imposed by or by virtue of any legislation or the prerogative;

“within devolved competence” and “outside devolved competence” are to be read in accordance with subsections (7) and (8).

(6) For the purposes of this section a function is “ancillary to” another function if or to the extent that it is exercisable with a view to facilitating, or in a way that is conducive or incidental to, the exercise of the other function.

(7) It is outside devolved competence—

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- (a) to make any provision by subordinate legislation that would be outside the legislative competence of the Assembly if it were included in an Act of the Assembly (see section 108A), or
  - (b) to confirm or approve any subordinate legislation containing such provision.
- (8) In the case of a function other than a function of making, confirming or approving subordinate legislation, it is outside devolved competence to exercise the function (or to exercise it in a particular way) if or to the extent that a provision of an Act of the Assembly conferring the function (or conferring it so as to be exercisable in that way) would be outside the legislative competence of the Assembly.”
- (2) In section 70 of that Act (financial assistance)—
- (a) in subsection (1)—
    - (i) for ““The Welsh Ministers”” substitute “ The First Minister ”;
    - (ii) for ““the Welsh Ministers consider”” substitute “ the First Minister considers ”;
    - (iii) for ““they aim”” substitute “ the Minister aims ”;
    - (iv) for ““their functions”” substitute “ the Minister's functions ”;
  - (b) in subsection (2)—
    - (i) for ““The Welsh Ministers”” substitute “ The First Minister ”;
    - (ii) for ““by them”” substitute “ by the Minister ”;
  - (c) for subsection (3) substitute—
 

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

(As regards the Welsh Ministers, see section 58A.)”
- (3) In section 71 of that Act (incidental etc powers of Welsh Ministers etc), for subsection (2) substitute—
- “(2) This section applies to the First Minister and the Counsel General.
- (As regards the Welsh Ministers, see section 58A.)”

#### Commencement Information

**I14** S. 19 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(e)

## F<sup>2</sup>20 Implementation of EU law

#### Textual Amendments

**F2** S. 20 repealed (31.12.2020) by The European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020 (S.I. 2020/1447), reg. 1(3), Sch. (with reg. 9(2))

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## 21 Transfer of Ministerial functions

- (1) In section 58 of the Government of Wales Act 2006 (transfer of Ministerial functions), in subsection (1)(b), for ““concurrently with the Minister of the Crown,”” substitute “—
  - (i) concurrently or jointly with a Minister of the Crown, or
  - (ii) only with the agreement of, or after consultation with, a Minister of the Crown,”.
- (2) In Part 2 of Schedule 3 to that Act (exercise of transferred functions), in paragraph 6(a) and (b) omit ““in relation to a cross-border body or an English border area””.
- (3) After section 59 of that Act insert—

### “59A Shared powers

Schedule 3A, which sets out functions of Ministers of the Crown and others that are exercisable concurrently or jointly with the Welsh Ministers, has effect.”

- (4) After Schedule 3 to that Act insert the Schedule 3A set out in Schedule 4 to this Act.

#### Commencement Information

**I15** S. 21 in force at 8.1.2018 by S.I. 2017/893, reg. 2

## 22 Consultation about cross-border bodies

Omit section 63 of the Government of Wales Act 2006 (consultation about cross-border bodies).

#### Commencement Information

**I16** S. 22 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(e)

## PART 2

### LEGISLATIVE AND EXECUTIVE COMPETENCE: FURTHER PROVISION

#### *Onshore petroleum*

## 23 Onshore petroleum licensing

- (1) Section 8A of the Petroleum Act 1998 (interpretation of Part 1) is amended as follows.
- (2) In subsection (1A), after paragraph (a) insert—
  - “(aa) in relation to the Welsh onshore area, the Welsh Ministers;”.
- (3) In subsection (2), after paragraph (a) insert—
  - “(aa) in relation to the Welsh onshore area, the Welsh Ministers;”.

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(4) At the end insert—

“(5) The Welsh onshore area is the area of Wales that is within the baselines established by any Order in Council under section 1(1)(b) of the Territorial Sea Act 1987 (extension of territorial sea).

(6) In subsection (5) ““Wales”” has the same meaning as in the Government of Wales Act 2006.

(7) The English onshore area is the area of England and the sea adjacent to England that is within the baselines established by any Order in Council under section 1(1)(b) of the Territorial Sea Act 1987 (extension of territorial sea).”

#### Commencement Information

**I17** S. 23 in force at 1.10.2018 by S.I. 2017/1179, reg. 4(a)

## 24 Onshore petroleum: existing licences

(1) The Secretary of State may make amendments to—

- (a) any model clause, to the extent that, under Part 1 of the Petroleum Act 1998, it is incorporated, or has effect as if incorporated, in an existing licence, and
- (b) any other provision of an existing licence.

(2) The Secretary of State may exercise the power in subsection (1) only if the Secretary of State considers that it is necessary or expedient to do so in consequence of—

- (a) the exceptions mentioned in Section D2 in Part 2 of Schedule 7A to the Government of Wales Act 2006 (licensing of and access to petroleum within Welsh onshore area), or
- (b) section 23.

(3) In the case of an existing licence granted in respect of an area (““the licence area””) of which part only was within the Welsh onshore area at the time the licence was granted—

- (a) the Secretary of State may direct that it is to have effect as a licence in respect of an area comprising that part and a separate licence in respect of an area comprising the rest of the licence area, and
- (b) subsection (1) applies in relation to each of those licences as it applies in relation to the existing licence.

(4) The power to make amendments under subsection (1)(a) is exercisable by regulations made by statutory instrument.

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

(6) In this section—

““existing licence”” means a licence, granted before the day on which section 23 comes into force, under—

- (a) section 3 of the Petroleum Act 1998, or
- (b) section 2 of the Petroleum (Production) Act 1934,

in respect of an area all or part of which is within the Welsh onshore area;

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“Welsh onshore area” has the meaning given by Section D2 in Part 2 of Schedule 7A to the Government of Wales Act 2006.

#### Commencement Information

I18 S. 24 in force at 7.3.2018 by S.I. 2017/1069, reg. 2

## 25 Onshore petroleum: right to use deep-level land in Wales

- (1) The Infrastructure Act 2015 is amended as follows.
- (2) In section 45 (payment schemes relating to right to use deep-level land for purposes of exploiting petroleum or geothermal energy)—
  - (a) in subsection (1), for “the right of use” substitute “—
    - (a) the right to use deep-level land in England for the purposes of exploiting petroleum, and
    - (b) the right to use deep-level land for the purposes of exploiting deep geothermal energy.”;
  - (b) after subsection (1) insert—

“(1A) The Welsh Ministers may, by regulations, require relevant energy undertakings to make payments in respect of the proposed exercise, or exercise, of the right to use deep-level land in Wales for the purposes of exploiting petroleum.”
- (3) In section 46 (notice schemes relating to right to use deep-level land for purposes of exploiting petroleum or geothermal energy)—
  - (a) in subsection (1), for “the right of use” substitute “—
    - (a) the right to use deep-level land in England for the purposes of exploiting petroleum, and
    - (b) the right to use deep-level land for the purposes of exploiting deep geothermal energy.”;
  - (b) after subsection (1) insert—

“(1A) The Welsh Ministers may, by regulations, require relevant energy undertakings to give notice of the proposed exercise, or exercise, of the right to use deep-level land in Wales for the purposes of exploiting petroleum.”
- (4) In section 49 (advice on likely impact of onshore petroleum on the carbon budget)—
  - (a) in subsection (1), after “activity” insert “ in England ”;
  - (b) in subsection (3), after “effect” insert “ in England ”;
  - (c) in subsection (7), for the definition of “petroleum got through onshore activity” substitute—

““petroleum got through onshore activity in England” means petroleum got from the strata in which it exists in its natural condition by activity carried out on land in England (excluding land covered by the sea or any tidal waters);”

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### Commencement Information

**I19** S. 25 in force at 1.10.2018 by S.I. 2017/1179, reg. 4(a)

## Road transport

### 26 Roads: speed limits, pedestrian crossings and traffic signs

- (1) The Road Traffic Regulation Act 1984 is amended as follows.
- (2) In section 17 (traffic regulation on special roads), after subsection (3ZA) insert—
  - “(3ZAA) The power to make provision of the following kinds by regulations under subsection (2) is exercisable by the Welsh Ministers—
    - (a) provision with respect to a particular special road in Wales;
    - (b) provision for regulating the speed of vehicles on special roads in Wales.”
- (3) In section 25 (pedestrian crossing regulations)—
  - (a) in subsection (1), for ““national authority”” substitute “ relevant authority ”;
  - (b) after subsection (6) insert—
    - “(7) In this section ““relevant authority”” means—
      - (a) in relation to a function so far as exercisable within devolved competence, within the meaning of the Scotland Act 1998, means the Scottish Ministers;
      - (b) in relation to a function so far as exercisable within devolved competence, within the meaning given by section 58A(7) and (8) of the Government of Wales Act 2006, means the Welsh Ministers;
      - (c) otherwise, means the Secretary of State.”
- (4) In section 64 (general provisions as to traffic signs)—
  - (a) for ““national authority””, in each place, substitute “ relevant authority ”;
  - (b) after subsection (6) insert—
    - “(6A) In this section ““relevant authority”” means—
      - (a) in relation to a function so far as exercisable within devolved competence, within the meaning of the Scotland Act 1998, means the Scottish Ministers;
      - (b) in relation to a function so far as exercisable within devolved competence, within the meaning given by section 58A(7) and (8) of the Government of Wales Act 2006, means the Welsh Ministers;
      - (c) otherwise, means the Secretary of State.”
- (5) In section 86 (speed limits for particular classes of vehicles), in subsection (7)—
  - (a) in paragraph (a) omit ““and Wales””;
  - (b) after paragraph (a) insert—
    - “(aa) as respects the driving of vehicles on roads in Wales, is the Welsh Ministers;”.



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- (6) In section 87 (exemption of emergency vehicles from speed limits) (as substituted by section 19 of the Road Safety Act 2006)—
- (a) in subsection (1)(b), for ““national authority”” substitute “ relevant authority ”;
  - (b) after subsection (6) insert—
    - “(7) In this section ““relevant authority””—
    - (a) in relation to a function so far as exercisable within devolved competence, within the meaning of the Scotland Act 1998, means the Scottish Ministers;
    - (b) otherwise, means the Secretary of State.”
- (7) In section 88 (temporary speed limits), in subsection (7A)—
- (a) in paragraph (a) omit ““and Wales””;
  - (b) after paragraph (a) insert—
    - “(aa) in relation to roads in Wales, is the Welsh Ministers;”.
- (8) In section 142(1) (general interpretation), in the definition of ““national authority””, after paragraph (a) insert—
  - “(aa) in relation to Wales, means the Welsh Ministers;”.

#### Commencement Information

**120** S. 26 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(f)

## 27 Bus service registration and traffic commissioners

- (1) The Transport Act 1985 is amended as set out in subsections (2) to (5).
- (2) In section 6 (registration of local bus services), after subsection (10) insert—
  - “(11) The power to make regulations under subsections (2), (3) and (9), so far as exercisable in relation to Wales, is exercisable by the Welsh Ministers (and not by the Secretary of State).”
- (3) In section 6A (applications for registration etc where restrictions are in force), after subsection (12) insert—
  - “(13) The power to make regulations under subsection (11), so far as exercisable in relation to Wales, is exercisable by the Welsh Ministers (and not by the Secretary of State).”
- (4) In section 6B (applications for registration where quality contracts scheme in force), after subsection (8) insert—
  - “(9) The power to make regulations under subsections (5) and (7), so far as exercisable in relation to Wales, is exercisable by the Welsh Ministers (and not by the Secretary of State).”
- (5) In section 7 (application of traffic regulation conditions to local bus services), after subsection (15) insert—

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“(16) The power to make regulations under subsections (6)(d), (9) and (11), so far as exercisable in relation to Wales, is exercisable by the Welsh Ministers (and not by the Secretary of State).”

(6) Section 4C of the Public Passenger Vehicles Act 1981 (power of senior traffic commissioner to give guidance and directions) is amended as set out in subsections (7) and (8).

(7) In subsection (1), in the second sentence, after ““subsection (5) below”” insert “ and, in relation to Wales, to subsection (6) below ”.

(8) After subsection (5) insert—

“(6) The senior traffic commissioner may not give guidance or directions under this section as to the exercise of a function so far as the function could (apart from paragraph 8 of Schedule 7B to the Government of Wales Act 2006) be conferred or imposed by provision falling within the legislative competence of the National Assembly for Wales.”

#### Commencement Information

**I21** S. 27 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(f)

## 28 Taxis: transfer of functions to Welsh Ministers

(1) The Transport Act 1985 is amended as follows.

(2) In section 10 (immediate hiring of taxis at separate fares), after subsection (9) insert—

“(9A) The power to make regulations under subsections (5)(c) and (8), so far as exercisable in relation to Wales, is exercisable by the Welsh Ministers (and not by the Secretary of State).”

(3) In section 13 (provisions supplementary to sections 10 to 12), after subsection (4) insert—

“(5) The power to make an order under subsection (1) for the purpose of supplementing section 10 or 11, so far as exercisable in relation to Wales, is exercisable by the Welsh Ministers (and not by the Secretary of State); and the reference to the Secretary of State in subsection (4) is to be read accordingly.”

#### Commencement Information

**I22** S. 28 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(f)

### *Harbours: transfer of executive functions*

## 29 Welsh harbours

(1) The functions mentioned in subsection (2) are (so far as not already transferred under the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672)) transferred to the Welsh Ministers.

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- (2) The functions are functions exercisable by a Minister of the Crown under or by virtue of—
- (a) section 21 of the Sea Fish Industry Act 1951 (fishery harbours);
  - (b) the following provisions of the Harbours Act 1964—
    - (i) section 11 (loans for harbour works);
    - (ii) sections 14 to 17 and Schedule 3 (harbour revision orders, harbour authority appointment orders and harbour empowerment orders);
    - (iii) section 18 and Schedule 4 (harbour reorganisation schemes);
    - (iv) section 19 (compensation for loss of office etc in consequence of harbour orders and schemes);
    - (v) sections 30 and 31 (harbour charges and dues);
    - (vi) section 39(4) (extension of order-making power under section 21(8) of the Sea Fish Industry Act 1951);
    - (vii) sections 41 and 42 (provision of information, accounts etc);
    - (viii) section 60 (power to amend local Acts);
  - (c) the following provisions of the Docks and Harbours Act 1966—
    - (i) section 36 (provision of inland clearance depots);
    - (ii) sections 42 and 43 (further provision about harbour reorganisation schemes);
  - (d) section 1 of the Harbours (Loans) Act 1972;
  - (e) section 5(2) of the Ports (Finance) Act 1985 (orders amending local Acts etc);
  - (f) the following provisions of the Pilotage Act 1987—
    - (i) section 1 (orders about competent harbour authorities);
    - (ii) section 8(3) (directions about pilotage exemption certificates);
    - (iii) section 10(6) (appeals in respect of pilotage charges);
    - (iv) section 12 (information and directions as to joint arrangements);
    - (v) section 13 (resolution of disputes between harbour authorities);
    - (vi) paragraph 4 of Schedule A1 (appeals in relation to decisions on authorisation of EEA pilots);
  - (g) Part 1 of the Ports Act 1991, other than section 11(8);
  - (h) any provision contained in a local Act (including an Act confirming a provisional order);
- so far as exercisable in relation to harbours that are wholly in Wales, other than harbours that are reserved trust ports.
- (3) In determining for the purposes of subsection (2)(b) whether a function is exercisable by a Minister of the Crown under or by virtue of a provision of the Harbours Act 1964, any order made under section 42A of that Act (delegation of functions) is to be ignored.
- (4) Where a function mentioned in subsection (2) relates to two or more harbours, that function is transferred to the Welsh Ministers only to the extent that both or all of the harbours to which it relates are wholly in Wales and are not reserved trust ports.
- (5) This section does not operate to transfer to the Welsh Ministers a function to the extent that, if exercised, it would result in a cross-border harbour being created.
- (6) Sections 34 to 38 make further provision about—

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- (a) the exercise, by a Minister of the Crown, of certain functions in relation to cross-border harbours,
- (b) the exercise of certain functions relating to pilotage by the Secretary of State in relation to waters in Wales, and by the Welsh Ministers in relation to waters in England, and
- (c) the exercise, by a Minister of the Crown, of certain functions in relation to two or more harbours where at least one of those harbours is wholly in Wales and is not a reserved trust port.

(7) In this section—

““cross-border harbour”” has the meaning given in section 34;

““reserved trust port”” has the meaning given in section 32;

““Wales”” has the same meaning as in the Government of Wales Act 2006 (see section 158(1) and (3) of that Act).

#### Commencement Information

**I23** S. 29 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(g) (with transitional provisions and savings in S.I. 2018/278, regs. 1, 2, Sch.)

### 30 Amendments of Harbours Act 1964

(1) The Harbours Act 1964 is amended as follows.

(2) In section 17 (harbour orders: procedure), in subsection (2C), for the words from ““fishery”” to ““National Assembly for Wales”” substitute “harbour that is wholly in Wales, other than a reserved trust port, as references to the Welsh Ministers”.

(3) In section 17E (harbour closure orders: devolution)—

(a) in subsection (1), for ““fishery harbours in Wales”” substitute “harbours that are wholly in Wales, other than reserved trust ports”;

(b) after subsection (1) insert—

“(1A) Before making a closure order that transfers functions to a harbour authority for a harbour that is wholly or partly in England or a reserved trust port, the Welsh Ministers must obtain the consent of the Secretary of State.”

(4) In section 40A (directions made by harbour authorities in respect of ships), in subsection (4)(a), for ““fishery harbour in Wales”” substitute “harbour that is wholly in Wales other than a reserved trust port”.

(5) In section 43 (provisions with respect to loans made by Minister)—

(a) after subsection (1) insert—

“(1A) Any loans which the Welsh Ministers make under section 11 of this Act shall be repaid to them at such times and by such methods, and interest thereon shall be paid to them at such rates and at such times, as they may from time to time direct.”;

(b) after subsection (2) insert—

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- “(2A) Such sums as are necessary to enable the Welsh Ministers to make loans under section 11 of this Act may be issued to them out of the Welsh Consolidated Fund.”;
- (c) after subsection (4) insert—
- “(4A) Any sums received by the Welsh Ministers under subsection (1A) of this section shall be paid into the Welsh Consolidated Fund.”;
- (d) after subsection (5) insert—
- “(6) The Welsh Ministers shall, as respects each financial year, prepare an account of sums issued to them under this section and of the sums to be paid into the Welsh Consolidated Fund under subsection (4A) and of the disposal by them of those sums respectively, and send it to the Auditor General for Wales not later than the end of November following the year; and the Auditor General for Wales shall examine, certify and report on the account and lay copies of it, together with his report, before the National Assembly for Wales.”;
- (e) in the heading, at the end insert “ or the Welsh Ministers ”.
- (6) In section 57(1) (interpretation), at the appropriate place insert—
- ““reserved trust port”” has the meaning given in section 32 of the Wales Act 2017.”.
- (7) In Schedule 3 (procedure for making harbour orders), in paragraph 25(6)(a), for subparagraph (ii) substitute—
- “(ii) a harbour that is wholly in Wales other than a reserved trust port, the Welsh Ministers;”.

#### Commencement Information

I24 S. 30 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(g)

### 31 Application of general provisions to transfer of functions in sections 29 and 30

- (1) The following provisions of the Government of Wales Act 2006 apply in relation to the transfer of functions under sections 29 and 30 as they apply in relation to a transfer of functions by an Order in Council made under section 58 of that Act—
- (a) Part 2 of Schedule 3 (exercise of transferred functions);
- (b) paragraph 13 of Schedule 3 (continued validity of things done);
- (c) paragraphs 1, 2(2) and 4 of Schedule 4 (transfers of property, rights and liabilities).
- (2) Where a function transferred under section 29 is exercisable by a delegate by virtue of an order made under section 42A of the Harbours Act 1964, the provisions mentioned in subsection (1) are to be read as if references to a Minister of the Crown or to the Secretary of State were, or included, references to the delegate.
- (3) The application by subsection (1)(c) of paragraphs 1 and 2(2) of Schedule 4 to the Government of Wales Act 2006 in relation to the transfer of functions under sections 29 and 30 is subject to any contrary provision made in regulations made by the Secretary of State.

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- (4) Regulations under subsection (3) may make—
- (a) different provision for different purposes or cases (including different provision for different harbours or different descriptions of harbour);
  - (b) transitional or saving provision.
- (5) Regulations under subsection (3) must be made by statutory instrument.
- (6) A statutory instrument containing regulations under subsection (3) is subject to annulment in pursuance of a resolution of either House of Parliament.

#### Commencement Information

**I25** S. 31 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(g)

### 32 Reserved trust ports

- (1) A harbour is a reserved trust port if, on the principal appointed day (within the meaning given by section 71), it is a harbour, dock, pier or boatslip that is owned or managed by a harbour authority that—
- (a) is a relevant port authority within the meaning of Part 1 of the Ports Act 1991 (see section 1(3) of that Act), and
  - (b) meets the annual turnover requirement.
- (2) The annual turnover requirement is the turnover requirement set out in section 11 of the Ports Act 1991.
- (3) Section 11 of that Act, in its application for the purposes of this section, has effect as if for subsection (1) there were substituted—
- “(1) A relevant port authority meet the annual turnover requirement if the annual turnover of the authority's port undertaking exceeded the turnover limit in the case of at least two of the last three accounting years of the authority for which accounts have been submitted under section 42(5) of the Harbours Act 1964.”

#### Commencement Information

**I26** S. 32 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(g)

### 33 Development consent

- (1) Section 24 of the Planning Act 2008 (development consent for construction or alteration of harbour facilities) is amended as follows.
- (2) In subsection (1), for paragraph (a) substitute—
- “(a) will be—
- (i) wholly or partly in England or in waters adjacent to England up to the seaward limits of the territorial sea, or
  - (ii) wholly in Wales or in waters adjacent to Wales up to the seaward limits of the territorial sea and will be, or will form part of, a reserved trust port, and”.

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(3) In subsection (2), for paragraph (a) substitute—

“(a) the harbour facilities are—

- (i) wholly or partly in England or in waters adjacent to England up to the seaward limits of the territorial sea, or
- (ii) wholly in Wales or in waters adjacent to Wales up to the seaward limits of the territorial sea and are, or form part of, a reserved trust port, and”.

(4) In subsection (6), after the definition of ““container ship”” insert—

““reserved trust port”” has the meaning given in section 32 of the Wales Act 2017;”.

#### Commencement Information

I27 S. 33 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(g)

### *Harbours: consultation and consent requirements*

## 34 Exercise of functions in relation to cross-border harbours

(1) Where—

- (a) a Minister of the Crown proposes to exercise a relevant function in relation to a cross-border harbour, and
- (b) the exercise of that function would, in the opinion of the Minister, be likely to have a material effect in Wales,

the Minister of the Crown must first consult the Welsh Ministers (except where section 38(1) applies).

(2) Where a Minister of the Crown proposes to exercise a function under the Harbours Act 1964 in such a way that it would result in a cross-border harbour being created, the Minister of the Crown must first consult the Welsh Ministers (except where section 38(1) applies).

(3) Where a Minister of the Crown has made an order under section 42A of the Harbours Act 1964, the duties in subsections (1) and (2) apply to the delegate as they apply to a Minister of the Crown.

(4) The following are ““relevant functions””—

- (a) making an order under section 21 of the Sea Fish Industry Act 1951;
- (b) making a harbour revision order under section 14 or 15 of the Harbours Act 1964, other than an order of the type described in section 7(5) of the Pilotage Act 1987 (order extending limits of pilotage jurisdiction);
- (c) making an order under any of the following sections of the Harbours Act 1964—
  - (i) section 15A (orders about port appointments);
  - (ii) section 16 (harbour empowerment orders);
  - (iii) section 17A (closure orders);
  - (iv) section 18 (orders for harbour reorganisation schemes);
  - (v) section 40A (orders designating harbour authority);

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- (vi) section 60 (orders amending local Acts);
  - (d) making regulations under section 19 of that Act (compensation for loss of office etc);
  - (e) approving a charge to which section 31 of that Act applies, or giving directions with respect to such a charge, under section 31(6)(a) or (b) of that Act (harbour dues);
  - (f) giving or refusing consent under section 36(1) of the Docks and Harbours Act 1966 (inland clearance depots);
  - (g) making an order under section 5(2) of the Ports (Finance) Act 1985 (order amending local enactments in consequence of borrowing powers etc);
  - (h) giving or refusing consent under section 5(1) of the Ports Act 1991 (control over issue or disposal of securities etc);
  - (i) giving directions under section 5(2) of that Act (directions about issue or disposal of securities etc);
  - (j) making a decision under section 9(6) of that Act (decision confirming port transfer scheme);
  - (k) giving directions under section 10(2) or (3) of that Act (directions requiring port authority to form a company or submit a scheme);
  - (l) making a scheme under section 12(1) of that Act (required port transfer scheme).
- (5) In this section—
- ““cross-border harbour”” means a harbour that is partly in England and partly in Wales;
  - ““England”” includes the sea adjacent to England out as far as—
    - (a) the seaward boundary of the territorial sea, or
    - (b) if nearer to the land, any boundary between waters that are treated as part of the sea adjacent to Wales and those that are not, as determined by an order made under section 158(3) of the Government of Wales Act 2006;
  - ““Wales”” has the same meaning as in the Government of Wales Act 2006 (see section 158(1) and (3) of that Act).

#### Commencement Information

**I28** S. 34 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(g)

### 35 Cross-border exercise of pilotage functions

- (1) Where—
- (a) the Secretary of State proposes to exercise a relevant pilotage function, and
  - (b) the function would be exercised in relation to waters in Wales,
- the Secretary of State must first consult the Welsh Ministers (except where section 38(1) applies).
- (2) Where—
- (a) the Welsh Ministers propose to exercise a relevant pilotage function other than a function mentioned in subsection (5)(e) or (h), and
  - (b) the function would be exercised in relation to waters in England,
- the Welsh Ministers must first obtain the consent of the Secretary of State.



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- (3) Where the Secretary of State or the Welsh Ministers have made an order under section 42A of the Harbours Act 1964 delegating the function of making a harbour revision order, the duty in subsection (1) or (2), so far as it relates to the function mentioned in subsection (5)(c), applies to the delegate as it applies to the Secretary of State or the Welsh Ministers.
- (4) Where—
- (a) the Welsh Ministers propose to exercise a function mentioned in subsection (5)(e) or (h), and
  - (b) the function would be exercised in relation to waters in England,
- the Welsh Ministers must first consult the Secretary of State (except where section 38(1) applies).
- (5) The following are ““relevant pilotage functions””—
- (a) making an order under section 1(3) of the Pilotage Act 1987 (order about exercise of pilotage jurisdiction);
  - (b) making an order under section 1(4) or (4A) of that Act (orders about competent harbour authorities);
  - (c) making an order of the type described in section 7(5) of that Act (harbour revision order extending limits of pilotage jurisdiction of a harbour authority);
  - (d) making a direction under section 8(3) of that Act (pilotage exemption certificates);
  - (e) approving a charge imposed by virtue of section 10 of that Act, or giving directions with respect to such a charge, under section 31(6) of the Harbours Act 1964 as applied by section 10(6) of the Pilotage Act 1987;
  - (f) making directions under section 12(2) or (3) of the Pilotage Act 1987 (joint arrangements);
  - (g) settling a dispute under section 13 of that Act (resolution of dispute between authorities);
  - (h) deciding an appeal under paragraph 4 of Schedule A1 to that Act (decisions on authorisation of EEA pilots).
- (6) In this section ““England”” and ““Wales”” have the same meanings as in section 34.

#### Commencement Information

**I29** S. 35 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(g)

### 36 Exercise of functions in relation to two or more harbours

- (1) Where—
- (a) a Minister of the Crown proposes to exercise a relevant function in relation to two or more harbours, and
  - (b) at least one of those harbours is a harbour that is wholly in Wales and is not a reserved trust port,
- the Minister of the Crown must first consult the Welsh Ministers (except where section 38(1) applies).

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- (2) Where a Minister of the Crown has made an order under section 42A of the Harbours Act 1964, the duty in subsection (1) applies to the delegate as it applies to a Minister of the Crown.
- (3) In this section—
- ““relevant function”” has the same meaning as in section 34;
  - ““reserved trust port”” has the meaning given in section 32;
  - ““Wales”” has the same meaning as in section 34.

**Commencement Information**

**I30** S. 36 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(g)

**37 Consequential amendments to consent requirements in Harbours Act 1964**

- (1) In section 42C of the Harbours Act 1964 (consent of Welsh Ministers for certain orders and schemes), after subsection (2) insert—
- “(2A) The references in subsections (1)(c) and (2) to a statutory provision of local application do not include a harbour revision order, a harbour empowerment order or a harbour reorganisation scheme.”
- (2) In section 42D of that Act (consent of Secretary of State for certain orders and schemes), after subsection (2) insert—
- “(2A) The references in subsections (1)(c) and (2) to a statutory provision of local application do not include a harbour revision order, a harbour empowerment order or a harbour reorganisation scheme.”

**Commencement Information**

**I31** S. 37 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(g)

**38 Sections 34 to 37: supplementary**

- (1) The duty to consult in section 34(1) or (2), section 35(1) or (4) or section 36(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.
- (2) If the duty to consult in section 34(1) or (2), section 35(1) or section 36(1) does not apply in relation to the exercise of a function by reason of subsection (1), the Secretary of State must as soon as is reasonably practicable inform the Welsh Ministers of the exercise of the function and of the reasons for its exercise.
- (3) If the duty to consult in section 35(4) does not apply in relation to the exercise of a function by reason of subsection (1), the Welsh Ministers must as soon as is reasonably practicable inform the Secretary of State of the exercise of the function and of the reasons for its exercise.
- (4) A failure to comply with a duty to consult in section 34(1) or (2), section 35(1) or (4) or section 36(1) in relation to the exercise of a function does not affect the validity of its exercise.

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- (5) The Secretary of State may make regulations modifying the application of sections 34, 35, 36 and this section in relation to the harbours, or descriptions of harbour, specified in the regulations.
- (6) Before making regulations under subsection (5), the Secretary of State must consult the Welsh Ministers.
- (7) The regulations may in particular—
  - (a) disapply a requirement for a Minister of the Crown to consult the Welsh Ministers before exercising a function;
  - (b) disapply a requirement for the Welsh Ministers to consult or obtain the consent of the Secretary of State before exercising a function;
  - (c) change a requirement to consult into a requirement to obtain consent, and vice versa;
  - (d) provide that a Minister of the Crown must consult, or obtain the consent of, the Welsh Ministers before exercising a function not mentioned in section 34, 35 or 36, in the circumstances set out in the regulations;
  - (e) provide that the Welsh Ministers must consult, or obtain the consent of, the Secretary of State before exercising a function not mentioned in section 35, in the circumstances set out in the regulations.
- (8) Regulations under subsection (5) may make—
  - (a) different provision for different purposes or cases, and
  - (b) consequential, incidental, supplementary, transitional and saving provision.
- (9) Regulations under subsection (5) must be made by statutory instrument.
- (10) A statutory instrument containing regulations under subsection (5) is subject to annulment in pursuance of a resolution of either House of Parliament.

#### Commencement Information

**I32** S. 38 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(g)

### *Planning for electricity generating stations*

#### **39 Development consent for generating stations with 350MW capacity or less**

- (1) Section 15 of the Planning Act 2008 (generating stations) is amended as set out in subsections (2) to (6).
- (2) In subsection (1), for ““or (3)”” substitute “ , (3), (3A) or (3B) ”.
- (3) In subsection (2)(a) omit ““or Wales””.
- (4) After subsection (3) insert—

“(3A) A generating station is within this subsection if—

  - (a) it is in Wales,
  - (b) it does not generate electricity from wind, and
  - (c) its capacity is more than 350 megawatts.

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- (3B) A generating station is within this subsection if—
- (a) it is in waters adjacent to Wales up to the seaward limits of the territorial sea, or in the Welsh zone, and
  - (b) its capacity is more than 350 megawatts.”
- (5) In subsection (4)—
- (a) in paragraph (a) omit ““or Wales””;
  - (b) in paragraph (b), after ““except”” insert “ the Welsh zone or ”.
- (6) After subsection (4) insert—
- “(5) ““Welsh zone”” has the meaning given in section 158 of the Government of Wales Act 2006.”
- (7) Section 36 of the Electricity Act 1989 (consent required for construction etc of generating stations) is amended as set out in subsections (8) to (11).
- (8) In subsection (1), (4) and (5)(a), for ““Secretary of State”” substitute “ appropriate authority ”.
- (9) In subsection (2)—
- (a) in paragraph (a)—
    - (i) at the beginning insert “ in the case of a generating station otherwise than in Wales, ”;
    - (ii) at the end omit ““and””;
  - (b) in paragraph (b), after ““extended”” insert “ otherwise than in Wales ”;
  - (c) after paragraph (b) insert—
    - “(c) in the case of a generating station in Wales, does not exceed the devolved capacity, that is to say, 350 megawatts; and
    - (d) in the case of a generating station which is to be constructed or extended in Wales, will not exceed the devolved capacity when it is constructed or extended;”
- (10) In subsection (7), for ““the Secretary of State”” substitute—
- “(a) the Welsh Ministers, if they are the appropriate authority, or
  - (b) the Secretary of State, in all other cases.”
- (11) After subsection (9) insert—
- “(10) In this section ““appropriate authority”” means—
- (a) the Scottish Ministers, in relation to a generating station in or to be constructed in Scotland;
  - (b) the Welsh Ministers, in relation to a generating station in or to be constructed in Welsh waters that—
    - (i) does not exceed the devolved capacity, that is to say, 350 megawatts;
    - (ii) in the case of a generating station which is to be constructed or extended, will not exceed the devolved capacity when constructed or extended;
  - (c) the Secretary of State, in all other cases.
- (11) In this section—

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““Scotland”” has the same meaning as in section 32(2) (see section 32(3));

““Welsh waters”” means so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Wales, and the Welsh zone;

““Welsh zone”” has the meaning given in section 158 of the Government of Wales Act 2006.”

(12) In section 36C of the Electricity Act 1989 (variation of consents under section 36), in subsection (6)—

(a) in the definition of ““appropriate authority”” —

(i) after paragraph (a) insert—

“(ab) the Welsh Ministers, in a case where the section 36 consent relates to a generating station (or proposed generating station) in Welsh waters that does not or will not when constructed or extended exceed 350 megawatts;”;

(ii) in paragraph (b), at the end insert “ and does not relate to a generating station (or proposed generating station) in Welsh waters that does not or will not when constructed or extended exceed 350 megawatts ”;

(b) in the definition of ““regulations””, after paragraph (a) insert—

“(aa) the Welsh Ministers, in the case of section 36 consents relating to generating stations (or proposed generating stations) in Welsh waters that do not or will not when constructed or extended exceed 350 megawatts;”;

(c) in the definition of ““statutory provision””, after ““Scottish Parliament”” insert “ and an Act of the Assembly ”;

(d) at the end insert—

“““Welsh waters”” has the meaning given in section 36.”

(13) In section 90 of the Town and Country Planning Act 1990 (development with government authorisation), in subsections (2) and (2ZA), after ““the Secretary of State”” insert “ or the Welsh Ministers ”.

#### Commencement Information

**I33** S. 39(4)(6) in force for specified purposes at 31.3.2017, see s. 71(2)(e)

**I34** S. 39 in force at 1.4.2018 for specified purposes by [S.I. 2017/1179](#), [reg. 3\(h\)](#)

**I35** S. 39 in force at 1.4.2019 in so far as not already in force by [S.I. 2017/1179](#), [reg. 5\(a\)](#)

## 40 Generating stations and public rights of navigation

(1) Section 36A of the Electricity Act 1989 (declarations extinguishing etc public rights of navigation) is amended as set out in subsections (2) to (5).

(2) In subsection (1)—

(a) for ““the Secretary of State or the Scottish Ministers”” substitute “ the appropriate authority ”;

(b) for ““he or (as the case may be) they”” substitute “ the appropriate authority ”.

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- (3) In subsection (2), for ““The Secretary of State or the Scottish Ministers”” substitute “ The appropriate authority ”.
- (4) In subsection (6)—
- (a) for ““the Secretary of State or the Scottish Ministers”” substitute “ the appropriate authority ”;
  - (b) for ““him or them””, in both places, substitute “ the appropriate authority ”.
- (5) In subsection (7), after ““In this section—”” insert—
- ““appropriate authority”” has the same meaning as in section 36;”.
- (6) Section 36B of that Act (duties in relation to navigation) is amended as set out in subsections (7) to (10).
- (7) In subsection (1)—
- (a) for ““Neither the Secretary of State nor the Scottish Ministers may”” substitute “ The appropriate authority may not ”;
  - (b) for ““he considers, or (as they case may be) they consider,”” substitute “ the appropriate authority considers ”.
- (8) In subsection (2), for ““both of the Secretary of State and of the Scottish Ministers”” substitute “ of the appropriate authority ”.
- (9) In subsection (3), for ““the Secretary of State or (as the case may be) the Scottish Ministers”” substitute “ the appropriate authority ”.
- (10) In subsection (4)(a), for ““the Secretary of State and the Scottish Minister have exercised or will exercise their powers”” substitute “ the appropriate authority has exercised or will exercise its powers ”.
- (11) Section 100 of the Energy Act 2004 (further provision relating to public rights of navigation) is amended as set out in subsections (12) to (14).
- (12) In subsection (1) omit ““the consenting authority””.
- (13) In subsections (3), (6) and (7), for ““the consenting authority”” substitute “ the appropriate authority ”.
- (14) In subsection (8), after ““In this section—”” insert—
- ““appropriate authority”” has the same meaning as in section 36 of the Electricity Act 1989;”.

#### **Commencement Information**

**I36** S. 40 in force at 1.4.2019 by S.I. 2017/1179, reg. 5(a)

## **41 Safety zones around renewable energy installations**

- (1) Section 95 of the Energy Act 2004 (safety zones around renewable energy installations) is amended as set out in subsections (2) to (5).
- (2) In subsection (1A)—
- (a) for ““means the Scottish Ministers”” substitute “means—

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- (a) the Scottish Ministers”;
- (b) paragraphs (a) to (c) are renumbered sub-paragraphs (i) to (iii);
- (c) in sub-paragraphs (ii) and (iii) (as renumbered), for ““paragraph (a)”” substitute “ sub-paragraph (i) ”;
- (d) before ““and otherwise”” insert—
- “(b) the Welsh Ministers, in relation to a renewable energy installation which has, or will have, a capacity of 350 megawatts or less and—
- (i) which is to be or is in an area of Welsh waters, and is not being proposed to be extended outside those areas,
- (ii) to which sub-paragraph (i) has ceased to apply because of an extension or proposed extension, if subsection (1D) applies, or
- (iii) to the extent that it is to be or is in an area of Welsh waters, if sub-paragraph (i) has ceased to apply because of an extension or proposed extension, and subsection (1D) does not apply.”.
- (3) After subsection (1C) insert—
- “(1D) This subsection applies if there is an agreement in force between the Secretary of State and the Welsh Ministers providing for the Welsh Ministers to be the appropriate Minister in relation to the whole of the installation.
- (1E) Where subsection (1D) applies, the Welsh Ministers must consult the Secretary of State about the exercise of their functions as the appropriate Minister.”
- (4) After subsection (4A) insert—
- “(4B) Before issuing a notice under this section which relates, wholly or partly, to Welsh waters, the Secretary of State must consult the Welsh Ministers.
- (4C) Before issuing a notice under this section which relates, wholly or partly, to an area outside Welsh waters, the Welsh Ministers must consult the Secretary of State.”
- (5) In section 96 of that Act (prohibited activities in safety zones), in subsection (8)(a), after ““the Secretary of State”” insert “ or the Welsh Ministers ”.
- (6) In section 104 of that Act (interpretation of Chapter 2 of Part 2), at the end of subsection (1) insert—
- “““Welsh waters”” means so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Wales, and the Welsh zone;
- ““Welsh zone”” has the meaning given in section 158 of the Government of Wales Act 2006.”

#### Commencement Information

I37 S. 41 in force at 1.4.2019 by S.I. 2017/1179, reg. 5(a)

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## 42 Overhead lines associated with devolved Welsh generating stations

(1) Section 37 of the Electricity Act 1989 (consent required for overhead lines) is amended as set out in subsection (2) and (3).

(2) In subsection (1), for ““(2)”” substitute ““(2A)””.

(3) After subsection (2) insert—

“(2A) Subsection (1) above shall not apply in relation to an electric line that—

- (a) has a nominal voltage of 132 kilovolts or less, and
- (b) is associated with the construction or extension of a devolved Welsh generating station granted planning permission or consented to on or after the day on which section 39 of the Wales Act 2017 comes into force.

(2B) ““Devolved Welsh generating station”” means a generating station that—

- (a) is in Wales and—
  - (i) generates electricity from wind, or
  - (ii) has a maximum capacity of 350 megawatts or less; or
- (b) is in Welsh waters and has a maximum capacity of 350 megawatts or less.

(2C) ““Welsh waters”” has the meaning given in section 36 above.”

(4) In section 16 of the Planning Act 2008 (electric lines), after subsection (3A) insert—

“(3B) The installation of an electric line above ground is not within section 14(1)

- (b) if the line is associated with the construction or extension of a devolved Welsh generating station granted planning permission or consented to on or after the day on which section 39 of the Wales Act 2017 comes into force and the nominal voltage of the line is expected to be no greater than 132 kilovolts.

(3C) ““Devolved Welsh generating station”” means a generating station that—

- (a) is in Wales and—
  - (i) generates electricity from wind, or
  - (ii) has a capacity of 350 megawatts or less; or
- (b) is in waters adjacent to Wales up to the seaward limits of the territorial sea or in the Welsh zone and has a capacity of 350 megawatts or less.

(3D) ““Welsh zone”” has the meaning given in section 158 of the Government of Wales Act 2006.”

### Commencement Information

**I38** S. 42(4) in force for specified purposes at 31.3.2017, see s. 71(2)(e)

**I39** S. 42(1)-(3) in force at 1.4.2019 by S.I. 2017/1179, reg. 5(a)

**I40** S. 42(4) in force at 1.4.2019 in so far as not already in force by S.I. 2017/1179, reg. 5(a)

## 43 Alignment of associated development consent

(1) Section 115 of the Planning Act 2008 (development for which development consent may be granted) is amended as follows.



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(2) In subsection (2)(c), for ““or (4)”” substitute “ , (4) or (4A) ”.

(3) After subsection (4) insert—

“(4A) Development is within this subsection if the development within subsection (1)(a) with which it is associated is—

- (a) the construction or extension of a generating station that is or (when constructed or extended) is expected to be within section 15(3A) or (3B), or
- (b) the installation of an electric line that is or (when installed) is expected to be within section 14(1)(b).”

### *Equal opportunities*

#### **44 Equal opportunities: public sector equality duty**

(1) The Equality Act 2010 is amended as follows.

(2) In section 152 (power to specify public authorities: consultation and consent)—

- (a) in subsection (2), for the words after ““must”” substitute “ consult the Commission, and after making such an order they must inform a Minister of the Crown. ”;
- (b) in the heading omit ““and consent””.

(3) In section 154 (power to impose specific duties: cross-border authorities), in the second column of the table in subsection (3), for the words ““The Welsh Ministers must consult a Minister of the Crown before”” in both places substitute “ The Welsh Ministers must inform a Minister of the Crown after ”.

#### **Commencement Information**

**I41** S. 44 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(i)

#### **45 Public sector duty regarding socio-economic inequalities**

(1) The Equality Act 2010 is amended as follows.

(2) In section 1 (public sector duty), in subsection (2A), after paragraph (a) insert—

“(aa) in the case of a duty imposed on an authority in relation to devolved Welsh functions, guidance issued by the Welsh Ministers;”.

(3) In section 2 (power to amend section 1) omit subsections (7), (9) and (10).

(4) Section 216 (commencement) is amended as follows.

(5) In subsection (3), for ““subsection (4)”” substitute “ subsections (4) and (6) ”.

(6) After subsection (5) insert—

“(6) The following provisions of Part 1 come into force on such day as the Welsh Ministers may by order appoint—

- (a) section 1, so far as it applies to a relevant authority as defined by section 2(6);

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- (b) section 2, so far as it confers a power on the Welsh Ministers;
- (c) section 3, for the purposes of section 1 to the extent mentioned in paragraph (a).

(7) Section 209 does not apply to an order under subsection (6).”

**Commencement Information**

**I42** S. 45 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(i)

*Marine licensing and conservation*

**46 Marine licensing in the Welsh offshore region**

- (1) The Marine and Coastal Access Act 2009 is amended as set out in subsections (2) to (5).
- (2) In section 113 (the appropriate licensing authority)—
  - (a) in subsection (4), for ““and the Welsh inshore region”” substitute “ , the Welsh inshore region and the Welsh offshore region ”;
  - (b) in subsection (5), after paragraph (b) insert—
    - “(c) in relation to the Welsh offshore region, any activity falling within the subject-matter of Part 6 of the Merchant Shipping Act 1995 (pollution etc).”
- (3) In section 236 (enforcement of marine licensing regime), in subsection (2)—
  - (a) in paragraph (a), for ““or the Welsh inshore region”” substitute “ , the Welsh inshore region or the Welsh offshore region ”;
  - (b) after that paragraph insert—
    - “(aa) any activity in the Welsh offshore region falling within the subject-matter of Part 6 of the Merchant Shipping Act 1995 (pollution etc);”.
- (4) In section 240 (marine licensing: oil and gas and other reserved matters), in subsection (1)—
  - (a) in paragraph (b), for ““or the Welsh inshore region”” substitute “ , the Welsh inshore region or the Welsh offshore region ”;
  - (b) after that paragraph insert—
    - “(ba) any activity in the Welsh offshore region falling within the subject-matter of Part 6 of the Merchant Shipping Act 1995 (pollution etc);”.
- (5) In section 241 (marine licensing: Northern Ireland), in subsection (3)—
  - (a) in paragraph (a), for ““or the Welsh inshore region”” substitute “ , the Welsh inshore region or the Welsh offshore region ”;
  - (b) after that paragraph insert—
    - “(aa) any activity in the Welsh offshore region falling within the subject-matter of Part 6 of the Merchant Shipping Act 1995 (pollution etc);”.

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- (6) The Marine Licensing (Exempted Activities) (Wales) Order 2011 (S.I. 2011/559 (W.81)) is amended as set out in subsection (7) to (9).
- (7) In Article 4 (exemption from need for marine licence), in paragraph (1), for ““or the Welsh inshore region”” substitute “ , the Welsh inshore region or the Welsh offshore region ”.
- (8) In Article 32 (bored tunnels), in paragraph (4), for ““and the Welsh inshore region”” substitute “ , the Welsh inshore region and the Welsh offshore region ”.
- (9) In Article 34 (loading of a vehicle or vessel etc for incineration outside Wales and the Welsh inshore region)—
  - (a) in the heading, for ““and the Welsh inshore region”” substitute “ , the Welsh inshore region and the Welsh offshore region ”;
  - (b) in paragraph (1)(b), for ““and the Welsh inshore region”” substitute “ , the Welsh inshore region and the Welsh offshore region ”.

**Commencement Information**

**I43** S. 46 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(j)

**47 Marine conservation zones**

- (1) Part 5 of the Marine and Coastal Access Act 2009 is amended as follows.
- (2) In section 116 (marine conservation zones)—
  - (a) in subsection (5)(a), after ““Wales”” insert “ or the Welsh offshore region ”;
  - (b) after subsection (5) insert—

“(5A) The Welsh Ministers may not designate an area as an MCZ without the agreement of the Secretary of State if any part of the proposed MCZ lies in the Welsh offshore region.”
- (3) In section 119 (consultation before designation)—
  - (a) in subsection (6), after ““Wales”” insert “ or the Welsh offshore region ”;
  - (b) omit subsection (9)(a).
- (4) In section 125 (general duties of public authorities in relation to MCZs), in subsection (11)(a), after ““Wales”” insert “ or the Welsh offshore region ”.

**Commencement Information**

**I44** S. 47 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(j)

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## Water etc

PROSPECTIVE

### 48 Water and sewerage

- (1) In Schedule 7A to the Government of Wales Act 2006 (substituted by this Act), in Section C15 (water and sewerage)—
- (a) omit paragraph 92;
  - (b) in paragraph 93 omit ““and regulation””;
  - (c) omit the two exceptions (and the heading ““Exceptions””);
  - (d) omit the definitions of ““supply system of a water undertaker”” and ““sewerage system of a sewerage undertaker””.
- (2) In section 192B of the Water Industry Act 1991 (annual and other reports)—
- (a) in subsection (1), after ““the Secretary of State”” insert “ and the Welsh Ministers ”;
  - (b) after subsection (5) insert—
 

“(5A) The Welsh Ministers shall—

    - (a) lay a copy of each annual report before the Assembly; and
    - (b) arrange for the report to be published in such manner as they consider appropriate.”;
  - (c) in subsection (7) omit ““the Assembly,””.

### 49 Modification of water-related functions

In section 58 of the Government of Wales Act 2006, after subsection (2) insert—

- “(2A) Her Majesty may by Order in Council—
- (a) make provision modifying (by reference to geographical extent or otherwise) a previously conferred or transferred water-related function;
  - (b) provide for such a function to be exercisable—
    - (i) concurrently or jointly with a Minister of the Crown or the Welsh Ministers, or
    - (ii) only with the agreement of, or after consultation with, a Minister of the Crown or the Welsh Ministers.
- (2B) In subsection (2A)—
- ““previously conferred or transferred function”” means a function exercisable by—
- (a) the Welsh Ministers, the First Minister or the Counsel General,
  - (b) a Minister of the Crown, or
  - (c) any authority or other body,
- by virtue of provision contained in or made under this Act or any other enactment;
- ““water-related function”” means a function exercisable in relation to water supply, water quality, water resources management, control of

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pollution of water resources, sewerage, rivers and other watercourses, land drainage, flood risk management or coastal protection.”

#### Commencement Information

I45 S. 49 in force at 8.1.2018 by S.I. 2017/893, reg. 2

## 50 Water protocol

- (1) The Welsh Ministers and the Secretary of State may make an agreement (the “water protocol”) for the purpose of ensuring that—
  - (a) actions or inaction of the Welsh Ministers, or public bodies exercising functions in Wales, do not have a serious adverse impact on water resources in England, water supply in England or the quality of water in England, and
  - (b) actions or inaction of the Secretary of State, or public bodies exercising functions in England, do not have a serious adverse impact on water resources in Wales, water supply in Wales or the quality of water in Wales.
- (2) The water protocol must—
  - (a) provide for a procedure for resolving matters of disagreement between the Welsh Ministers and the Secretary of State;
  - (b) make provision about whether, or to what extent, functions relating to such matters may be exercised pending the outcome of the procedure.
- (3) The water protocol may be revised by agreement of the Welsh Ministers and the Secretary of State.
- (4) The water protocol, and any revised protocol, must be laid before both Houses of Parliament and the National Assembly for Wales.
- (5) The Welsh Ministers and the Secretary of State must exercise their functions in accordance with the provisions of the water protocol, unless it is revoked by agreement of the Welsh Ministers and the Secretary of State.

## 51 Reciprocal cross-border duties in relation to water

- (1) In exercising functions relating to water resources, water supply or water quality—
  - (a) the Welsh Ministers must have regard to the interests of consumers in England;
  - (b) the Secretary of State must have regard to the interests of consumers in Wales.
- (2) In subsection (1) “the interests of consumers” has the same meaning as in section 2 of the Water Industry Act 1991.

## 52 Repeal of intervention powers relating to water

- (1) In the Government of Wales Act 2006—
  - (a) in section 114 (power to intervene in certain cases) omit paragraph (b) of subsection (1);
  - (b) omit section 152 (intervention in case of functions relating to water).

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- (2) Regulations under section 71 bringing this section into force may not be made until an agreement under section 50 has been laid before both Houses of Parliament and the National Assembly for Wales.

**Commencement Information**

**I46** S. 52 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(k)

*Miscellaneous*

**53 Transfer of functions in relation to fishing vessels**

- (1) The functions to which this section applies, so far as exercisable in relation to Welsh fishing boats beyond the seaward limits of the Welsh zone, are transferred to the Welsh Ministers.
- (2) This section applies to —
- (a) functions of a Minister of the Crown or the Marine Management Organisation under the Sea Fish (Conservation) Act 1967,
  - (b) functions of a Minister of the Crown under the Sea Fisheries Act 1968,
  - (c) functions of a Minister of the Crown under Parts 2 to 4 of the Fisheries Act 1981, and
  - (d) functions of a Minister of the Crown or the Marine Management Organisation under the Sea Fisheries (Wildlife Conservation) Act 1992.
- (3) But this section does not apply to—
- (a) functions conferred on the Board of Trade by section 8 of the Sea Fish (Conservation) Act 1967;
  - (b) functions listed in paragraph 2(2) of Schedule 3A to the Government of Wales Act 2006 (inserted by this Act) (functions concurrently exercisable with the Welsh Ministers).
- (4) In this section—
- ““Welsh fishing boat”” means a fishing vessel which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Wales as the port to which the vessel is to be treated as belonging;
- ““Welsh zone”” has the meaning given in section 158 of the Government of Wales Act 2006.

**Commencement Information**

**I47** S. 53 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(l)

**54 Transfer of functions in relation to excepted energy buildings**

- (1) The functions conferred or imposed on the Secretary of State by or under the Building Act 1984, so far as exercisable in relation to excepted energy buildings in Wales, are transferred to the Welsh Ministers.

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- (2) But subsection (1) does not operate to transfer any functions that are reserved by the following provisions of the 2009 TFO—
- (a) Article 3(b) (functions exercisable by Secretary of State as a Crown authority);
  - (b) Article 3(c) (powers of commencement etc);
  - (c) Article 4 (energy performance requirements and energy assessors for existing buildings).
- (3) The following provisions of the Government of Wales Act 2006 apply in relation to the transfer of functions under subsection (1) as they apply in relation to a transfer of functions by an Order in Council made under section 58 of that Act—
- (a) Part 2 of Schedule 3 (exercise of functions transferred under section 58);
  - (b) paragraph 1 of Schedule 4 (general transfer of property, rights and liabilities).
- (4) In this section—
- ““excepted energy building”” has the meaning given in the Schedule to the 2009 TFO;
  - ““the 2009 TFO”” means the Welsh Ministers (Transfer of Functions) (No. 2) Order 2009 (S.I. 2009/3019).

#### Commencement Information

**148** S. 54 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(1)

## 55 Renewable energy incentive schemes

- (1) After section 148 of the Government of Wales Act 2006 insert—

### *“Consultation with Welsh Ministers*

#### **148A Renewable energy incentive schemes**

- (1) The Secretary of State must consult the Welsh Ministers before—
- (a) establishing a renewable energy incentive scheme that applies in Wales, or
  - (b) amending such a scheme as it relates to Wales.
- (2) Subsection (1) does not apply to amendments that appear to the Secretary of State to be minor or made only for technical or administrative reasons; and the Secretary of State is not to be taken to establish or amend a scheme by exercising a power under a scheme, other than a power that is exercisable subject to any parliamentary procedure.
- (3) Subsection (1) does not require the Secretary of State to consult the Welsh Ministers about any levy in connection with a renewable energy incentive scheme.
- (4) In this section a ““renewable energy incentive scheme”” means any scheme, whether statutory or otherwise, that provides an incentive to generate, or facilitate the generation of, electricity or heat from sources of energy other than fossil fuel or nuclear fuel. This includes provision made by or under the

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following so far as they relate to the generation of electricity or heat from sources of energy other than fossil fuel or nuclear fuel—

- (a) sections 6 to 26 of the Energy Act 2013 (contracts for difference);
- (b) sections 41 to 43 of the Energy Act 2008 (feed-in tariffs for small-scale generation of electricity);
- (c) section 100 of that Act (renewable heat incentives);
- (d) sections 32 to 32Z2 of the Electricity Act 1989 (renewables obligations or certificate purchase obligations)."

- (2) Where, before the commencement of this section, the Secretary of State has consulted, or is consulting, the Welsh Ministers regarding a renewable energy incentive scheme within the meaning of section 148A of the Government of Wales Act 2006 (inserted by subsection (1) above), that consultation is to be treated as fulfilling the obligation in that section.

#### Commencement Information

**I49** S. 55 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(I)

## 56 Financial assistance for inland waterway and sea freight

- (1) Section 272 of the Transport Act 2000 (financial assistance for inland waterway and sea freight) is amended as follows.

- (2) For subsection (4) substitute—

“(4) So far as it relates to inland waterways that are wholly in Wales, the power conferred by this section is a power of the Welsh Ministers.

- (4A) So far as it relates to—

- (a) the carriage of goods by an inland waterway that is partly in Wales, or
- (b) the carriage of goods by sea where the carriage concerned is wholly or partly by sea adjacent to Wales,

the power conferred by this section may be exercised concurrently or jointly by the Secretary of State and the Welsh Ministers.”

- (3) For subsection (6) substitute—

“(6) In this section—

““inland waterway”” includes both a natural and an artificial inland waterway;

““sea adjacent to Wales”” means the sea adjacent to Wales out as far as the seaward boundary of the territorial sea.

- (7) An order under section 158(3) of the Government of Wales Act 2006 determining, or making provision for determining, any boundary between waters which are to be treated as parts of the sea adjacent to Wales and those which are not applies for the purposes of the definition of ““sea adjacent to Wales”” in this section as it applies for the purposes of the definition of ““Wales”” in that Act.”



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#### Commencement Information

**I50** S. 56 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(I)

### 57 Maritime and Coastguard Agency

(1) In section 1 of the Coastguard Act 1925 (transfer of the coastguard to the Board of Trade), after subsection (4) insert—

“(5) The Secretary of State must consult the Welsh Ministers about the strategic priorities of the Secretary of State in exercising functions under subsection (1) in relation to activities of Her Majesty's Coastguard in Wales.

(6) In subsection (5) ““Wales”” has the same meaning as in the Government of Wales Act 2006.”

(2) In section 292 of the Merchant Shipping Act 1995 (general functions of the Secretary of State), after subsection (4) insert—

“(5) The Secretary of State must consult the Welsh Ministers about the strategic priorities of the Secretary of State in exercising functions under subsection (1) in relation to the safety standards of ships in Wales and protecting the health and safety of persons on them.

(6) In subsection (5) ““Wales”” has the same meaning as in the Government of Wales Act 2006.”

#### Commencement Information

**I51** S. 57 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(I)

### 58 Gaming machines on licensed betting premises

(1) In section 172 of the Gambling Act 2005 (gaming machines), in subsection (12) (definition of ““appropriate Minister””), after paragraph (a) insert—

“(aa) the Welsh Ministers, so far as, in the case of a betting premises licence in respect of premises in Wales and not in respect of a track, the order varies—

(i) the number of gaming machines authorised for which the maximum charge for use is more than £10, or

(ii) whether such machines are authorised;”

(2) In section 355 of that Act (regulations, orders and rules)—

(a) in subsection (1), after ““the Secretary of State”” insert “, the Welsh Ministers”;

(b) in subsection (3), after ““the Secretary of State”” insert “ or the Welsh Ministers”;

(c) after subsection (8) insert—

“(8A) An order of the Welsh Ministers under section 172 shall not be made unless a draft has been laid before and approved by resolution of the National Assembly for Wales.”

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- (3) The amendments made by this section do not apply in relation to a betting premises licence issued before this section comes into force.

#### Commencement Information

**I52** S. 58 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(1)

### PART 3

#### WELSH TRIBUNALS

#### 59 The Welsh tribunals

- (1) In this Part ““Welsh tribunal”” means—
- (a) the Agricultural Land Tribunal for Wales or Tribiwnlys Tir Amaethyddol Cymru;
  - (b) the Mental Health Review Tribunal for Wales;
  - (c) a rent assessment committee constituted in accordance with Schedule 10 to the Rent Act 1977 (including a leasehold valuation tribunal and a residential property tribunal);
  - [<sup>F3</sup>(d) the Education Tribunal for Wales or Tribiwnlys Addysg Cymru;]
  - (e) a tribunal constituted in accordance with Schedule 3 to the Education Act 2005 (registration of inspectors in Wales: tribunals hearing appeals under section 27);
  - (f) a tribunal drawn from the Adjudication Panel for Wales or Panel Dyfarnu Cymru;
  - (g) the Welsh Language Tribunal or Tribiwnlys y Gymraeg.
- (2) Her Majesty may by Order in Council amend subsection (1)—
- (a) so as to remove or revise a paragraph,
  - (b) so as to add or substitute a tribunal whose functions—
    - (i) are exercisable only in relation to Wales, and
    - (ii) do not relate to reserved matters (within the meaning of the Government of Wales Act 2006), or
  - (c) so as to make amendments (to provisions of this Part or other enactments) that are consequential on an amendment within paragraph (a) or (b).
- (3) 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 has been laid before, and approved by a resolution of, the National Assembly for Wales.
- (4) Subsection (3) does not apply to a statutory instrument containing an Order in Council that only makes—
- (a) provision for the omission of a paragraph in subsection (1) where the tribunal concerned has ceased to exist,
  - (b) provision for the variation of a paragraph in consequence of a change of name or transfer of functions, or
  - (c) amendments within subsection (2)(c).

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Such an Order in Council is subject to annulment in pursuance of a resolution of the Assembly.

#### Textual Amendments

**F3** S. 59(1)(d) substituted (1.9.2021) by [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Consequential Amendments\) Regulations 2021 \(S.I. 2021/861\)](#), regs. 1, **10(2)**

#### Commencement Information

**I53** S. 59 in force at 10.7.2017 or the first day on which regulations made under 2017 c. 4, Sch. 5 para. 7(1) come into force, whichever is the later by [S.I. 2017/351](#), **reg. 2**

## 60 President of Welsh Tribunals

- (1) The Lord Chief Justice of England and Wales may appoint a person to the office of President of Welsh Tribunals or Llywydd Tribiwnlysoedd Cymru.
- (2) The President of Welsh Tribunals is not a devolved Welsh authority for the purposes of the Government of Wales Act 2006.
- (3) Schedule 5 makes further provision about the President of Welsh Tribunals and about appointments under subsection (1).
- (4) A holder of the office of President of Welsh Tribunals must, in carrying out the functions of that office, have regard to—
  - (a) the need for the Welsh tribunals to be accessible;
  - (b) the need for proceedings before those tribunals—
    - (i) to be fair, and
    - (ii) to be handled quickly and efficiently;
  - (c) the need for members of those tribunals to be experts in the subject-matter of, or the law to be applied in, cases in which they decide matters;
  - (d) the need to develop innovative methods of resolving disputes that are of a type that may be brought before those tribunals.
- (5) The President of Welsh Tribunals is responsible—
  - (a) for the maintenance of appropriate arrangements for the training, guidance and welfare of members of the Welsh tribunals within the resources made available by the Welsh Ministers;
  - (b) for representing the views of members of the Welsh tribunals to the Welsh Ministers and to other members of the National Assembly for Wales.

#### Commencement Information

**I54** S. 60 in force at 10.7.2017 or the first day on which regulations made under 2017 c. 4, Sch. 5 para. 7(1) come into force, whichever is the later by [S.I. 2017/351](#), **reg. 2**

## 61 Directions as to practice and procedure

- (1) The President of Welsh Tribunals may give directions as to the practice and procedure to be followed by the Welsh tribunals.

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- (2) The president or chairman of a Welsh tribunal may give directions as to the practice and procedure to be followed by that tribunal.
- (3) A power under this section to give directions includes—
  - (a) power to vary or revoke directions made in the exercise of the power;
  - (b) power to make different provision for different purposes (including different provision for different areas);
  - (c) (in the case of directions by the President of Welsh Tribunals) power to make different provision for different tribunals.
- (4) Directions under this section may not be given without the approval of the Welsh Ministers.
- (5) Subsection (4) does not apply to directions to the extent that they consist of guidance about any of the following—
  - (a) the application or interpretation of the law;
  - (b) the making of decisions by members of the Welsh tribunals.
- (6) Subsection (4) does not apply to directions to the extent that they consist of criteria for determining which members of the Welsh tribunals may be chosen to decide particular categories of matter; but the directions may, to that extent, be given only after consulting the Welsh Ministers.
- (7) Before the President of Welsh Tribunals gives directions under this section he or she must consult the president or chairman of each Welsh tribunal to which the directions relate.
- (8) Before the president or chairman of a Welsh tribunal gives directions under this section he or she must consult the President of Welsh Tribunals.
- (9) A person giving, varying or revoking directions under this section must publish the directions, or the variation or revocation, in whatever way the person thinks appropriate.

#### Commencement Information

**I55** S. 61 in force at 10.7.2017 or the first day on which regulations made under 2017 c. 4, Sch. 5 para. 7(1) come into force, whichever is the later by [S.I. 2017/351](#), [reg. 2](#)

## 62 Cross-deployment of members of the Welsh tribunals

- (1) In Schedule 9 to the Agriculture Act 1947 (Agricultural Land Tribunal etc), in paragraph 15A, after sub-paragraph (1) insert—
 

“(1A) A member of a tribunal listed in section 59 of the Wales Act 2017 (the Welsh tribunals) who is not a member of the Agricultural Land Tribunal may, at the request of the Chairman of the Agricultural Land Tribunal and with the approval of the President of Welsh Tribunals, act as a member of the Agricultural Land Tribunal.”
- (2) In Schedule 10 to the Rent Act 1977 (rent assessment committees), after paragraph 5A insert—

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“5B A member of a tribunal listed in section 59 of the Wales Act 2017 (the Welsh tribunals) who is not a member of a rent assessment committee in Wales may, at the request of the president or vice-president of the panel and with the approval of the President of Welsh Tribunals, act as a member of such a committee.”

(3) In Schedule 2 to the Mental Health Act 1983 (Mental Health Review Tribunal for Wales), in paragraph 5—

(a) after sub-paragraph (1) insert—

“(1A) A member of a tribunal listed in section 59 of the Wales Act 2017 (the Welsh tribunals) who is not a member of the Tribunal but who is eligible to decide any matter in a case under this Act may, at the request of the President of the Mental Health Review Tribunal for Wales and with the approval of the President of Welsh Tribunals, act as a member of the Mental Health Review Tribunal for Wales.”;

(b) in sub-paragraph (3), after ““sub-paragraph (1)”” insert “ or (1A) ”.

<sup>F4</sup>(4) .....

(5) In section 75 of the Local Government Act 2000 (Adjudication Panel for Wales), at the end insert—

“(12) A member of a tribunal listed in section 59 of the Wales Act 2017 (the Welsh tribunals) who is not a member of the Adjudication Panel for Wales may, at the request of the president or the deputy president (if any) and with the approval of the President of Welsh Tribunals, act as a member of a tribunal drawn from the Panel.”

(6) In Schedule 3 to the Education Act 2005 (registration of inspectors in Wales: tribunals hearing appeals under section 27), in paragraph 1, after sub-paragraph (3) insert—

“(3A) A member of a tribunal listed in section 59 of the Wales Act 2017 (the Welsh tribunals) who is not a member of a tribunal constituted to hear an appeal under section 27 may act as a member of such a tribunal at the request of its chairman and with the approval of the President of Welsh Tribunals.”

(7) In Schedule 11 to the Welsh Language (Wales) Measure 2011 (nawm 1) (the Welsh Language Tribunal)—

(a) in the Welsh text, after Rhan 2 insert—

## “RHAN 2A

### TRAWS-LEOLI AELODAU'R TRIBIWNLYS

9A

Ar gais y Llywydd a chyda chymeradwyaeth Llywydd Tribiwnlysoedd Cymru, caiff aelod o dribiwnlys sydd wedi'i restru yn adran 59 o Ddeddf Cymru 2017 (Tribiwnlysoedd Cymru), ac nad yw'n aelod o'r Tribiwnlys, weithredu fel aelod o'r Tribiwnlys.”;

(b) in the English text, after Part 2 insert—

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## “PART 2A

### CROSS-DEPLOYMENT OF TRIBUNAL MEMBERS

9A

A member of a tribunal listed in section 59 of the Wales Act 2017 (the Welsh tribunals) who is not a member of the Tribunal may, at the request of the President and with the approval of the President of Welsh Tribunals, act as a member of the Tribunal.”

#### Textual Amendments

**F4** S. 62(4) omitted (1.9.2021) by virtue of [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Consequential Amendments\) Regulations 2021 \(S.I. 2021/861\)](#), regs. 1, **10(3)**

#### Commencement Information

**I56** S. 62 in force at 10.7.2017 or the first day on which regulations made under 2017 c. 4, Sch. 5 para. 7(1) come into force, whichever is the later by [S.I. 2017/351](#), **reg. 2**

## 63 Cross-deployment of tribunal members and judges

- (1) A member of a Welsh tribunal may act as a member of the First-tier Tribunal if—
  - (a) the Senior President of Tribunals asks the member to do so, and
  - (b) the President of Welsh Tribunals agrees to the request being made.
- (2) A judge or other member of—
  - (a) the First-tier Tribunal, or
  - (b) the Upper Tribunal,
 may act as a member of a specified Welsh tribunal if the President of Welsh Tribunals asks the member to do so and the Senior President of Tribunals agrees to the request being made.
- (3) Subsection (2) does not apply to a tribunal member who is a relevant judge.
- (4) A relevant judge may act as a member of a specified Welsh tribunal if—
  - (a) the President of Welsh Tribunals asks the judge to do so, and
  - (b) the Lord Chief Justice of England and Wales agrees to the request being made.
- (5) In subsections (2) and (4) “specified” means specified in the request.
- (6) In this section “relevant judge” means—
  - (a) a judge of the Senior Courts;
  - (b) a deputy judge of the High Court;
  - (c) a Circuit judge;
  - (d) a deputy Circuit judge;
  - (e) a recorder;
  - (f) a district judge;
  - (g) a deputy district judge;
  - (h) a District Judge (Magistrates' Courts);

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- (i) a Deputy District Judge (Magistrates' Courts);
  - (j) the holder of an office listed in—
    - (i) the first column of the table in section 89(3C) of the Senior Courts Act 1981 (senior High Court Masters etc), or
    - (ii) column 1 of Part 2 of Schedule 2 to that Act (High Court Masters etc).
- (7) A reference in this section to—
- (a) the President of Welsh Tribunals,
  - (b) the Senior President of Tribunals, or
  - (c) the Lord Chief Justice of England and Wales,
- includes a reference to an individual designated by that person to exercise the person's functions under this section.
- (8) A designation made by a person under subsection (7) that is in force immediately before the person ceases to hold the office in question continues in force until varied or revoked by a subsequent holder of that office.

#### Commencement Information

**I57** S. 63 in force at 10.7.2017 or the first day on which regulations made under 2017 c. 4, Sch. 5 para. 7(1) come into force, whichever is the later by [S.I. 2017/351](#), [reg. 2](#)

#### 64 Power to amend section 63

- (1) The Lord Chancellor may by regulations amend subsection (2) of section 63—
- (a) so as to add a tribunal to those listed,
  - (b) so as to remove or revise a reference to a tribunal added under paragraph (a), or
  - (c) so as to make amendments (to provisions of this Part or other enactments) that are consequential on an amendment within paragraph (a) or (b).
- (2) Regulations under this section may not add a tribunal whose functions—
- (a) are exercisable only in relation to Wales, and
  - (b) do not relate to reserved matters (within the meaning of the Government of Wales Act 2006).
- (3) 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, each House of Parliament.
- (4) Subsection (3) does not apply to a statutory instrument containing regulations that only make—
- (a) provision for the omission of a reference to a tribunal that has ceased to exist,
  - (b) provision for the variation of a reference in consequence of a change of name or transfer of functions, or
  - (c) amendments within subsection (1)(c).

Such an instrument is subject to annulment in pursuance of a resolution of either House of Parliament.

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#### Commencement Information

**I58** S. 64 in force at 10.7.2017 or the first day on which regulations made under 2017 c. 4, Sch. 5 para. 7(1) come into force, whichever is the later by [S.I. 2017/351](#), [reg. 2](#)

## PART 4

### MISCELLANEOUS

#### 65 Provision of information to the Office for Budget Responsibility

After section 66 of the Government of Wales Act 2006 insert—

##### “66A Provision of information to the Office for Budget Responsibility

- (1) The Office for Budget Responsibility has a right of access at any reasonable time to all information held by—
  - (a) the Welsh Ministers, or
  - (b) any devolved Welsh authority within paragraph (a) or (b) of section 157A(1) that is specified in regulations made by the Secretary of State,
 

that it may reasonably require for the purpose of the performance of its duty under section 4 of the Budget Responsibility and National Audit Act 2011 (duty to examine and report on the sustainability of the public finances).
- (2) The Office is entitled to require from any person holding or accountable for such information any assistance or explanation that the Office reasonably thinks necessary for that purpose.
- (3) No regulations are to be made under subsection (1)(b) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.
- (4) This section is subject to any enactment or rule of law that operates to prohibit or restrict the disclosure of information or the giving of any assistance or explanation.”

#### Commencement Information

**I59** S. 65 in force at 1.4.2018 by [S.I. 2017/1179](#), [reg. 3\(m\)](#)

#### 66 Gas and Electricity Markets Authority

- (1) In section 37 of the Government of Wales Act 2006 (witnesses and documents: power to call), after subsection (6) insert—

“(6A) Subsection (1) applies in relation to requirements imposed on a person in connection with the discharge of the functions of the Gas and Electricity Markets Authority in relation to Wales with the omission of the words after paragraph (b).”



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- (2) In section 5 of the Utilities Act 2000 (annual and other reports of Authority)—
- (a) in subsection (5)(aa), after ““the Scottish Ministers”” insert “ and the Welsh Ministers ”;
  - (b) after subsection (5A) insert—

“(5B) The Welsh Ministers shall lay a copy of each annual report before the National Assembly for Wales.”
- (3) In section 5XA of that Act (laying of accounts before Scottish Parliament)—
- (a) in the heading, after ““Scottish Parliament”” insert “ and Welsh Assembly ”;
  - (b) in subsection (2), after ““the Scottish Ministers”” insert “ and the Welsh Ministers ”;
  - (c) after subsection (3) insert—

“(3A) The Welsh Ministers must lay a copy of whatever is sent to them under subsection (2) before the National Assembly for Wales.”

**Commencement Information**

**I60** S. 66 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(m)

**67 Licensing of coal-mining operations: approval by Welsh Ministers**

After section 26 of the Coal Industry Act 1994 insert—

**“26A Licences for coal-mining operations in Wales: approval by Welsh Ministers**

- (1) If or to the extent that a licence under this Part authorises coal-mining operations in relation to coal in Wales, it shall have effect only if the Welsh Ministers notify the Authority that they approve the authorisation.
- (2) In this section ““Wales”” has the meaning given in section 158(1) of the Government of Wales Act 2006.”

**Commencement Information**

**I61** S. 67 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(m)

**68 Office of Communications**

- (1) Section 1 of the Office of Communications Act 2002 (the Office of Communications) is amended as set out in subsections (2) to (5).
- (2) In subsection (3), after paragraph (aa) insert—

“(ab) a member appointed by the Welsh Ministers;”.
- (3) After subsection (3A) insert—

“(3B) Before appointing a member under subsection (3)(ab) the Welsh Ministers must consult the Secretary of State.”

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- (4) In subsection (5), before ““and (b),”” insert “ , (ab) ”.
- (5) After subsection (11) insert—
- “(12) Paragraphs 1 and 2 of the Schedule apply in relation to the appointment made under subsection (3)(ab) as if—
- (a) any reference to the Secretary of State were to the Welsh Ministers, and
- (b) after the paragraph 2(7) treated as inserted by subsection (11) there were inserted—
- “(8) Before the Welsh Ministers remove a person from office they must consult the Secretary of State.””
- (6) The Schedule to that Act is amended as set out in subsections (7) and (8).
- (7) In paragraph 11 (accounts and audit)—
- (a) in sub-paragraph (3)(c), after ““the Scottish Ministers”” insert “ and the Welsh Ministers ”;
- (b) after sub-paragraph (4) insert—
- “(5) The Welsh Ministers shall lay a copy of the statement and report sent to them under sub-paragraph (3) before the National Assembly for Wales.”
- (8) In paragraph 12 (annual report)—
- (a) in sub-paragraph (1), for ““and the Scottish Ministers”” substitute “ , the Scottish Ministers and the Welsh Ministers ”;
- (b) after sub-paragraph (4) insert—
- “(5) The Welsh Ministers shall lay a copy of every report sent to them under this paragraph before the National Assembly for Wales.”

#### Commencement Information

**I62** S. 68 in force at 1.4.2018 by S.I. 2017/1179, reg. 3(m)

## PART 5

### GENERAL

#### 69 Consequential provision

- (1) Schedule 6 contains minor and consequential amendments.
- (2) The Secretary of State may by regulations make such consequential provision in connection with any provision of this Act as the Secretary of State considers appropriate.
- (3) Regulations under subsection (2) may amend, repeal, revoke or otherwise modify—
- (a) an enactment contained in primary legislation, or
- (b) an instrument made under an enactment contained in primary legislation.

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- (4) Regulations under subsection (2) may make—
  - (a) different provision for different purposes or cases;
  - (b) provision generally or for specific cases;
  - (c) provision subject to exceptions;
  - (d) provision for the delegation of functions;
  - (e) transitional or saving provision.
- (5) The power to make regulations under subsection (2) is exercisable by statutory instrument.
- (6) A statutory instrument containing regulations under subsection (2) that includes provision amending or repealing any provision of primary legislation may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (7) Any other statutory instrument containing regulations under subsection (2), if made without a draft having been approved by a resolution of each House of Parliament, is subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) In this section ““primary legislation”” means—
  - (a) an Act of Parliament;
  - (b) a Measure or Act of the National Assembly for Wales.

**Modifications etc. (not altering text)**

**C1** S. 69(2) modified (1.4.2018 for specified purposes, 1.5.2018 for E.W.S.) by [Digital Economy Act 2017 \(c. 30\)](#), [ss. 45\(11\)](#), [118\(4\)\(5\)](#); [S.I. 2018/342](#), [reg. 3\(1\)\(i\)](#); [S.I. 2018/382](#), [reg. 3\(j\)](#)

**Commencement Information**

**I63** S. 69(2)-(8) in force for specified purposes at Royal Assent, see. 71(1)(a)

**I64** S. 69(1) in force at 10.7.2017 or the first day on which regulations made under 2017 c. 4, Sch. 5 para. 7(1) come into force, whichever is the later, for specified purposes by [S.I. 2017/351](#), [reg. 2](#)

**I65** S. 69(1) in force at 1.4.2018 for specified purposes by [S.I. 2017/1179](#), [reg. 3\(n\)](#)

**70 Transitional provision and savings**

- (1) Schedule 7 contains transitional provision and savings.
- (2) The Secretary of State may by regulations make any other transitional or saving provision that may appear appropriate in consequence of, or otherwise in connection with, this Act.
- (3) Regulations under subsection (2) may, in particular, include any savings from the effect of any amendment or repeal or revocation made by this Act.
- (4) Regulations under subsection (2) may make—
  - (a) different provision for different purposes or cases;
  - (b) provision generally or for specific cases;
  - (c) provision subject to exceptions.
- (5) Nothing in Schedule 7 limits the power conferred by subsection (2).

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*Status:* Point in time view as at 01/09/2021. This version of this Act contains provisions that are prospective.

*Changes to legislation:* Wales Act 2017 is up to date with all changes known to be in force on or before 07 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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- (6) 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.
- (7) The power to make regulations under subsection (2) is exercisable by statutory instrument.
- (8) A statutory instrument containing regulations under subsection (2) is subject to annulment in pursuance of a resolution of either House of Parliament.

## 71 Commencement

- (1) The following provisions come into force on the day on which this Act is passed—
  - (a) section 69(2) to (8);
  - (b) section 70 and Schedule 7;
  - (c) this section;
  - (d) section 72.
- (2) The following provisions come into force at the end of the period of two months beginning with the day on which this Act is passed—
  - (a) sections 1 and 2;
  - (b) sections 14 and 15;
  - (c) section 16, and sections 9 and 10 so far as relating to a provision of a Bill that would change the name of the Assembly or confer power to do so;
  - (d) sections 17 and 18;
  - (e) section 43, and sections 39(4) and (6) and 42(4) for the purposes of section 43;
  - (f) section 48(2);
  - (g) sections 50 and 51.
- (3) Section 3 and Schedules 1 and 2 come into force on the day appointed by the Secretary of State by regulations under this subsection (“the principal appointed day”).
 

Before making regulations under this subsection the Secretary of State must consult the Welsh Ministers and the Presiding Officer of the National Assembly for Wales.
- (4) The other provisions of this Act come into force on whatever day or days the Secretary of State appoints by regulations.
 

Regulations under subsection (3) may appoint the principal appointed day for any of those provisions.
- (5) The power to make regulations under this section is exercisable by statutory instrument.
- (6) The principal appointed day, or a day appointed under subsection (4), must be after the end of the period of four months beginning with the day on which the regulations appointing that day are made.
- (7) Regulations under this section (other than regulations bringing into force section 3 and Schedules 1 and 2) may appoint different days for different purposes.

## 72 Short title

This Act may be cited as the Wales Act 2017.

**Status:**

Point in time view as at 01/09/2021. This version of this Act contains provisions that are prospective.

**Changes to legislation:**

Wales Act 2017 is up to date with all changes known to be in force on or before 07 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.