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Wales Act 2017

2017 CHAPTER 4

PART 1

CONSTITUTIONAL ARRANGEMENTS

Executive competence etc

VALID FROM 01/04/2018

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;

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- (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—

- (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.

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(As regards the Welsh Ministers, see section 58A.)”

VALID FROM 01/04/2018

20 Implementation of EU law

- (1) After section 58A of the Government of Wales Act 2006 (inserted by section 19 above) insert—

“58B Implementation of EU law: general

- (1) Section 2(2) of the European Communities Act 1972 (secondary legislation implementing EU obligations, etc) applies to the Welsh Ministers as if they were a Minister of the Crown or government department designated by Order in Council under that provision.
- (2) But subsection (1) confers no power to make provision that would be outside the legislative competence of the Assembly if it were included in an Act of the Assembly (see section 108A).
- (3) In particular, it confers no power to make provision that may be included in an Act of the Assembly only—
- with the consent of the appropriate Minister (see paragraphs 8(1), 10(1) and 11(1) of Schedule 7B), or
 - after consultation with the appropriate Minister (see paragraph 11(2) of that Schedule),
- unless that consent has been given or that consultation has been carried out.
- (4) Subsection (1) does not restrict any power conferred on a Minister of the Crown or government department by an Order in Council under section 2(2) of the European Communities Act 1972.
- (5) In section 2(4) of the European Communities Act 1972 as it has effect by virtue of subsection (1) above, the reference to an Act of Parliament is to be read as a reference to an Act of the Assembly.
- (6) A statutory instrument containing any order, rules, regulations or scheme made by virtue of this section, if made without a draft having been approved by resolution of the Assembly, is subject to annulment in pursuance of a resolution of the Assembly; and paragraph 2(2) of Schedule 2 to European Communities Act 1972 does not apply to such an instrument.
- (7) In this section ““appropriate Minister”” has the same meaning as in paragraph 8 of Schedule 7B.”
- (2) In section 59 of that Act (implementation of EU law)—
- in the heading, at the end insert “ : designation of Welsh Ministers, etc ”;
 - after subsection (2) insert—
- “(2A) Any such restrictions or conditions do not apply in relation to the power that the Welsh Ministers have under that section by virtue of section 58B above.”;

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- (c) in subsection (3), for ““that power”” substitute “ a power exercisable by virtue of a designation under section 2(2) of the European Communities Act 1972 ”.

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

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

VALID FROM 01/04/2018

22 Consultation about cross-border bodies

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

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