



# Wales Act 2017

## 2017 CHAPTER 4

### PART 2

#### LEGISLATIVE AND EXECUTIVE COMPETENCE: FURTHER PROVISION

##### *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.
- (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);

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*Status: This is the original version (as it was originally enacted).*

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- (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—
  - (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).

### **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—

“(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;”.

### **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.
- (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.

### **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.”

### **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”.

(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;”.