



# Government of Wales Act 1998

## 1998 CHAPTER 38

### PART V

#### OTHER PROVISIONS ABOUT THE ASSEMBLY

##### *Community law, human rights and international obligations*

#### **106 Community law**

- (1) A Community obligation of the United Kingdom is also an obligation of the Assembly if, and to the extent that, the obligation could be implemented (or enabled to be implemented) or complied with by the exercise by the Assembly of any of its functions.
- (2) Subsection (1) does not apply in the case of a Community obligation of the United Kingdom if—
  - (a) it is an obligation to achieve a result defined by reference to a quantity (whether expressed as an amount, proportion or ratio or otherwise), and
  - (b) the quantity relates to the United Kingdom (or to an area including the United Kingdom or to an area consisting of a part of the United Kingdom which includes the whole or part of Wales).
- (3) But if such a Community obligation could (to any extent) be implemented (or enabled to be implemented) or complied with by the exercise by the Assembly of any of its functions, a Minister of the Crown may by order provide for the achievement by the Assembly (in the exercise of its functions) of so much of the result to be achieved under the Community obligation as is specified in the order.
- (4) The order may specify the time by which any part of the result to be achieved by the Assembly is to be achieved.
- (5) No order shall be made by a Minister of the Crown under subsection (3) unless he has consulted the Assembly.

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- (6) Where an order under subsection (3) is in force in relation to a Community obligation, to the extent that the Community obligation involves achieving what is specified in the order it is also an obligation of the Assembly (enforceable as if it were an obligation of the Assembly under subsection (1)).
- (7) The Assembly has no power—
- (a) to make, confirm or approve any subordinate legislation, or
  - (b) to do any other act,
- so far as the subordinate legislation or act is incompatible with Community law or an obligation under subsection (6).

## **107 Human rights**

- (1) The Assembly has no power—
- (a) to make, confirm or approve any subordinate legislation, or
  - (b) to do any other act,
- so far as the subordinate legislation or act is incompatible with any of the Convention rights.
- (2) Subsection (1) does not enable a person—
- (a) to bring any proceedings in a court or tribunal, or
  - (b) to rely on any of the Convention rights in any such proceedings,
- in respect of an act unless he would be a victim for the purposes of Article 34 of the Convention if proceedings were brought in the European Court of Human Rights in respect of that act.
- (3) Subsection (2) does not apply to the Attorney General, the Assembly, the Advocate General for Scotland or the Attorney General for Northern Ireland.
- (4) Subsection (1)—
- (a) does not apply to an act which, by virtue of subsection (2) of section 6 of the Human Rights Act 1998, is not unlawful under subsection (1) of that section, and
  - (b) does not enable a court or tribunal to award in respect of an act any damages which it could not award on finding the act unlawful under that subsection.
- (5) In this Act “the Convention rights” has the same meaning as in the Human Rights Act 1998 and in subsection (2) “the Convention” has the same meaning as in that Act.

## **108 International obligations**

- (1) If a Minister of the Crown considers that any action proposed to be taken by the Assembly would be incompatible with any international obligation, he may by order direct that the proposed action shall not be taken.
- (2) If a Minister of the Crown considers that any action capable of being taken by the Assembly is required for the purpose of giving effect to any international obligation, he may by order direct the Assembly to take the action.
- (3) If a Minister of the Crown considers that any subordinate legislation made, or which could be revoked, by the Assembly is incompatible with any international obligation, he may by order revoke the legislation.

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- (4) An order under subsection (3) may include provision for the order to have effect from a date earlier than that on which it is made; but—
  - (a) such a provision shall not affect any rights or liabilities acquired or incurred before the date on which the order is made, and
  - (b) no person shall be guilty of an offence merely because of such a provision.
- (5) An order under subsection (1), (2) or (3) may contain any appropriate consequential, incidental, supplementary or transitional provisions or savings.
- (6) In this section “international obligation” means an international obligation of the United Kingdom other than—
  - (a) an obligation under Community law, or
  - (b) an obligation not to act (or fail to act) in a way which is incompatible with any of the Convention rights.
- (7) A Minister of the Crown may make an order containing provision such as is specified in subsection (8) where—
  - (a) an international obligation is an obligation to achieve a result defined by reference to a quantity (whether expressed as an amount, proportion or ratio or otherwise), and
  - (b) the quantity relates to the United Kingdom (or to an area including the United Kingdom or to an area consisting of a part of the United Kingdom which includes the whole or part of Wales).
- (8) The provision referred to in subsection (7) is provision for the achievement by the Assembly (in the exercise of its functions) of so much of the result to be achieved under the international obligation as is specified in the order.
- (9) The order may specify the time by which any part of the result to be achieved by the Assembly is to be achieved.
- (10) Where an order under subsection (7) is in force in relation to an international obligation, references to the international obligation in subsections (1) to (3) are to an obligation to achieve so much of the result to be achieved under the international obligation as is specified in the order by the time or times so specified.
- (11) No order shall be made by a Minister of the Crown under subsection (2), (3) or (7) unless he has consulted the Assembly.
- (12) In this section “action” includes making, confirming or approving subordinate legislation.

### *Decisions about Assembly functions*

#### **109 Resolution of devolution issues**

Schedule 8 (which makes provision about devolution issues) has effect.

#### **110 Power to vary retrospective decisions**

- (1) This section applies where any court or tribunal decides that the Assembly did not have the power to make a provision of subordinate legislation which it has purported to make.

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- (2) The court or tribunal may make an order—
  - (a) removing or limiting any retrospective effect of the decision, or
  - (b) suspending the effect of the decision for any period and on any conditions to allow the defect to be corrected.
- (3) In determining whether to make an order under this section, the court or tribunal shall (among other things) have regard to the extent to which persons who are not parties to the proceedings would otherwise be adversely affected by the decision.
- (4) Where a court or tribunal is considering whether to make an order under this section, it shall order notice (or intimation) of that fact to be given to the relevant law officer and the Assembly (unless he or it is a party to the proceedings).
- (5) Where the relevant law officer or the Assembly is given notice (or intimation) under subsection (4), he or it may take part as a party in the proceedings so far as they relate to the making of the order.
- (6) In deciding any question as to costs or expenses, the court or tribunal may—
  - (a) take account of any additional expense which it considers that any party to the proceedings has incurred as a result of the participation of any person in pursuance of subsection (5), and
  - (b) award the whole or part of the additional expense as costs or expenses to the party who incurred it (whether or not it makes an order under this section and whatever the terms of any such order it does make).
- (7) Any power to make provision for regulating the procedure before any court or tribunal shall include power to make provision for the purposes of this section including, in particular, provision for determining the manner in which and the time within which any notice (or intimation) is to be given.
- (8) In this section “the relevant law officer” means—
  - (a) in relation to proceedings in England and Wales, the Attorney General,
  - (b) in relation to proceedings in Scotland, the Advocate General for Scotland, and
  - (c) in relation to proceedings in Northern Ireland, the Attorney General for Northern Ireland;
 and in subsection (1) “make” includes confirm or approve.

### *Investigation of complaints*

## **111 Welsh Administration Ombudsman**

- (1) There shall be an office of Welsh Administration Ombudsman or Ombwdsmon Gweinyddiaeth Cymru.
- (2) Schedule 9 (which makes provision about the Welsh Administration Ombudsman and, in particular, enables him to investigate administrative action taken by the Assembly and certain other public bodies in Wales in response to complaints claiming maladministration) has effect.

## **112 Amendments of Health Service Commissioners Act 1993**

Schedule 10 (which makes amendments of the Health Service Commissioners Act 1993 in relation to the Health Service Commissioner for Wales and in consequence of the establishment of the office of Welsh Administration Ombudsman) has effect.

*Local government, the voluntary sector and business*

## **113 Relations with local government**

- (1) The Assembly shall make a scheme (referred to in this Act as the local government scheme) setting out how the Assembly proposes, in the exercise of its functions, to sustain and promote local government in Wales.
- (2) The Assembly shall establish and maintain a body to be known as the Partnership Council for Wales or Cyngor Partneriaeth Cymru (but referred to in this Act as the Partnership Council).
- (3) The Partnership Council shall consist of Assembly members and members of local authorities in Wales.
- (4) The Partnership Council may—
  - (a) give advice to the Assembly about matters affecting the exercise of any of the Assembly’s functions,
  - (b) make representations to the Assembly about any matters affecting, or of concern to, those involved in local government in Wales, and
  - (c) give advice to those involved in local government in Wales.
- (5) In determining at any time the provision to be included in the local government scheme the Assembly shall have regard to any advice which has been given, and to any representations which have been made, to the Assembly by the Partnership Council.
- (6) Schedule 11 (which makes provision supplementing this section) has effect.
- (7) For the purposes of subsection (3) and that Schedule the following are local authorities in Wales—
  - (a) county councils, county borough councils and community councils in Wales,
  - (b) National Park authorities for National Parks in Wales,
  - (c) police authorities for police areas in Wales,
  - (d) fire authorities for combined areas in Wales, and
  - (e) authorities of any description specified for the purposes of this paragraph by order made by the Assembly.
- (8) No order shall be made under subsection (7)(e) unless the Assembly has consulted the Partnership Council.

## **114 Relations with voluntary organisations**

- (1) The Assembly shall make a scheme setting out how it proposes, in the exercise of its functions, to promote the interests of relevant voluntary organisations.
- (2) In this section “relevant voluntary organisations” means bodies (other than local authorities or other public bodies) whose activities—

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- (a) are carried on otherwise than for profit, and
  - (b) directly or indirectly benefit the whole or any part of Wales (whether or not they also benefit any other area).
- (3) In determining the provision to be included in the scheme the Assembly shall consider how it intends to exercise such of its functions as relate to matters affecting, or of concern to, relevant voluntary organisations.
- (4) The scheme shall specify—
- (a) how the Assembly proposes to provide assistance to relevant voluntary organisations (whether by grants, loans, guarantees or any other means),
  - (b) how the Assembly proposes to monitor the use made of any assistance provided by it to relevant voluntary organisations, and
  - (c) how the Assembly proposes to consult relevant voluntary organisations about the exercise of such of its functions as relate to matters affecting, or of concern to, such organisations.
- (5) The Assembly shall keep the scheme under review and in the year following each ordinary election (after the first) shall consider whether it should be remade or revised.
- (6) The Assembly may not delegate the function of making, or remaking or revising, the scheme.
- (7) The Assembly shall publish the scheme when first made and whenever subsequently remade and, if the scheme is revised without being remade, shall publish either the revisions or the scheme as revised (as it considers appropriate).
- (8) The Assembly shall consult such relevant voluntary organisations as it considers appropriate before making, remaking or revising the scheme.
- (9) After each financial year the Assembly shall publish a report of how its proposals as set out in the scheme were implemented in that financial year.

## **115 Consultation with business**

The Assembly shall carry out consultation with such organisations representative of business and such other organisations as it considers appropriate having regard to the impact of the exercise by the Assembly of its functions on the interests of business.

### *Welsh public records*

## **116 Status of Welsh public records**

- (1) Welsh public records shall not be public records for the purposes of the Public Records Act 1958.
- (2) But that Act shall have effect in relation to Welsh public records (as if they were public records for the purposes of that Act) until an order under section 117 imposes a duty to preserve them on the Assembly (or a member of the Assembly's staff); and this subsection applies to Welsh public records whether or not, apart from subsection (1), they would be public records for those purposes.

## **117 Transfer of responsibility**

- (1) The Lord Chancellor may by order make provision—
  - (a) imposing or conferring on the Assembly (or a member of the Assembly’s staff) functions relating to Welsh public records (including, in particular, functions of preserving them and of making them available for inspection by the public), and
  - (b) imposing on persons responsible for Welsh public records duties relating to the selection of such records for permanent preservation, the safe-keeping of such records and their transfer to a place specified in, or appointed under, the order.
- (2) An order under this section may (in particular)—
  - (a) make in relation to Welsh public records provision analogous to that made by the Public Records Act 1958 in relation to records which are public records for the purposes of that Act, and
  - (b) contain any appropriate consequential, incidental, supplementary or transitional provisions or savings (including provisions in the form of amendments or repeals of enactments).
- (3) An order under this section—
  - (a) may make provision in relation to all Welsh public records or any description of Welsh public records (or all Welsh public records apart from those of a particular description), and
  - (b) may make different provision in relation to different descriptions of Welsh public records.
- (4) An order under this section which imposes on the Assembly (or a member of the Assembly’s staff) a duty to preserve Welsh public records, or Welsh public records of any description, must include provision for the Lord Chancellor to make such arrangements as appear appropriate for the transfer of Welsh public records, or Welsh public records of that description, which are in—
  - (a) the Public Record Office, or
  - (b) a place of deposit appointed under the Public Records Act 1958, to a place specified in, or appointed under, the order.
- (5) No order shall be made under this section unless the Lord Chancellor has consulted the Assembly.

## **118 Meaning of “Welsh public records”**

- (1) The following are Welsh public records—
  - (a) records of the Assembly,
  - (b) administrative and departmental records of the Auditor General for Wales,
  - (c) administrative and departmental records belonging to Her Majesty which are records of or held in any government department which is wholly or mainly concerned with Welsh affairs,
  - (d) administrative and departmental records belonging to Her Majesty which are records of any office, commission or other body or establishment under Her Majesty’s Government which is wholly or mainly concerned with Welsh affairs in a field or fields in which the Assembly has functions,

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- (e) administrative and departmental records of the bodies and establishments specified in subsection (2) (but not records of health service hospitals in Wales which are of the descriptions excepted from being public records for the purposes of the Public Records Act 1958 in the case of health service hospitals in England), and
  - (f) any other description of records (other than records of any court or tribunal or held in any department of the Supreme Court) which is specified by order made by the Lord Chancellor.
- (2) The bodies and establishments referred to in subsection (1)(e) are—
- (a) the Countryside Council for Wales,
  - (b) the Curriculum and Assessment Authority for Wales,
  - (c) Family Practitioner Committees for localities in Wales,
  - (d) the Further Education Funding Council for Wales,
  - (e) the General Teaching Council for Wales,
  - (f) health service hospitals, within the meaning of the National Health Service Act 1977, in Wales,
  - (g) the Higher Education Funding Council for Wales,
  - (h) the Local Government Boundary Commission for Wales,
  - (i) National Health Service Authorities for districts or localities in Wales, or for areas in or consisting of Wales, including National Health Service trusts all of whose hospitals, establishments and facilities are situated in Wales,
  - (j) the Qualifications, Curriculum and Assessment Authority for Wales, and
  - (k) the Welsh Board of Health.
- (3) An order under subsection (1)(f) may be made in relation to a description of records—
- (a) which (immediately before the order is made) are public records for the purposes of the Public Records Act 1958, or
  - (b) which (at that time) are not public records for those purposes.
- (4) No order under subsection (1)(f) may be made in relation to records within subsection (3)(a) unless the Lord Chancellor has consulted the Assembly; and no such order may be made in relation to records within subsection (3)(b) unless the Assembly has resolved that the Lord Chancellor be requested to make the order.
- (5) In this section “records” includes not only written records but records conveying information by any other means whatsoever.

#### *Miscellaneous*

### **119 Publication and inspection of documents**

- (1) Where the Assembly publishes any document, it shall make a copy of the document available for public inspection.
- (2) Where the Assembly makes any document available for public inspection—
  - (a) the document shall be made available for such inspection free of charge, and
  - (b) (subject to subsection (3)) members of the public shall be afforded facilities for obtaining copies of the document (or of any part of it).



- (3) The Assembly may make a charge for supplying copies of (or of any part of) any document which it publishes or makes available for public inspection.
- (4) Subsections (2) and (3) have effect subject to any provision contained in, or made under, any enactment which provides for—
  - (a) the making of charges for the inspection of documents,
  - (b) the making of charges for supplying copies of documents (or parts of documents), or
  - (c) the supply of copies of documents (or parts of documents) free of charge.
- (5) An Assembly member shall be entitled to a single free copy of any document such as is mentioned in subsection (3).
- (6) Neither subsection (2)(b) nor subsection (5) requires or authorises the doing of any act which infringes the copyright in any work; but nothing done in pursuance of subsection (2)(b) or (5) constitutes an infringement of Crown copyright.
- (7) Subsection (4) does not authorise the inclusion in the standing orders of provision contrary to subsection (2).

## **120 Equality of opportunity**

- (1) The Assembly shall make appropriate arrangements with a view to securing that its functions are exercised with due regard to the principle that there should be equality of opportunity for all people.
- (2) After each financial year the Assembly shall publish a report containing—
  - (a) a statement of the arrangements made in pursuance of subsection (1) which had effect during that financial year, and
  - (b) an assessment of how effective those arrangements were in promoting equality of opportunity.

## **121 Sustainable development**

- (1) The Assembly shall make a scheme setting out how it proposes, in the exercise of its functions, to promote sustainable development.
- (2) The Assembly shall keep the scheme under review and in the year following each ordinary election (after the first) shall consider whether it should be remade or revised.
- (3) The Assembly may not delegate the function of making, or remaking or revising, the scheme.
- (4) The Assembly shall publish the scheme when first made and whenever subsequently remade and, if the scheme is revised without being remade, shall publish either the revisions or the scheme as revised (as it considers appropriate).
- (5) The Assembly shall consult such persons or bodies as it considers appropriate before making, remaking or revising the scheme.
- (6) After each financial year the Assembly shall publish a report of how its proposals as set out in the scheme were implemented in that financial year.

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- (7) In the year following each ordinary election (after the first) the Assembly shall publish a report containing an assessment of how effective its proposals (as set out in the scheme and implemented) have been in promoting sustainable development.

## **122 English and Welsh texts of Assembly instruments**

- (1) The English and Welsh texts of any subordinate legislation made by the Assembly which is in both English and Welsh when made shall be treated for all purposes as being of equal standing.
- (2) The Assembly may by order provide in respect of any Welsh word or phrase that, where it appears in the Welsh text of any subordinate legislation made by the Assembly, it is to be taken as having the same meaning as the English word or phrase specified in relation to it in the order.
- (3) An order under subsection (2) may, in respect of any Welsh word or phrase, make different provision for different purposes.
- (4) Subordinate legislation made by the Assembly shall, subject to any provision to the contrary contained in it, be construed in accordance with any order under subsection (2).

## **123 Provision of information to Treasury**

Where it appears to the Treasury that any information in the possession or under the control of the Assembly is required for the exercise of any function by the Treasury, the Treasury may require the Assembly to provide the information to the Treasury in such form as the Treasury may reasonably specify.

## **124 Documentary evidence**

A document purporting to be—

- (a) duly executed under the seal of the Assembly, or
- (b) signed on behalf of the Assembly,

shall be received in evidence and shall, unless the contrary is proved, be taken to be so executed or signed.

## **125 Minor and consequential amendments**

Schedule 12 (minor and consequential amendments relating to Parts I to IV and this Part) has effect.