



# Government of Wales Act 1998

## 1998 CHAPTER 38

An Act to establish and make provision about the National Assembly for Wales and the offices of Auditor General for Wales and Welsh Administration Ombudsman; to reform certain Welsh public bodies and abolish certain other Welsh public bodies; and for connected purposes. [31st July 1998]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Modifications etc. (not altering text)

- C1** Act: modified (7.7.2005 for W.) [Higher Education Act 2004 \(c. 8\)](#), ss. **44(6)**, 52; S.I. 2005/1833, art. **4(b)** (as amended by S.I. 2006/1660, art. 2)
- C2** Act: modified (E.W.) (26.5.2006) by [Transport \(Wales\) Act 2006 \(c. 5\)](#), ss. **5(9)**, 12; S.I. 2006/1403, art. **2(2)(e)**

## PART I

### THE NATIONAL ASSEMBLY FOR WALES

#### *The Assembly*

#### **1 The Assembly.**

- (1) There shall be an Assembly for Wales to be known as the National Assembly for Wales or Cynulliad Cenedlaethol Cymru (but referred to in this Act as the Assembly).
- (2) The Assembly shall be a body corporate.
- (3) The exercise by the Assembly of its functions is to be regarded as done on behalf of the Crown.

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## **2 Membership.**

- (1) The Assembly shall consist of—
  - (a) one member for each Assembly constituency, and
  - (b) members for each Assembly electoral region.
- (2) The Assembly constituencies and Assembly electoral regions, and the number of Assembly seats for each Assembly electoral region, shall be as provided for by or in accordance with Schedule 1.
- (3) Members of the Assembly (referred to in this Act as Assembly members) shall be returned in accordance with the provision made by and under this Act for—
  - (a) the holding of ordinary elections of Assembly members, and
  - (b) the filling of vacancies in Assembly seats.
- (4) An ordinary election involves the holding of elections for the return of the entire Assembly.
- (5) The term of office of an Assembly member—
  - (a) begins when he is declared to be returned as an Assembly member, and
  - (b) continues until the end of the day before the day of the poll at the next ordinary election.
- (6) But an Assembly member may at any time resign his seat by giving notice to—
  - (a) the presiding officer, or
  - (b) any person authorised by the standing orders of the Assembly to receive the notice.
- (7) The validity of anything done by the Assembly is not affected by any vacancy in its membership.

### *Ordinary elections*

## **3 Time of ordinary elections.**

- (1) The poll at the first ordinary election shall be held on a day appointed by order made by the Secretary of State.
- (2) The poll at each subsequent ordinary election shall be held on the first Thursday in May in the fourth calendar year following that in which the previous ordinary election was held.
- (3) But the Secretary of State may by order require the poll at such an ordinary election to be held on a day which is neither—
  - (a) more than one month earlier, nor
  - (b) more than one month later,
 than the first Thursday in May.
- (4) Where the poll at an ordinary election would be held on the same day as polls at ordinary elections of community councillors, the Secretary of State may by order provide for the polls at ordinary elections of community councillors to be postponed, for not more than three months, to a day specified in the order.
- (5) An order under subsection (4) may make provision for—

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- (a) any provision of, or made under, the Representation of the People Acts, or
  - (b) any other enactment relating to elections of community councillors,
- to have effect with such modifications or exceptions as the Secretary of State considers appropriate in connection with the postponement of polls for which it provides.
- (6) No order shall be made under subsection (3), and no order in connection with an ordinary election subsequent to the first shall be made under subsection (4), unless the Secretary of State has consulted the Assembly.

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

- C3** S. 3(4): transfer of functions (W.) (1.7.1999 subject to art. 2(b)-(f) of the amending S.I.) by S.I. 1999/672, art. 2(a), Sch. 1

**4 Voting at ordinary elections.**

- (1) Each person entitled to vote at an ordinary election in an Assembly constituency shall have two votes.
- (2) One (referred to in this Act as a constituency vote) is to be given for a candidate to be the Assembly member for the Assembly constituency.
- (3) The other (referred to in this Act as an electoral region vote) is to be given for—
  - (a) a registered political party which has submitted a list of candidates to be Assembly members for the Assembly electoral region in which the Assembly constituency is included, or
  - (b) an individual who is a candidate to be an Assembly member for that Assembly electoral region.
- (4) The Assembly member for the Assembly constituency shall be returned under the simple majority system.
- (5) The Assembly members for the Assembly electoral region shall be returned under the additional member system of proportional representation in accordance with sections 5 to 7.
- (6) The person who is to be returned as the Assembly member for each Assembly constituency in the Assembly electoral region must be determined before it is determined who are to be returned as the Assembly members for that Assembly electoral region.
- (7) At an ordinary election a person may not be a candidate to be the Assembly member for more than one Assembly constituency.
- (8) In this Act “registered political party” means [<sup>F1</sup>a party registered under Part II of the Political Parties, Elections and Referendums Act 2000].

**Textual Amendments**

- F1** S. 4(8): words in definition of "registered political party" substituted (16.2.2001) by 2000 c. 41, ss. 158(1), 163(2), Sch. 21 para. 12(2) (with s. 156(6)); S.I. 2001/222, art. 2, Sch. 1 Pt. I (subject to Sch. 1 Pt. II)

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## **5 Party lists and individual candidates.**

- (1) Any registered political party may submit a list of candidates to be Assembly members for the Assembly electoral region.
- (2) The list is to be submitted to the regional returning officer.
- (3) The list has effect in relation to—
  - (a) the ordinary election, and
  - (b) any vacancies in seats of Assembly members returned for Assembly electoral regions which occur after that election and before the next ordinary election.
- (4) The list must not include more than twelve persons (but may include only one).
- (5) The list must not include a person—
  - (a) who is included on any other list submitted for the Assembly electoral region or any list submitted for another Assembly electoral region,
  - (b) who is an individual candidate to be an Assembly member for the Assembly electoral region or another Assembly electoral region,
  - (c) who is a candidate to be the Assembly member for an Assembly constituency which is not included in the Assembly electoral region, or
  - (d) who is a candidate to be the Assembly member for an Assembly constituency included in the Assembly electoral region but is not a candidate of the party.
- (6) A person may not be an individual candidate to be an Assembly member for the Assembly electoral region if he is—
  - (a) included on a list submitted by a registered political party for the Assembly electoral region or another Assembly electoral region,
  - (b) an individual candidate to be an Assembly member for another Assembly electoral region,
  - (c) a candidate to be the Assembly member for an Assembly constituency which is not included in the Assembly electoral region, or
  - (d) a candidate of any registered political party to be the Assembly member for an Assembly constituency included in the Assembly electoral region.

## **6 Calculation of electoral region figures.**

- (1) For each registered political party by which a list of candidates has been submitted for the Assembly electoral region—
  - (a) there shall be added together the number of electoral region votes given for the party in the Assembly constituencies included in the Assembly electoral region, and
  - (b) the number arrived at under paragraph (a) shall then be divided by the aggregate of one and the number of candidates of the party returned as Assembly members for any of those Assembly constituencies.
- (2) For each individual candidate to be an Assembly member for the Assembly electoral region there shall be added together the number of electoral region votes given for him in the Assembly constituencies included in the Assembly electoral region.
- (3) The number arrived at—
  - (a) in the case of a registered political party, under subsection (1)(b), or
  - (b) in the case of an individual candidate, under subsection (2),

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is referred to in this Act as the electoral region figure for that party or individual candidate.

## **7 Return of electoral region members.**

- (1) The first seat for the Assembly electoral region shall be allocated to the party or individual candidate with the highest electoral region figure.
- (2) The second and subsequent seats for the Assembly electoral region shall be allocated to the party or individual candidate with the highest electoral region figure after any recalculation required by subsection (3) has been carried out.
- (3) This subsection requires a recalculation under section 6(1)(b) in relation to a party—
  - (a) for the first application of subsection (2), if the application of subsection (1) resulted in the allocation of a seat to the party, or
  - (b) for any subsequent application of subsection (2), if the previous application of that subsection did so;and a recalculation shall be carried out after adding one to the aggregate mentioned in section 6(1)(b).
- (4) An individual candidate already returned as an Assembly member shall be disregarded.
- (5) Seats for the Assembly electoral region which are allocated to a party shall be filled by the persons on the party's list in the order in which they appear on the list.
- (6) Once a party's list has been exhausted (by the return of persons included on it as Assembly members for Assembly constituencies or by the previous application of subsection (1) or (2)) the party shall be disregarded.
- (7) If (on the application of subsection (1) or any application of subsection (2)) the highest electoral region figure is the electoral region figure of two or more parties or individual candidates, the subsection shall apply to each of them.
- (8) However, where subsection (7) would mean that more than the full number of seats for the Assembly electoral region were allocated, subsection (1) or (2) shall not apply until—
  - (a) a recalculation has been carried out under section 6(1)(b) after adding one to the number of votes given for each party with that electoral region figure, and
  - (b) one has been added to the number of votes given for each individual candidate with that electoral region figure.
- (9) If, after that, the highest electoral region figure is still the electoral region figure of two or more parties or individual candidates, the regional returning officer shall decide between them by lots.
- (10) For the purposes of subsection (5) and section 9 a person included on a list submitted by a registered political party who is returned as an Assembly member shall be treated as ceasing to be on the list (even if his return is void).

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## *Vacancies*

### **8 Constituency seats.**

- (1) This section applies where the seat of an Assembly member returned for an Assembly constituency is vacant.
- (2) Subject to subsection (6), an election shall be held in the Assembly constituency to fill the vacancy.
- (3) At the election to fill the vacancy, each person entitled to vote at the election shall have only a constituency vote; and the Assembly member for the Assembly constituency shall be returned under the simple majority system.
- (4) The date of the poll at the election shall be fixed by the presiding officer in accordance with subsection (5).
- (5) The date fixed shall be not later than three months after the occurrence of the vacancy, except that if the vacancy does not come to the presiding officer's notice within one month of its occurrence the date fixed shall be not later than three months after the vacancy comes to his notice.
- (6) An election shall not be held if it appears to the presiding officer that the latest date which may be fixed for the poll would fall within the period of three months preceding an ordinary election.
- (7) A person may not be a candidate in an election to fill a vacancy if he is an Assembly member or a candidate in another such election.
- (8) For the purposes of this section a vacancy shall be taken to have occurred on such date as may be determined under the standing orders of the Assembly.
- (9) References in this section and section 9 to the presiding officer include references to any person for the time being performing the functions of presiding officer.

### **9 Electoral region seats.**

- (1) This section applies where the seat of an Assembly member returned for an Assembly electoral region is vacant.
- (2) If the Assembly member was returned (under section 7 or this section) from the list of a registered political party, the regional returning officer shall notify to the presiding officer the name of the person who is to fill the vacancy.
- (3) A person's name may only be so notified if he—
  - (a) is included on that list,
  - (b) is willing to serve as an Assembly member for the Assembly electoral region, and
  - (c) is not a person to whom subsection (4) applies.
- (4) This subsection applies to a person if—
  - (a) he is not a member of the party, and
  - (b) the party gives notice to the regional returning officer that his name is not to be notified to the presiding officer as the name of the person who is to fill the vacancy.

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- (5) But where there is more than one person who satisfies the conditions in subsection (3), the regional returning officer may only notify the name of whichever of them was the higher, or highest, on that list.
- (6) A person whose name is notified under subsection (2) shall be treated as declared to be returned as an Assembly member for the Assembly electoral region on the day on which notification of his name is received by the presiding officer.
- (7) If—
  - (a) the Assembly member whose seat is vacant was returned as an individual candidate, or
  - (b) he was returned from the list of a registered political party but there is no-one who satisfies the conditions in subsection (3),the seat shall remain vacant until the next ordinary election.

### *The franchise and conduct of elections*

## **10 Entitlement to vote.**

- (1) The persons entitled to vote at an election of Assembly members (or of an Assembly member) in an Assembly constituency are those who on the day of the poll—
  - (a) would be entitled to vote as electors at a local government election in an electoral area wholly or partly included in the Assembly constituency, and
  - (b) are registered in the register of local government electors at an address within the Assembly constituency.
- (2) But a person is not entitled as an elector—
  - (a) to cast more than one constituency vote, or more than one electoral region vote, in the same Assembly constituency at any ordinary election,
  - (b) to vote in more than one Assembly constituency at any ordinary election, or
  - (c) to cast more than one vote in an election held under section 8.

## **11 Power to make provision about elections etc.**

- (1) The Secretary of State may by order make provision as to—
  - (a) the conduct of elections for the return of Assembly members,
  - (b) the questioning of an election for the return of Assembly members and the consequences of irregularities, and
  - (c) the return of an Assembly member otherwise than at an election.
- (2) The provision which may be made under subsection (1)(a) includes, in particular, provision—
  - (a) about the registration of electors,
  - (b) for disregarding alterations in a register of electors,
  - (c) about the limitation of the election expenses of candidates<sup>F2</sup>. . . (and the creation of criminal offences in connection with the limitation of such expenses),
  - (d) for the combination of polls at elections for the return of Assembly members and other elections, and

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- (e) for modifying the operation of section 4 in a case where the poll at an election for the return of the Assembly member for an Assembly constituency is abandoned (or notice of it is countermanded).
- (3) An order under this section may—
- (a) apply or incorporate, with or without modifications or exceptions, any provision of, or made under, the Representation of the People Acts or the <sup>M1</sup>European Parliamentary Elections Act 1978 or any other enactment relating to parliamentary elections, European Parliamentary elections or local government elections,
  - (b) modify any form contained in, or in regulations or rules made under, the Representation of the People Acts so far as may be necessary to enable it to be used both for the original purpose and in relation to elections for the return of Assembly members, and
  - (c) so far as may be necessary in consequence of any provision made by this Act or an order under this section, amend any provision made by or under any enactment relating to the registration of parliamentary electors or local government electors.
- (4) An order under this section may require sums to be paid by the Assembly.
- (5) No return of an Assembly member at an election shall be questioned except by an election petition under the provisions of Part III of the Representation of the <sup>M2</sup>People Act 1983 as applied by or incorporated in an order under this section.
- (6) In this Act “regional returning officer”, in relation to any Assembly electoral region, means the person designated as the regional returning officer for the Assembly electoral region in accordance with an order under this section.

#### Textual Amendments

**F2** Words in s. 11(2)(c) repealed (16.2.2001) by 2000 c. 41, s. 158, Sch. 21 para. 12(3), Sch. 22 (with s. 156(2)); S.I. 2001/222, art. 2, Sch. 1 Pt. I Annex (subject to transitional provisions in Sch. 1 Pt. II)

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

**C4** S. 11 amended (16.2.2001) by 2000 c. 41, ss. 7(2)(f), 8(3)(b) (with s. 156(6)); S.I. 2001/222, art. 2, Sch. 1 Pt. I (subject to transitional provisions in Sch. 1 Pt. II)

#### Marginal Citations

**M1** 1978 c. 10.

**M2** 1983 c. 2.

### *Disqualification*

## 12 Disqualification from being Assembly member.

- (1) A person is disqualified from being an Assembly member if—
- (a) he is disqualified from being a member of the House of Commons under paragraphs (a) to (e) of section 1(1) of the <sup>M3</sup>House of Commons Disqualification Act 1975 (judges, civil servants, members of the armed forces, members of police forces and members of foreign legislatures),



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- (b) he holds any of the offices for the time being designated by Order in Council as offices disqualifying persons from being Assembly members,
  - (c) he holds the office of Auditor General for Wales or the office of Welsh Administration Ombudsman, or
  - (d) he is disqualified from being a member of a local authority under section 17(2) (b) or 18(7) of the <sup>M4</sup>Audit Commission Act 1998 (members of local authorities who are responsible for incurring or authorising unlawful expenditure or whose wilful misconduct has caused a loss or deficiency).
- (2) Subject to section 13(1) and (2), a person is also disqualified from being an Assembly member if he is disqualified otherwise than under the <sup>M5</sup>House of Commons Disqualification Act 1975 (either generally or in relation to a particular constituency) from being a member of the House of Commons or from sitting and voting in it.
- (3) For the purposes of subsection (2) the references to the Republic of Ireland in section 1 of the Representation of the <sup>M6</sup>People Act 1981 (disqualification of offenders detained in, or unlawfully at large from detention in, the British Islands or the Republic of Ireland) shall be treated as references to any member State (other than the United Kingdom).
- (4) A person who holds office as lord-lieutenant, lieutenant or high sheriff of any area in Wales is disqualified from being an Assembly member for any Assembly constituency or Assembly electoral region wholly or partly included in that area.
- (5) An Order in Council under paragraph (b) of subsection (1) may designate particular offices or offices of any description and may designate an office by reference to any characteristic of a person holding it; and in that paragraph and this subsection “office” includes any post or employment.
- (6) No recommendation shall be made to Her Majesty in Council to make an Order in Council under subsection (1)(b) unless a draft of the statutory instrument containing the Order in Council has been laid before, and approved by a resolution of, each House of Parliament.
- (7) But subsection (6) does not apply in the case of an Order in Council varying or revoking a previous Order in Council if the Assembly has resolved that the Secretary of State be requested to recommend the making of the Order in Council.

#### Marginal Citations

- M3** 1975 c. 24.
- M4** 1998 c. 18.
- M5** 1975 c. 24.
- M6** 1981 c. 34.

### 13 Exceptions and relief from disqualification.

- (1) A person is not disqualified from being an Assembly member merely because—
- (a) he is a peer (whether of the United Kingdom, Great Britain, England or Scotland), or
  - [<sup>F3</sup>(b) he is a Lord Spiritual.]

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- (2) A citizen of the European Union who is resident in the United Kingdom is not disqualified from being an Assembly member merely because of section 3 of the Act of Settlement (disqualification of persons born outside the United Kingdom other than Commonwealth citizens and citizens of the <sup>M7</sup>Republic of Ireland).
- (3) Where a person was, or is alleged to have been, disqualified from being an Assembly member on a ground within section 12(1)(a), (b) or (c) or (4), the Assembly may resolve that any disqualification incurred by that person on that ground is to be disregarded if it appears to the Assembly—
  - (a) that that ground has been removed, and
  - (b) that it is proper so to resolve.
- (4) A resolution under subsection (3) shall not—
  - (a) affect any proceedings under Part III of the Representation of the <sup>M8</sup>People Act 1983 as applied by or incorporated in an order under section 11, or
  - (b) enable the Assembly to disregard any disqualification which has been established in such proceedings or in proceedings under section 15.

#### Textual Amendments

**F3** Words in s. 13(1)(b) substituted (11.5.2001) by 2001 c. 13, s. 1(3), **Sch. 1 para. 3**

#### Marginal Citations

**M7** 1700 c. 2.

**M8** 1983 c. 2.

## 14 Effect of disqualification.

- (1) If a person who is disqualified from being an Assembly member, or from being an Assembly member for a particular Assembly constituency or Assembly electoral region, is returned as an Assembly member or as an Assembly member for that Assembly constituency or Assembly electoral region, his return shall be void and his seat vacant.
- (2) If an Assembly member becomes disqualified from being an Assembly member or from being an Assembly member for the Assembly constituency or Assembly electoral region for which he is sitting, he shall cease to be an Assembly member (so that his seat is vacant).
- (3) Subsections (1) and (2) have effect subject to any resolution of the Assembly under section 13(3).
- (4) Subsection (2) also has effect subject to section 141 of the <sup>M9</sup>Mental Health Act 1983 (mental illness) and section 427 of the <sup>M10</sup>Insolvency Act 1986 (bankruptcy etc.); and where, in consequence of either of those sections, the seat of a disqualified Assembly member is not vacant he shall not cease to be an Assembly member until his seat becomes vacant but—
  - (a) he shall not participate in any proceedings of the Assembly (including proceedings of a committee of the Assembly or of a sub-committee of such a committee), and
  - (b) any of his other rights and privileges as an Assembly member may be withdrawn by the Assembly.

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- (5) The validity of anything done by the Assembly is not affected by the disqualification of any person from being an Assembly member or from being an Assembly member for the Assembly constituency or Assembly electoral region for which he purports to sit.

#### Marginal Citations

M9 1983 c. 20.

M10 1986 c. 45.

## 15 Judicial proceedings as to disqualification.

- (1) Any person who claims that a person purporting to be an Assembly member is, or at any time since being returned as an Assembly member has been, disqualified from being—
- an Assembly member, or
  - an Assembly member for the Assembly constituency or Assembly electoral region for which he purports to sit,
- may apply to the High Court for a declaration to that effect.
- (2) An application under subsection (1) in respect of any person may be made whether the grounds on which it is made are alleged to have subsisted at the time when he was returned or to have arisen subsequently.
- (3) No declaration shall be made under this section in respect of any person—
- on grounds which subsisted when he was returned, if an election petition is pending or has been tried in which his disqualification on those grounds is or was in issue, or
  - on any ground, if a resolution under section 13(3) requires that any disqualification incurred by him on that ground is to be disregarded.
- (4) On an application under this section—
- the person in respect of whom the application is made shall be the respondent, and
  - the applicant shall give such security for the costs of the proceedings as the court may direct.
- (5) The amount of the security shall not exceed £5,000 or such other sum as the Secretary of State may by order specify.
- (6) The decision of the court on an application under this section shall be final.

*Remuneration, oaths etc.*

## 16 Salaries and allowances.

- (1) The Assembly shall pay to Assembly members salaries at such levels—
- as the Assembly from time to time determines, or
  - before the first determination, as the Secretary of State directs.
- (2) The Assembly may pay to Assembly members allowances at such levels—
- as the Assembly may from time to time determine, or

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- (b) before the first determination, as the Secretary of State may direct.
- (3) A determination or direction under this section may provide—
  - (a) for higher levels of salaries to be payable to Assembly members holding any of the offices specified in Part III of this Act or in the standing orders of the Assembly, and
  - (b) for different salaries to be payable to Assembly members holding different such offices.
- (4) A determination or direction under this section may provide for different allowances for different cases.
- (5) A determination under this section may provide for levels of salaries or allowances to change from time to time by reference to a specified formula.
- (6) The Assembly may not delegate the function of making a determination under this section.
- (7) A determination under this section shall not be made unless a motion to approve it is passed by the Assembly on a vote in which at least two-thirds of the Assembly members voting support the motion.
- (8) The standing orders of the Assembly must include provision for the publication of every determination under this section; and the Secretary of State shall publish any direction under this section as soon as is reasonably practicable after it is given.

## **17 Limit on salaries of members of other public bodies.**

- (1) The Secretary of State may by order make provision such as is specified in subsection (3) in relation to any Assembly members to whom relevant remuneration is payable—
  - (a) pursuant to a resolution (or combination of resolutions) of either House of Parliament relating to the remuneration of members of that House,
  - (b) under section 1 of the <sup>M11</sup>European Parliament (Pay and Pensions) Act 1979 (remuneration of United Kingdom MEPs), or
  - (c) in respect of their membership of any other public body (whether elected or appointed) which is specified in the order.
- (2) In this section “relevant remuneration” means—
  - (a) a salary, or
  - (b) any allowance of a description specified by order made by the Secretary of State.
- (3) The provision referred to in subsection (1) is provision that the amount of the salary payable to an Assembly member under section 16—
  - (a) shall be reduced to a specified proportion of what it otherwise would be or to a specified amount, or
  - (b) shall be reduced by the amount of the relevant remuneration payable to him as mentioned in subsection (1), by a specified proportion of that amount or by some other specified amount.
- (4) An order under subsection (1) may make different provision in relation to Assembly members—

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- (a) to whom (apart from the order) different amounts of salary would be payable under section 16, or
  - (b) to whom different amounts of relevant remuneration are payable as mentioned in subsection (1).
- (5) Such an order may include provision that it (or a specified part of it) is not to apply to a specified Assembly member or description of Assembly members—
- (a) either indefinitely or for a specified period, and
  - (b) either unconditionally or subject to the fulfilment of specified conditions.

#### **Marginal Citations**

**M11** 1979 c. 50.

### **18 Pensions etc.**

- (1) The Assembly may make such provision for the payment of pensions, allowances and gratuities to or in respect of persons who have ceased to be Assembly members—
- (a) as the Assembly may from time to time determine, or
  - (b) before the first determination, as the Secretary of State may direct.
- (2) The provision which may be made under this section includes, in particular, provision for—
- (a) the making of payments towards the provision of superannuation benefits, and
  - (b) establishing and administering one or more schemes for the provision of such benefits.
- (3) Different provision may be made under this section for different cases.
- (4) The Assembly may not delegate the function of making a determination under this section.
- (5) A determination under this section shall not be made unless a motion to approve it is passed by the Assembly on a vote in which at least two-thirds of the Assembly members voting support the motion.
- (6) The standing orders of the Assembly must include provision for the publication of every determination under this section; and the Secretary of State shall publish any direction under this section as soon as is reasonably practicable after it is given.
- (7) A determination or direction under this section shall not affect pensions or allowances in payment before the determination was made or the direction was given.

### **19 Publication of information about remuneration paid.**

The standing orders of the Assembly must contain provision for the publication of information relating to sums paid under sections 16 and 18 for each financial year.

### **20 Oath or affirmation of allegiance.**

- (1) An Assembly member shall take the oath of allegiance set out in section 2 of the <sup>M12</sup>Promissory Oaths Act 1868 (or make the corresponding affirmation) as soon as

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may be after he is returned as an Assembly member (whether for the first time or subsequently).

- (2) The oath shall be taken (or the affirmation made) before a person appointed by the Assembly (or, until the first appointment is made by the Assembly, before a person appointed by the Secretary of State).
- (3) Until an Assembly member has taken the oath (or made the affirmation) he shall not do anything as an Assembly member (other than take part in proceedings of the Assembly at which Assembly members take the oath or make the affirmation, or any earlier proceedings for the election of the presiding officer or deputy presiding officer).
- (4) If an Assembly member has not taken the oath (or made the affirmation) within—
  - (a) the period of two months beginning with the day on which he was declared to be returned as an Assembly member, or
  - (b) such longer period as the Assembly may have allowed before the end of that period of two months,
 he shall at the end of that period of two months or longer period cease to be an Assembly member (so that his seat is vacant).
- (5) No salary, allowance, gratuity or payment towards the provision of superannuation benefits shall be paid under this Act to or in respect of an Assembly member until he has taken the oath (or made the affirmation); but this subsection does not affect any entitlement to payments in respect of the period before he took the oath (or made the affirmation) once he has done so.

#### Marginal Citations

M12 1868 c. 72.

## PART II

### ASSEMBLY FUNCTIONS

#### Commencement Information

II Part II (ss. 21-45) in force at 1.12.1998 by S.I. 1998/2789, art. 2

#### Introduction

### 21 Introductory.

The Assembly shall have the functions which are—

- (a) transferred to, or made exercisable by, the Assembly by virtue of this Act, or
- (b) conferred or imposed on the Assembly by or under this Act or any other Act.

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## Transfer of Ministerial functions to Assembly

### 22 Transfer of Ministerial functions.

- (1) Her Majesty may by Order in Council—
  - (a) provide for the transfer to the Assembly of any function so far as exercisable by a Minister of the Crown in relation to Wales,
  - (b) direct that any function so far as so exercisable shall be exercisable by the Assembly concurrently with the Minister of the Crown, or
  - (c) direct that any function so far as exercisable by a Minister of the Crown in relation to Wales shall be exercisable by the Minister only with the agreement of, or after consultation with, the Assembly.
- (2) The Secretary of State shall, before the first ordinary election, lay before each House of Parliament the draft of an Order in Council under this section making provision for the transfer of such functions in each of the fields specified in Schedule 2 as the Secretary of State considers appropriate.
- (3) An Order in Council under this section may contain any appropriate consequential, incidental, supplementary or transitional provisions or savings (including provisions in the form of amendments or repeals of enactments).
- (4) No recommendation shall be made to Her Majesty in Council to make an Order in Council under this section—
  - (a) 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
  - (b) in the case of an Order in Council varying or revoking a previous Order in Council, unless such a draft has also been laid before, and approved by a resolution of, the Assembly.
- (5) Schedule 3 (which makes further provision about the transfer etc. of functions by Order in Council under this section) has effect.

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

- C5** S. 22 modified (30.6.1999) by 1999 c. 9, ss. 14(1)(2), 17(2)(d)  
S. 22 modified (E.W.S.) (1.1.2002 for E. and 1.9.2002 otherwise) by 2001 c. 10, s. 42(5) (with s. 43(13)); S.I. 2001/2217, art. 5 (as amended by virtue of S.I. 2001/2614, art. 4); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1  
S. 22 modified (1.4.2003 for E. and 9.1.2004 for W.) by Education Act 2002 (c. 32), ss. 208(3), 211, 216 (with ss. 210(8), 214(4)); S.I. 2003/124, art. 4; S.I. 2003/2961, art. 7, Sch. Pt. IV
- C6** S. 22 extended (7.11.2002) by Adoption and Children Act 2002 (c. 38), s. 145(4) (with Sch. 4 paras. 6-8)
- C7** S. 22 modified (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), ss. 8(4)(5), 53(1); S.I. 2005/1126, art. 2(2)(e)

### 23 General transfer of property, rights and liabilities etc.

- (1) There shall be transferred to and vest in the Assembly by virtue of this subsection all property, rights and liabilities to which a Minister of the Crown is entitled or subject,



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- at the coming into force of an Order in Council under section 22, in connection with any function exercisable by the Minister which is transferred by the Order in Council.
- (2) There may be continued by or in relation to the Assembly anything (including legal proceedings) which relates to—
- (a) any function exercisable by a Minister of the Crown which is transferred by an Order in Council under section 22, or
  - (b) any property, rights or liabilities transferred by subsection (1) as the result of the transfer of any such function by such an Order in Council,
- and which is in the process of being done by or in relation to the Minister immediately before the coming into force of the Order in Council.
- (3) Anything which was done by a Minister of the Crown for the purpose of or in connection with—
- (a) any function exercisable by the Minister which is transferred by an Order in Council under section 22, or
  - (b) any property, rights or liabilities transferred by subsection (1) as the result of the transfer of any such function by such an Order in Council,
- and which is in effect immediately before the coming into force of the Order in Council shall have effect as if done by the Assembly.
- (4) The Assembly shall be substituted for any Minister of the Crown in any instruments, contracts or legal proceedings which relate to—
- (a) any function exercisable by the Minister which is transferred by an Order in Council under section 22, or
  - (b) any property, rights or liabilities transferred by subsection (1) as the result of the transfer of any such function by such an Order in Council,
- and which are made or commenced before the coming into force of the Order in Council.

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

- C8** S. 23(1) restricted (1.7.1999) by S.I. 1999/672, **art. 7**  
S. 23(1) restricted (16.2.2000) by S.I. 2000/253, **arts. 1(2), 10**
- C9** S. 23(1) excluded (15.11.2001) by S.I. 2001/3679, **arts. 1, 3**; S.I. 2001/3686, **reg. 1**
- C10** S. 23(1) applied (18.11.2004) by The National Assembly for Wales (Transfer of Functions) Order 2004 (S.I. 2004/3044), **art. 1(2), 5**
- C11** S. 23(1) excluded (8.6.2006) by The National Assembly for Wales (Transfer of Functions) Order 2006 (S.I. 2006/1458), **arts. 1(2), 4**
- C12** S. 23(1) excluded (15.12.2006) by The National Assembly for Wales (Transfer of Functions) (No.2) Order 2006 (S.I. 2006/3334), **arts. 1(2), 5**

## 24 General transfer: supplementary.

- (1) An Order in Council under section 22 may provide that all or any of the provisions of section 23—
- (a) shall not apply in relation to the transfer of functions by the Order in Council or to the property, rights and liabilities connected with the functions,
  - (b) shall apply only in relation to the transfer of particular functions by the Order in Council or to particular property, rights or liabilities connected with the functions transferred by the Order in Council, or



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- (c) shall not apply in relation to the transfer of particular functions by the Order in Council or to particular property, rights or liabilities connected with the functions transferred by the Order in Council.
- (2) Section 23 does not apply to rights or liabilities relating to the employment of persons in Crown employment (as defined in section 191(3) of the <sup>M13</sup>Employment Rights Act 1996).

#### Marginal Citations

M13 1996 c. 18.

## 25 Power to make specific transfers etc.

- (1) The Secretary of State may by order make provision for the transfer to the Assembly of—
  - (a) any specified property, rights or liabilities, or
  - (b) property, rights or liabilities of any specified description, to which a Minister of the Crown is entitled or subject.
- (2) An order under subsection (1) may provide for the transfer of any property, rights or liabilities to have effect subject to exceptions or reservations specified in or determined under the order.
- (3) An order under subsection (1) may provide—
  - (a) for the creation in favour of a Minister of the Crown of interests in, or rights over, property transferred to the Assembly,
  - (b) for the creation in favour of the Assembly of interests in, or rights over, property retained by a Minister of the Crown, or
  - (c) for the creation of new rights and liabilities between the Assembly and a Minister of the Crown.
- (4) The Secretary of State may by order make provision for the continuation by or in relation to the Assembly of—
  - (a) any specified thing, or
  - (b) anything of a specified description, commenced by or in relation to a Minister of the Crown.
- (5) The Secretary of State may by order make provision for—
  - (a) any specified thing, or
  - (b) anything of a specified description, done by a Minister of the Crown to have effect as if done by the Assembly.
- (6) The Secretary of State may by order make provision for the substitution of the Assembly for any Minister of the Crown in—
  - (a) any specified instrument, contract or legal proceedings, or
  - (b) any instrument, contract or legal proceedings of a specified description.
- (7) An order under this section may be made in consequence of the making of an Order in Council under section 22 or in any other circumstances in which the Secretary of State considers it appropriate to make such an order.

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- (8) An order under this section may contain any appropriate consequential, incidental, supplementary or transitional provisions or savings.

## **26 Transfers of property: supplementary.**

- (1) A certificate issued by the Secretary of State that any property has been transferred by—
- (a) section 23, or
  - (b) an order under section 25,
- shall be conclusive evidence of the transfer.
- (2) Section 23 and an order under section 25 shall have effect in relation to property, rights or liabilities to which it applies in spite of any provision (of whatever nature) which would prevent or restrict the transfer of the property, rights or liabilities otherwise than by that section or such an order.

### *Other functions*

## **27 Reform of Welsh health authorities.**

- (1) The Assembly may by order make provision for the transfer to the Assembly of any or all of the functions of a Welsh health authority.
- (2) In this section “Welsh health authority” means—
- (a) a Health Authority for an area in, or consisting of, Wales, or
  - (b) a Special Health Authority performing functions in respect only of Wales.
- (3) An order under subsection (1) relating to a Health Authority may provide for the transfer of any or all of the functions of the authority with respect to the whole, or any part, of the area for which the authority act.
- (4) If such an order provides for the transfer of all of the authority’s functions with respect to a part of that area, it shall also include provision—
- (a) specifying the rest of that area as the new area for which the authority are to act, and
  - (b) specifying as the name by which the authority shall be known (in addition to the title “Health Authority”) such name as appears to the Assembly appropriately to signify the connection of the authority with the new area.
- (5) Where an order under subsection (1) transfers—
- (a) all of the functions of a Health Authority with respect to the whole of the area for which the authority act, or
  - (b) all of the functions of a Special Health Authority,
- the Assembly may by order make provision for the abolition of the authority.
- (6) Subsection (7) applies where—
- (a) a Health Authority which act for an area are abolished by an order under subsection (5), or
  - (b) an order under subsection (1) relating to a Health Authority provides for the transfer of all of the functions of the authority with respect to a part of the area for which the authority act.

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- (7) Where this subsection applies—
- (a) the duty imposed by [<sup>F4</sup>section 8(1)(b) and (5)(b)] of the <sup>M14</sup>National Health Service Act 1977 (duty to establish Health Authorities covering whole of England and Wales) no longer requires there to be a Health Authority for the area mentioned in paragraph (a) of subsection (6), or the part mentioned in paragraph (b) of that subsection, but
  - (b) the duty imposed by section 20 of that Act (duty to establish community health councils covering the areas of all Health Authorities) includes a duty to establish one or more community health councils covering that area or part (whether or not together with the area, or part of the area, for which any Health Authority act).
- (8) An order under subsection (1) or (5) relating to a Welsh health authority may include provision for the transfer of staff of the authority and of any property, rights and liabilities to which the authority are entitled or subject.
- (9) An order under this section may contain any appropriate consequential, incidental, supplementary or transitional provisions or savings (including provisions in the form of amendments or repeals of enactments).
- (10) Nothing in this section limits any power conferred by the <sup>M15</sup>National Health Service Act 1977.

#### Textual Amendments

- F4** Words in s. 27(7)(a) substituted (1.10.2002 for E.W.) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\), s. 37\(1\), Sch. 8 para. 26](#); S.I. 2002/2478, arts. 2(1), [3\(1\)\(e\)\(ii\)](#) (subject to [art. 3\(3\)](#) and with transitional provisions in [art. 4](#)) (S.I. 2002/2532, arts. 1(3), 2, [Sch.](#) purports to bring [Sch. 8 para. 26](#) of the amending Act into force on 10.10.2002 in relation to Wales only)

#### Marginal Citations

- M14** 1977 c. 49.  
**M15** 1977 c. 49.

## 28 Reform of other Welsh public bodies.

- (1) The Assembly may by order make, in relation to any one or more of the statutory functions of a body specified in Part I or II of Schedule 4, provision for the transfer of the function or functions—
- (a) to a body specified in Part I or III of that Schedule,
  - (b) to a body specified in Part II or IV of that Schedule if that body consents to the transfer to it of the function or functions,
  - (c) to a county council, county borough council or community council in Wales (or to more than one such council), or
  - (d) to the Assembly.
- (2) Where the Assembly considers that, if a statutory function of a body specified in Part I or II of Schedule 4 were transferred to a body within any of paragraphs (a) to (d) of subsection (1) by an order under that subsection, that body—

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- (a) would not be able to exercise the function because the function requires or permits something to be done in relation to that body, or
  - (b) could by exercising another of its functions do what the function would require or permit that body to do,
- the Assembly may by order make provision for the abolition of the function.
- (3) Where each of the statutory functions of a body specified in Part I or II of Schedule 4 is transferred or abolished by an order under subsection (1) or (2), the Assembly may by order make provision—
- (a) for the abolition of the body if it is a body specified in Part I of that Schedule, or
  - (b) for the abolition of the duty to recognise the body if it is a body specified in Part II of that Schedule.
- (4) An order under subsection (1), (2) or (3)(a) making provision in relation to a body specified in Part I of Schedule 4 may include provision for the transfer of staff of the body and of any property, rights and liabilities to which the body is entitled or subject and may in particular—
- (a) provide for the transfer of any property, rights or liabilities to have effect subject to exceptions or reservations specified in or determined under the order,
  - (b) provide for the creation of interests in, or rights over, property transferred or retained or for the creation of new rights and liabilities between the body and the transferee,
  - (c) provide for the order to have effect in spite of any provision (of whatever nature) which would prevent or restrict the transfer of the property, rights or liabilities otherwise than by the order, or
  - (d) make provision about property situated outside the United Kingdom or rights and liabilities arising otherwise than under the law of England and Wales.
- (5) Where by an order under subsection (1) or (2)—
- (a) any function of a body specified in Part I of Schedule 4 is transferred or abolished, or
  - (b) any function is transferred to a body specified in Part I or III of that Schedule,
- the Assembly may by order make provision altering the membership of the body.
- (6) An order under subsection (3)(a) making provision for the abolition of a body may include provision for the abolition of any duty in compliance with which it was established or constituted.
- (7) An order under this section may contain any appropriate consequential, incidental, supplementary or transitional provisions or savings (including provisions in the form of amendments or repeals of enactments).
- (8) In this section “statutory functions” means functions conferred or imposed by an enactment (including an enactment which is contained in an Act passed after this Act or is made after the passing of this Act).

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## 29 Implementation of Community law.

- (1) The power to designate a Minister of the Crown or government department under section 2(2) of the <sup>M16</sup>European Communities Act 1972 may be exercised to designate the Assembly.
- (2) Accordingly, the Assembly may exercise the power to make regulations conferred by section 2(2) of the <sup>M17</sup>European Communities Act 1972 in relation to any matter, or for any purpose, if the Assembly has been designated in relation to that matter or for that purpose, but subject to such restrictions or conditions (if any) as may be specified by the Order in Council designating the Assembly.
- (3) Paragraph 2(2) of Schedule 2 to the <sup>M18</sup>European Communities Act 1972 (Parliamentary procedure) shall not apply to a statutory instrument containing regulations made by the Assembly unless the statutory instrument contains regulations—
  - (a) made by a Minister of the Crown or government department (whether or not jointly with the Assembly),
  - (b) relating to an English border area, or
  - (c) relating to a cross-border body (and not relating only to the exercise of functions, or the carrying on of activities, by the body in or with respect to Wales or a part of Wales).
- (4) The power conferred by section 56 of the <sup>M19</sup>Finance Act 1973 (services provided in pursuance of a Community obligation etc.) on the Minister in charge of a government department to make (with the consent of the Treasury) regulations prescribing, or providing for the determination of, fees and charges in respect of things done by the department may be exercised by the Assembly (with the consent of the Treasury) for prescribing, or providing for the determination of, fees and charges in respect of corresponding things done by the Assembly.
- (5) Section 56(4) of the <sup>M20</sup>Finance Act 1973 shall not cause a statutory instrument containing regulations made by the Assembly to be subject to annulment in pursuance of a resolution of either House of Parliament unless the statutory instrument contains regulations—
  - (a) made by a Minister of the Crown (whether or not jointly with the Assembly),
  - (b) relating to an English border area, or
  - (c) relating to a cross-border body (and not relating only to the exercise of functions, or the carrying on of activities, by the body in or with respect to Wales or a part of Wales).

### Modifications etc. (not altering text)

C13 S. 29(3) applied (18.11.2004) by [Civil Partnership Act 2004 \(c. 33\), ss. 260\(5\), 263](#)

### Marginal Citations

M16 1972 c. 68.

M17 1972 c. 68.

M18 1972 c. 68.

M19 1973 c. 51.

M20 1973 c. 51.

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### **30 Consultation about public appointments.**

- (1) Her Majesty may by Order in Council make provision requiring any Minister of the Crown or other person to consult the Assembly before—
  - (a) appointing a person to a specified public post,
  - (b) recommending, consenting to or approving the appointment of a person to a specified public post,
  - (c) nominating a person for appointment to a specified public post, or
  - (d) selecting persons with a view to the appointment of one or more of them to a specified public post (whether or not by the person subject to the requirement).
- (2) In subsection (1) “a specified public post” means—
  - (a) a public office specified, or of a description specified, in the Order in Council, or
  - (b) membership, or membership of a description so specified, of a public body so specified or of a description so specified.
- (3) An Order in Council under this section may not specify any public office or body, or public offices or bodies of any description, unless the office or body exercises, or all offices or bodies of the description exercise, functions in or in relation to Wales or a part of Wales (whether or not they also exercise functions in or in relation to any other area).
- (4) An Order in Council under this section may impose a requirement on a person even where—
  - (a) he is required to consult, or obtain the consent or approval of, another person before acting, or
  - (b) he is required to act at the request of another person or after a recommendation, nomination or selection has been made by another person.
- (5) A requirement imposed by an Order in Council under this section need not be complied with in relation to an appointment if—
  - (a) it is not reasonably practicable to comply with it because of the urgency of making the appointment, or
  - (b) the appointment is a temporary one.
- (6) Where a person is appointed to an office or membership of a body, any failure to comply with a requirement imposed by an Order in Council under this section in relation to the appointment does not affect the validity of anything done by or in relation to him as the holder of the office, or by or in relation to the body while he is a member of it.
- (7) An Order in Council under this section may contain any appropriate consequential, incidental, transitional or supplementary provisions or savings (including provisions in the form of amendments or repeals of enactments).
- (8) No recommendation shall be made to Her Majesty in Council to make an Order in Council under this section which contains provisions in the form of amendments or repeals of enactments contained in an Act unless a draft of the statutory instrument containing the Order in Council has been laid before, and approved by a resolution of, each House of Parliament.

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- (9) A statutory instrument containing an Order in Council under this section shall (unless a draft of it has been approved by a resolution of each House of Parliament) be subject to annulment in pursuance of a resolution of either House of Parliament.

### **31 Consultation about government’s legislative programme.**

- (1) As soon as is reasonably practicable after the beginning of each session of Parliament, the Secretary of State for Wales shall undertake with the Assembly such consultation about the government’s legislative programme for the session as appears to him to be appropriate but including attending and participating in proceedings of the Assembly relating to the programme on at least one occasion.
- (2) For this purpose the government’s legislative programme for a session of Parliament consists of the bills which (at the beginning of the session) are intended to be introduced into either House of Parliament during the session by a Minister of the Crown.
- (3) If at any time after the beginning of a session of Parliament—
- (a) it is decided that a bill should be introduced into either House of Parliament during the session by a Minister of the Crown, and
  - (b) no consultation about the bill has been undertaken under subsection (1),
- the Secretary of State for Wales shall undertake with the Assembly such consultation about the bill as appears to him to be appropriate.
- (4) This section does not require the Secretary of State for Wales to undertake consultation with the Assembly about a bill if he considers that there are considerations relating to the bill which make it inappropriate for him to do so.

### **32 Support of culture etc.**

The Assembly may do anything it considers appropriate to support—

- (a) museums, art galleries or libraries in Wales,
- (b) buildings of historical or architectural interest, or other places of historical interest, in Wales,
- (c) the Welsh language, or
- (d) the arts, crafts, sport or other cultural or recreational activities in Wales.

### **33 Consideration of matters affecting Wales.**

The Assembly may consider, and make appropriate representations about, any matter affecting Wales.

*Ancillary powers etc.*

### **34 Staff.**

- (1) The Assembly may appoint such staff as it considers appropriate.
- (2) Service as a member of the Assembly’s staff shall be service in Her Majesty’s Home Civil Service.

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- (3) Subsection (1) is subject to any provision made in relation to Her Majesty’s Home Civil Service by or under any Order in Council.
- (4) Section 1(2) of the <sup>M21</sup>Civil Service (Management Functions) Act 1992 (delegation of civil service management functions vested in a Minister of the Crown to any other servant of the Crown) shall have effect as if the reference to any other servant of the Crown included the Assembly.
- (5) Section 1(2) and (3) of the <sup>M22</sup>Superannuation Act 1972 (delegation of functions relating to civil service superannuation schemes by Minister for the Civil Service to another Minister etc. and consultation by that Minister or another Minister) shall have effect as if the references to a Minister of the Crown other than the Minister for the Civil Service included the Assembly.
- (6) The Assembly shall pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of—
  - (a) the provision of pensions, allowances or gratuities by virtue of section 1 of the <sup>M23</sup>Superannuation Act 1972 to or in respect of persons who are or have been members of the Assembly’s staff, and
  - (b) the expenses incurred in administering those pensions, allowances or gratuities.
- (7) The Assembly may make any such payments towards the provision of superannuation benefits for or in respect of any member of the Assembly’s staff as it considers appropriate.

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

**C14** S. 34(2) restricted (23.11.2005) by The Welsh Development Agency (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005 (S.I. 20005/3226), {art. 2(5)} (with art. 3(1))

**Marginal Citations**

**M21** 1992 c. 61.

**M22** 1972 c. 11.

**M23** 1972 c. 11.

**[<sup>F5</sup>34A Assistance to groups of Assembly members.**

- (1) The Assembly may make to (or in respect of) groups of Assembly members such payments as the Assembly from time to time determines for the purpose of assisting Assembly members in the groups to perform their functions as Assembly members.
- (2) A determination under this section may make provision—
  - (a) for ascertaining the groups to which (or in respect of which) payments are to be made,
  - (b) for calculating the amount of any payment to a group,
  - (c) for the conditions subject to which payments are to be made, and
  - (d) for the presiding officer to decide questions arising under the determination about which groups Assembly members belong to.
- (3) A determination under this section may make different provision for different groups.



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- (4) The Assembly may not delegate the function of making a determination under this section.
- (5) A determination under this section shall not be made unless a motion to approve it is passed by the Assembly on a vote in which at least two-thirds of the Assembly members voting support the motion.
- (6) The standing orders of the Assembly must include provision for the publication of every determination under this section.]

#### Textual Amendments

**F5** S. 34A inserted (30.11.2000) by 2000 c. 41, ss. 158(1), 163(3)(b), Sch. 21 para. 12(4) (with s. 156(6))

### 35 Inquiries.

- (1) The Assembly may cause an inquiry to be held into any matter relevant to the exercise of any of its functions.
- (2) Subsections (2) to (5) of section 250 of the <sup>M24</sup>Local Government Act 1972 (witnesses and costs at local inquiries) shall apply in relation to an inquiry held under subsection (1) as if it were a local inquiry held under that section and the Assembly were the Minister causing it to be held.

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

**C15** S. 35 amended (1.4.2002, 30.1.2003, 1.4.2004 for W. for certain purposes and 7.7.2004 for W. for certain purposes, otherwise prosp.) by 2000 c. 14, s. 10(6); S.I. 2002/920, arts. 2, {3(2)(3)(a)} (subject to art. 3(4)(5), Schs. 1-3); S.I. 2003/152, art. 2(1)(a); S.I. 2004/1015, art. 2; S.I. 2004/1730, art. 2

#### Marginal Citations

**M24** 1972 c. 70.

### 36 Polls for ascertaining views of the public.

- (1) The Assembly may hold a poll in an area consisting of Wales or any part (or parts) of Wales for the purpose of ascertaining the views of those polled about whether or how any of the Assembly's functions (other than those under section 33) should be exercised.
- (2) The persons entitled to vote in a poll under this section are those who—
  - (a) would be entitled to vote as electors at a local government election in an electoral area wholly or partly included in the area in which the poll is held, and
  - (b) are registered in the register of local government electors at an address within the area in which the poll is held.
- (3) The Assembly may not delegate the function of deciding—
  - (a) whether to hold a poll under this section,
  - (b) when, and in which area, a poll is to be held, and
  - (c) the wording of any questions or propositions to be put to those polled.

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- (4) The Assembly may by order make provision as to the conduct of polls (or any poll) under this section.
- (5) The Secretary of State may by order make provision for the combination of polls (or any poll) under this section with polls at any elections.
- (6) An order under subsection (4) or (5) may apply or incorporate, with or without modifications or exceptions, any provision of or made under any enactment relating to any elections; and the provision which may be made under subsection (4) includes, in particular, provision for disregarding alterations in a register of electors.
- (7) The costs of polls under this section shall be met by the Assembly.

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

- C16** S. 36(4)(5) amended (16.2.2001) by 2000 c. 41, s. 7(2)(f) (with s. 156(6)); S.I. 2001/222, art. 2, Sch. 1 Pt. I (subject to transitional provisions in Sch. 1 Pt. II)
- C17** S. 36(5): functions transferred (W.) (1.7.1999 subject to art. 2(b)-(f) of the amending S.I.) by S.I. 1999/672, art. 2(a), Sch. 1

### 37 Private bills.

- (1) The Assembly may promote private bills in Parliament and may oppose any private bill in Parliament.
- (2) But the Assembly shall not promote or oppose any private bill in Parliament unless a motion to authorise the Assembly to promote or oppose the bill is passed by the Assembly on a vote in which at least two-thirds of the Assembly members voting support the motion.
- (3) Subsection (1) shall not cause the Assembly to have power to apply for orders under section 1 or 3 of the <sup>M25</sup>Transport and Works Act 1992 by virtue of section 20 of that Act (which gives a body with power to promote and oppose private bills power to apply for and object to such orders).

#### Marginal Citations

- M25** 1992 c. 42.

### 38 Legal proceedings.

Where the Assembly considers it appropriate for the promotion or protection of the public interest it may institute in its own name, defend or appear in any legal proceedings relating to matters with respect to which any functions of the Assembly are exercisable.

### 39 Contracts.

The Secretary of State may by order provide that the <sup>M26</sup>Local Government (Contracts) Act 1997 shall apply in relation to contracts entered into by the Assembly but subject to any appropriate modifications.

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#### Marginal Citations

M26 1997 c. 65.

#### 40 Supplementary powers.

The Assembly may do anything (including the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the exercise of any of its functions.

#### 41 Agency arrangements and provision of services.

- (1) Arrangements may be made between the Assembly and any relevant authority for—
  - (a) any functions of one of them to be exercised by, or by members of staff of, the other, or
  - (b) the provision of administrative, professional or technical services by one of them for the other.
- (2) Any arrangements under subsection (1)(a) for the exercise of any functions of the Assembly shall not affect the responsibility of the Assembly; and such arrangements for the exercise of any functions of a relevant authority shall not affect the responsibility of the relevant authority.
- (3) The references in subsections (1)(a) and (2) to functions do not include functions of making, confirming or approving subordinate legislation.
- (4) In this section “relevant authority” means any government department, any local or other public authority or the holder of any public office.

VALID FROM 01/04/2005

#### [<sup>F6</sup>41A Co-operation with the Auditor General for Wales

The Assembly must co-operate with the Auditor General for Wales where it seems to the Assembly appropriate to do so for the efficient and effective discharge of its functions in relation to Welsh NHS bodies (within the meaning given in section 60 of the Public Audit (Wales) Act 2004).]

#### Textual Amendments

F6 S. 41A inserted (1.4.2005) by Public Audit (Wales) Act 2004 (c. 23), ss. 66, 73, Sch. 2 para. 43; S.I. 2005/558, art. 2, {Sch. 1} (subject to Sch. 2)

#### *Supplementary*

#### 42 Different exercise of functions by Assembly.

- (1) This section applies where—

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- (a) an enactment confers or imposes a function exercisable in relation to England and Wales, and
  - (b) the function is to any extent conferred or imposed on the Assembly by the enactment or transferred to, or made exercisable by, the Assembly by an Order in Council under section 22.
- (2) Subject to subsection (4), the enactment shall be taken to permit—
- (a) the exercise of the function by the Assembly whether or not it is exercised otherwise than by the Assembly, and
  - (b) the exercise of the function differently by the Assembly (on the one hand) and otherwise than by the Assembly (on the other).
- (3) The reference in subsection (1)(a) to a function exercisable in relation to England and Wales includes a function exercisable in relation both to England and Wales and to another country or territory or other countries or territories.
- (4) Subsection (2) is subject to any provision made by—
- (a) the enactment by which the function is conferred or imposed on the Assembly, or
  - (b) the Order in Council by which the function is transferred to, or made exercisable by, the Assembly.
- (5) Subsection (2) does not limit any power to exercise a function in relation to Wales whether or not it is exercised in relation to England, or to exercise a function differently in relation to Wales and England, where the function is not (to any extent)—
- (a) conferred or imposed on the Assembly by any enactment, or
  - (b) transferred to, or made exercisable by, the Assembly by an Order in Council under section 22.
- (6) In this section “enactment” includes an enactment—
- (a) contained in an Act passed after this Act, or
  - (b) made after the passing of this Act.

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

C18 S. 42 restricted (16.2.2000) by S.I. 2000/253, arts. 1(2), 9

**43 Construction of references to Ministers and departments.**

- (1) So far as may be necessary for the purpose or in consequence of the exercise by the Assembly of any of its functions, any reference in any enactment or other document to—
- (a) a Minister of the Crown, or
  - (b) a government department,
- (whether by name or in general terms) shall be construed as being or including a reference to the Assembly.
- (2) References in any enactment to property vested in or held for the purposes of a government department shall be construed as including references to property vested in or held for the purposes of the Assembly (and in relation to property so vested or held the Assembly shall be deemed to be a government department for the purposes of any enactment).

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- (3) In this section “enactment” includes an enactment—
- (a) contained in an Act passed after this Act, or
  - (b) made after the passing of this Act.

#### **44 Parliamentary procedures for subordinate legislation.**

- (1) This section applies where a function to make subordinate legislation (including a function conferred or imposed by, or after the passing of, this Act) has been transferred to, or made exercisable by, the Assembly by an Order in Council under section 22.
- (2) Subject to subsections (4) and (5), any relevant Parliamentary procedural provision relating to the function shall not have effect in relation to the exercise of the function by the Assembly.
- (3) For the purposes of this Act “relevant Parliamentary procedural provision” means provision—
- (a) requiring any instrument made in the exercise of the function, or a draft of any such instrument, to be laid before Parliament or either House of Parliament,
  - (b) for the annulment or approval of any such instrument or draft by or in pursuance of a resolution of either House of Parliament or of both Houses,
  - (c) prohibiting the making of any such instrument without that approval,
  - (d) for any such instrument to be a provisional order (that is, an order which requires to be confirmed by Act of Parliament), or
  - (e) requiring any order (within the meaning of the <sup>M27</sup>Statutory Orders (Special Procedure) Act 1945) to be subject to special parliamentary procedure.
- (4) Subsection (2) does not apply in the case of any instrument made in the exercise of the function, or a draft of any such instrument, if it—
- (a) contains subordinate legislation made or to be made by a Minister of the Crown or government department (whether or not jointly with the Assembly),
  - (b) contains (or confirms or approves) subordinate legislation relating to an English border area, or
  - (c) contains (or confirms or approves) subordinate legislation relating to a cross-border body (and not relating only to the exercise of functions, or the carrying on of activities, by the body in or with respect to Wales or a part of Wales).
- (5) Where a function transferred to, or made exercisable by, the Assembly by an Order in Council under section 22 is subject to a provision of the description specified in subsection (3)(e), the Order in Council may provide that—
- (a) any order made by the Assembly in the exercise of the function, or
  - (b) any order so made in circumstances specified in the Order in Council,
- is to be subject to special parliamentary procedure.
- (6) In this section “make” includes confirm or approve and related expressions (except “made exercisable”) shall be construed accordingly; but an instrument (or draft) does not fall within subsection (4)(a) just because it contains subordinate legislation made (or to be made) by the Assembly with the agreement of a Minister of the Crown or government department.

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

- C19** S. 44 modified (7.11.2002) by [Adoption and Children Act 2002 \(c. 38\), s. 145\(4\)](#) (with Sch. 4 paras. 6-8)
- C20** S. 44 applied (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\), ss. 5, 8\(2\), Sch. 3 para. 10\(6\)](#) (with Sch. 3)

#### Marginal Citations

- M27** [1945 c.18 \(9 & 10 Geo.6\)](#).

## 45 Laying of reports and statements.

- (1) This section applies where—
- (a) any enactment makes provision (“provision for Parliamentary laying”) for any report or statement to be laid before Parliament or either House of Parliament, and
  - (b) the report or statement relates exclusively to matters with respect to which functions are exercised by the Assembly and no functions are exercised by a Minister of the Crown.
- (2) The provision for Parliamentary laying shall be construed as provision for the report or statement to be laid before, and published by, the Assembly (instead of being laid before Parliament or either House of Parliament).
- (3) But if the report or statement is one which—
- (a) would (apart from provision made by or by virtue of this Act) be required to be made by or given to a Minister of the Crown or other person before being laid by him, but
  - (b) by or by virtue of this Act, is instead to be made by or given to the Assembly, the provision for Parliamentary laying shall not have effect but the Assembly shall publish the matter which is contained in the report or statement.
- (4) In this section—
- (a) references to a report or statement include any other document (except one containing subordinate legislation) in the case of which any enactment makes provision for laying before Parliament or either House of Parliament, and
  - (b) “enactment” includes an enactment contained in an Act passed after this Act or made after the passing of this Act.

## PART III

### ASSEMBLY PROCEDURE

#### Commencement Information

- I2** Part III wholly in force: Ss. 50, 51 in force at Royal assent, see [s. 158](#); Ss. 46-49, 52-79 in force at 1.12.1998 by [S.I. 1998/2789, art. 2](#)

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### *Introductory*

#### **46 Regulation of procedure.**

- (1) The procedure of the Assembly (including that of committees of the Assembly and sub-committees of such committees) shall be regulated by the standing orders of the Assembly.
- (2) But subsection (1) is subject to any other provision of this Act or any other enactment which regulates, or provides for the regulation of, the procedure of the Assembly (or of committees of the Assembly or sub-committees of such committees).
- (3) The standing orders may make different provision for different circumstances.
- (4) Section 50 makes provision for the making of standing orders to have effect when the Assembly first meets; but the Assembly may remake or revise the standing orders at any time.
- (5) The Assembly may not delegate the function of remaking or revising the standing orders.
- (6) The standing orders shall not be remade or revised unless a motion to approve the standing orders or revisions is passed by the Assembly on a vote in which at least two-thirds of the Assembly members voting support the motion.

#### **47 Equal treatment of English and Welsh languages.**

- (1) The Assembly shall in the conduct of its business give effect, so far as is both appropriate in the circumstances and reasonably practicable, to the principle that the English and Welsh languages should be treated on a basis of equality.
- (2) In determining how to comply with subsection (1), the Assembly shall have regard to the spirit of any guidelines under section 9 of the <sup>M28</sup>Welsh Language Act 1993.
- (3) The standing orders shall be made in both English and Welsh.

#### **Marginal Citations**

M28 1993 c. 38.

#### **48 Equal opportunities in conduct of business.**

The Assembly shall make appropriate arrangements with a view to securing that its business is conducted with due regard to the principle that there should be equality of opportunity for all people.

### *Initial provisions*

#### **49 First meeting.**

- (1) The first meeting of the Assembly shall be held on the day, and at the time and place, appointed by order made by the Secretary of State.

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- (2) The Secretary of State for Wales, or a person nominated by him, shall take the chair at the first meeting of the Assembly until the election of an Assembly member to be the presiding officer in accordance with the standing orders.

## **50 First standing orders.**

- (1) The Secretary of State shall appoint Commissioners to prepare a draft of standing orders to have effect when the Assembly first meets.
- (2) When the Commissioners have prepared draft standing orders, they shall submit them to the Secretary of State.
- (3) The Secretary of State shall consider the draft standing orders submitted to him and make standing orders either in the form of the draft or in that form but with such modifications as he considers appropriate.
- (4) The Secretary of State shall publish the standing orders as soon as is reasonably practicable after he has made them.
- (5) The standing orders made by the Secretary of State shall have effect (subject to any revisions made by the Assembly) unless and until they are remade by the Assembly.

## **51 The Commissioners.**

- (1) There shall be not fewer than five, and not more than nine, Commissioners.
- (2) The Commissioners shall hold office on such terms (including terms as to the payment of allowances and expenses) as the Secretary of State considers appropriate.
- (3) A Commissioner may resign, and the Secretary of State may remove a Commissioner from office, at any time.
- (4) The Secretary of State may issue to the Commissioners guidance as to—
  - (a) the content and form of the draft standing orders which they are to prepare, and
  - (b) the date by which draft standing orders prepared by them are to be submitted to him.
- (5) But no guidance may be issued as to the content of the draft standing orders if standing orders prepared in accordance with it would not comply with any requirement contained in this Part.
- (6) Any guidance issued by the Secretary of State under subsection (4) shall be published by him.

### *Offices and committees*

## **52 Presiding officer and deputy.**

- (1) The Assembly shall elect from among the Assembly members—
  - (a) the presiding officer, and
  - (b) the deputy presiding officer.



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- (2) The offices specified in subsection (1) shall be known by such titles as the standing orders may provide (but are referred to in this Act as the presiding officer and the deputy presiding officer).
- (3) The presiding officer and the deputy presiding officer may not be Assembly members who represent the same party.

### **53 Assembly First Secretary and Assembly Secretaries.**

- (1) The Assembly shall elect one of the Assembly members to be Assembly First Secretary or Prif Ysgrifennydd y Cynulliad.
- (2) The Assembly First Secretary shall appoint Assembly Secretaries, or Ysgrifenyddion y Cynulliad, from among the Assembly members (and may at any time remove a person from office as an Assembly Secretary).
- (3) The standing orders must specify the maximum number of Assembly Secretaries that may be appointed.
- (4) The Assembly First Secretary, and each of the Assembly Secretaries, is a Crown servant for the purposes of the <sup>M29</sup>Official Secrets Act 1989.

#### **Marginal Citations**

**M29** 1989 c. 6.

### **54 Committees.**

- (1) The Assembly—
  - (a) shall establish the committees which it is required to establish by the following provisions of this Part, and
  - (b) may establish any other committees which it considers appropriate.
- (2) The members of any committee established by the Assembly under subsection (1)(b)—
  - (a) shall be elected by the Assembly from among the Assembly members, and
  - (b) shall, unless the committee exists solely to provide advice, be elected so as to secure that, as far as is practicable, the balance of the parties in the Assembly is reflected in the membership of the committee.

### **55 Sub-committees.**

- (1) Any committee of the Assembly may establish one or more sub-committees.
- (2) The members of any sub-committee established by a committee of the Assembly shall be elected by the committee from among Assembly members who are members of the committee.
- (3) A committee of the Assembly, other than the executive committee, shall not elect as members of a sub-committee Assembly members who all represent the same party.

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### *The statutory committees*

#### **56 Executive committee.**

- (1) There shall be a committee of the Assembly whose members shall be—
  - (a) the Assembly First Secretary, who shall chair it, and
  - (b) the Assembly Secretaries.
- (2) The committee shall be known by such title as the standing orders may provide (but is referred to in this Act as the executive committee).
- (3) The Assembly First Secretary shall allocate accountability in the fields in which the Assembly has functions to members of the executive committee so that, in the case of each of those fields, accountability in the field is allocated either to one of the Assembly Secretaries or to him.
- (4) The Assembly First Secretary need not make an allocation under subsection (3) to every member of the executive committee; but the number of Assembly Secretaries to whom no such allocation is made shall not exceed such number as may be specified in, or determined in accordance with, the standing orders.
- (5) For the purposes of this section and section 57 “accountability”, in relation to a member of the executive committee and a field, means that he is the member of the executive committee accountable to the Assembly (in accordance with standing orders under subsection (7)) for the exercise of the Assembly’s functions in that field, except the exercise of functions by the executive committee (or by the Assembly itself).
- (6) The Assembly First Secretary is accountable to the Assembly (in accordance with standing orders under subsection (7)) for the exercise of functions by the executive committee.
- (7) The standing orders must include provision for allowing Assembly members to question (orally or in writing, as Assembly members prefer)—
  - (a) each member of the executive committee about the exercise of the Assembly’s functions in the field or fields in which he is accountable, except the exercise of functions by the executive committee (or by the Assembly itself), and
  - (b) the Assembly First Secretary about the exercise of functions by the executive committee.
- (8) In this section—
  - (a) references to the exercise of functions by the executive committee include the exercise of functions by a sub-committee of that committee or by members of the Assembly’s staff in pursuance of a delegation to the Assembly’s staff by either that committee or such a sub-committee, and
  - (b) references to the exercise of functions by the Assembly itself include the exercise of functions by members of the Assembly’s staff in pursuance of a delegation to the Assembly’s staff by the Assembly itself.

#### **57 Subject committees.**

- (1) The Assembly shall establish committees with responsibilities in the fields in which the Assembly has functions.

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- (2) The committees established under this section shall be known by such titles as the standing orders may provide (but are referred to in this Act as subject committees).
- (3) There shall be the same number of—
  - (a) subject committees, and
  - (b) members of the executive committee to whom the Assembly First Secretary allocates accountability in any of the fields in which the Assembly has functions.
- (4) The division between the subject committees of the fields in which those committees have responsibilities and the division between members of the executive committee of the fields in which accountability is allocated to members of that committee shall be the same; and the member of the executive committee who has accountability in the field or fields in which a subject committee has responsibilities shall be a member of that subject committee.
- (5) The Assembly shall elect a number of Assembly members to be a panel from which the members who are to chair the subject committees are to be selected; and the members of the panel shall be elected so as to secure that, as far as is practicable, the balance of the parties in the Assembly is reflected in the membership of the panel.
- (6) The number of members of the panel at any time shall be equal to the number of subject committees at that time; and each member of the panel shall be selected to chair one (but not more than one) subject committee.
- (7) A subject committee shall have such number of members (in addition to the person who is a member of the committee by virtue of subsection (4) and the member who chairs it) as the standing orders may provide.
- (8) Those other members shall be elected by the Assembly from among the Assembly members so as to secure that, as far as is practicable, the balance of the parties in the Assembly is reflected in the membership of the committee (including the person who is a member by virtue of subsection (4) and the member who chairs it).

## **58 Subordinate legislation scrutiny committee.**

- (1) The Assembly shall establish a committee with responsibilities relating to the scrutiny of relevant Welsh subordinate legislation.
- (2) For the purposes of this section “relevant Welsh subordinate legislation” is any subordinate legislation—
  - (a) which is made or proposed to be made, or
  - (b) which, or a draft of which, is (or but for paragraph 2(4) of Schedule 7 would be) required to be confirmed or approved,by the Assembly (whether or not jointly with a Minister of the Crown or government department).
- (3) The committee established under this section shall be known by such title as the standing orders may provide (but is referred to in this Act as the subordinate legislation scrutiny committee).
- (4) The subordinate legislation scrutiny committee shall—
  - (a) consider any proposed Assembly general subordinate legislation when the draft statutory instrument containing it has been laid before the Assembly, and

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- (b) report to the Assembly whether or not the special attention of the Assembly should be drawn to it on any of the grounds specified in the standing orders for the purposes of this subsection.
- (5) The Assembly may give to the subordinate legislation scrutiny committee—
  - (a) other responsibilities relating to the scrutiny of Assembly general subordinate legislation, or
  - (b) responsibilities relating to the scrutiny of any other description of relevant Welsh subordinate legislation.
- (6) For the purposes of this Act “Assembly general subordinate legislation” is any relevant Welsh subordinate legislation within subsection (2)(a) which is—
  - (a) required to be made by statutory instrument,
  - (b) not made or proposed to be made by an instrument in the case of which, or of a draft of which, any relevant Parliamentary procedural provision has effect, and
  - (c) not local in nature.
- (7) The Assembly may not give to the subordinate legislation scrutiny committee responsibilities not relating to the scrutiny of relevant Welsh subordinate legislation.

## **59 Members of scrutiny committee etc.**

- (1) The subordinate legislation scrutiny committee shall have such number of members as the standing orders may provide.
- (2) The members of the subordinate legislation scrutiny committee shall be elected by the Assembly from among the Assembly members so as to secure that, as far as is practicable, the balance of the parties in the Assembly is reflected in the membership of the committee.
- (3) Neither the Assembly First Secretary nor an Assembly Secretary may be a member of the subordinate legislation scrutiny committee.
- (4) The Assembly shall elect one of the members of the subordinate legislation scrutiny committee to chair the committee but it may not be chaired by a member who represents the largest party with an executive role.
- (5) The subordinate legislation scrutiny committee may not delegate the function of making reports under section 58(4).
- (6) But the standing orders may include provision for securing that, in circumstances specified in the standing orders, any function of the subordinate legislation scrutiny committee which is so specified may be exercised—
  - (a) by the member who chairs the committee, or
  - (b) in the absence of that member, by any other member of the committee authorised by that member.
- (7) For the purposes of this Act a party is the largest party with an executive role if—
  - (a) an Assembly member representing the party is a member of the executive committee, and
  - (b) it is represented by more Assembly members than any other party represented by an Assembly member who is a member of that committee.

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## **60 Audit Committee.**

- (1) The Assembly shall establish a committee to be known as the Audit Committee or Pwyllgor Archwilio.
- (2) The Audit Committee shall have such number of members as the standing orders may provide.
- (3) The members of the Audit Committee shall be elected by the Assembly from among the Assembly members so as to secure that, as far as is practicable, the balance of the parties in the Assembly is reflected in the membership of the Committee.
- (4) Neither the Assembly First Secretary nor an Assembly Secretary may be a member of the Audit Committee.
- (5) The Assembly shall elect one of the members of the Audit Committee to chair the Committee but it may not be chaired by a member who represents the largest party with an executive role.
- (6) The Assembly may not delegate any function to the Audit Committee except as provided by section 94(4).

## **61 Regional committees.**

- (1) The Assembly shall establish a committee for North Wales to provide advice to the Assembly about matters affecting North Wales.
- (2) The Assembly shall also establish a committee for each of the other regions of Wales to provide advice to the Assembly about matters affecting the region.
- (3) The standing orders must specify the areas which are to constitute—
  - (a) North Wales, and
  - (b) the other regions of Wales,for the purposes of this section.
- (4) The committees established under this section shall be known by such titles as the standing orders may provide (but are referred to in this Act as regional committees).
- (5) The members of a regional committee shall be—
  - (a) the Assembly members returned for an Assembly constituency which is wholly or partly included in the region about which the committee is to provide advice, and
  - (b) such of the Assembly members returned for an Assembly electoral region which is wholly or partly included in that region as may be elected as members of the committee by the Assembly.
- (6) Each regional committee shall elect one of the members of the committee to chair it.

### *Delegation*

## **62 Delegation of functions.**

- (1) The Assembly may delegate functions of the Assembly (to such extent as the Assembly may determine) to—
  - (a) any committee of the Assembly, or

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- (b) the Assembly First Secretary.
- (2) Any committee of the Assembly, apart from the Audit Committee, may delegate functions of the committee (to such extent as the committee may determine) to a sub-committee of the committee.
- (3) In addition—
  - (a) the executive committee may delegate functions of the executive committee (to such extent as the executive committee may determine) to the Assembly First Secretary or an Assembly Secretary, and
  - (b) a subject committee may delegate functions of the subject committee (to such extent as the subject committee may determine) to the member of the executive committee who is a member of the subject committee by virtue of section 57(4).
- (4) A sub-committee of the executive committee may delegate functions of the sub-committee (to such extent as the sub-committee may determine) to the Assembly First Secretary or an Assembly Secretary; and a sub-committee of a subject committee may delegate functions of the sub-committee (to such extent as the sub-committee may determine) to the member of the executive committee who is a member of the subject committee by virtue of section 57(4).
- (5) The Assembly First Secretary may delegate functions of his (to such extent as he may determine) to an Assembly Secretary.
- (6) In delegating a function under any provision of this section the Assembly, a committee of the Assembly or a sub-committee of such a committee may limit or prohibit its further delegation under this section or section 63 (or both); and in delegating a function under subsection (5) the Assembly First Secretary may limit or prohibit its further delegation under section 63.
- (7) Where a function has been delegated to the Assembly, this section applies to the function subject to the terms of the delegation to the Assembly.
- (8) The delegation of a function under this section shall not prevent the exercise of the function by the body or person by whom the delegation is made.

### **63 Exercise of functions by Assembly staff.**

- (1) Each of the following—
  - (a) the Assembly,
  - (b) any committee of the Assembly, apart from the Audit Committee,
  - (c) any sub-committee of a committee of the Assembly,
  - (d) the Assembly First Secretary, and
  - (e) any Assembly Secretary,
 may delegate functions of its or his (to such extent as it or he may determine) to the Assembly's staff.
- (2) Where a function is delegated to the Assembly's staff it is for the Permanent Secretary to the Assembly to make arrangements as to which member or members of the Assembly's staff is or are to exercise the function; and in this subsection "the Permanent Secretary to the Assembly" means the person appointed in accordance with section 34(1) and (3) to be the head of the Assembly's staff (whether or not that person is known by the title of Permanent Secretary to the Assembly).

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- (3) Where a function has been delegated to the Assembly, this section applies to the function subject to the terms of the delegation to the Assembly.
- (4) The delegation of a function under this section shall not prevent the exercise of the function by the body or person by whom the delegation is made.

#### *Procedures relating to subordinate legislation*

### **64 Standing orders to provide procedures.**

The standing orders must provide procedures (referred to in this Act as the subordinate legislation procedures) for—

- (a) the preparation, and
  - (b) the making, confirmation and approval,
- of orders, regulations, rules and other subordinate legislation.

### **65 Regulatory appraisals.**

- (1) The subordinate legislation procedures must include provision for securing that an appraisal (referred to in this Act as a regulatory appraisal) as to the likely costs and benefits of complying with any proposed Assembly general subordinate legislation is carried out before a draft of the statutory instrument containing the subordinate legislation is laid before the Assembly.
- (2) But the subordinate legislation procedures may provide that a regulatory appraisal need not be carried out in relation to any proposed Assembly general subordinate legislation if in the particular circumstances it is inappropriate or not reasonably practicable for one to be carried out.
- (3) The subordinate legislation procedures must also include provision for securing that, if a regulatory appraisal indicates that the costs of complying with any proposed Assembly general subordinate legislation are likely to be significant—
  - (a) appropriate consultation (including consultation with representatives of business) is carried out, and
  - (b) the regulatory appraisal is published,before a draft of the statutory instrument containing the subordinate legislation is laid before the Assembly.

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

**C21** S. 65 excluded by [Government of Wales Act 2006 \(c. 32\)](#), ss. 161, 162, [Sch. 11 para. 25\(2\)\(a\)](#), the amending provision coming into force immediately after "the 2007 election" (held on 3.5.2007) subject to [s. 161\(4\)\(5\)](#) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see [ss. 46, 161\(1\)\(4\)\(5\)](#) of the amending Act.

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## 66 Making of Assembly general subordinate legislation.

- (1) Assembly general subordinate legislation shall be made by being signed by the presiding officer, the deputy presiding officer, the Assembly First Secretary or such other person as may be authorised by the subordinate legislation procedures.
- (2) Assembly general subordinate legislation may not be made until a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Assembly.
- (3) The subordinate legislation procedures must include provision for securing that Assembly general subordinate legislation may be made by being signed otherwise than by the presiding officer only in the absence of the presiding officer.
- (4) The subordinate legislation procedures must include provision for securing that a draft of the statutory instrument containing any Assembly general subordinate legislation may be approved by the Assembly only if the draft is in both English and Welsh unless in the particular circumstances it is inappropriate or not reasonably practicable for the draft to be in both languages.
- (5) The subordinate legislation procedures must include provision for securing that a draft of the statutory instrument containing any Assembly general subordinate legislation is not approved by the Assembly until the Assembly has considered—
  - (a) the report of the subordinate legislation scrutiny committee relating to the subordinate legislation, and
  - (b) the regulatory appraisal (if any) published in relation to it.
- (6) The Assembly First Secretary may not delegate his function of signing Assembly general subordinate legislation.
- (7) The Assembly may not delegate the function of approving the draft of the statutory instrument containing any Assembly general subordinate legislation or the function of considering—
  - (a) the report of the subordinate legislation scrutiny committee relating to it, or
  - (b) the regulatory appraisal (if any) published in relation to it.

### Modifications etc. (not altering text)

**C22** S. 66 excluded by [Government of Wales Act 2006 \(c. 32\)](#), ss. 161, 162, **Sch. 11 para. 25(2)(d)**, the amending provision coming into force immediately after "the 2007 election" (held on 3.5.2007) subject to [s. 161\(4\)\(5\)](#) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see [ss. 46, 161\(1\)\(4\)\(5\)](#) of the amending Act.

## 67 Disapplication of procedural requirements.

- (1) The subordinate legislation procedures may include provision permitting Assembly general subordinate legislation to be made without compliance with any of the relevant procedural requirements if the executive committee determines that, in the particular circumstances, it is not reasonably practicable to comply with the requirement in relation to the subordinate legislation.
- (2) For the purposes of this section the relevant procedural requirements are—
  - (a) the requirement in section 66(2), and



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- (b) each of the requirements included in the subordinate legislation procedures in pursuance of sections 65(3) and 66(5).
- (3) If the subordinate legislation procedures include provision permitting Assembly general subordinate legislation to be made without compliance with the requirement in section 66(2), they must also provide that any Assembly member is entitled to move, within the period of forty working days beginning with the day on which any Assembly general subordinate legislation is made without that requirement having been complied with, that it be revoked.
- (4) If, pursuant to a motion made within that period, the Assembly resolves that the subordinate legislation be revoked, the resolution revokes it.
- (5) The Assembly may by order make any provision which appears appropriate in consequence of the revocation of the subordinate legislation by the resolution.
- (6) Neither the passing of a resolution revoking any subordinate legislation nor the making of an order making provision consequential on the revocation—
  - (a) affects the validity of anything done under the subordinate legislation before its revocation, or
  - (b) prevents the making of new subordinate legislation.
- (7) For the purposes of subsections (3) and (4) a day is a working day unless it is—
  - (a) a Saturday or a Sunday,
  - (b) Christmas Eve, Christmas Day, Maundy Thursday or Good Friday,
  - (c) a day which is a bank holiday in Wales under the <sup>M30</sup>Banking and Financial Dealings Act 1971, or
  - (d) a day appointed for public thanksgiving or mourning.

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

**C23** S. 67 excluded by Government of Wales Act 2006 (c. 32), ss. 161, 162, **Sch. 11 para. 25(2)(b)**, the amending provision coming into force immediately after "the 2007 election" (held on 3.5.2007) subject to s. 161(4)(5) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see ss. 46, 161(1)(4)(5) of the amending Act.

**Marginal Citations**

**M30** 1971 c. 80.

**68 Financial initiative.**

- (1) The subordinate legislation procedures must include provision requiring the recommendation of the executive committee for the making by the Assembly of any Assembly general subordinate legislation which may give rise to the payment of any sums by the Assembly.
- (2) The provision included in the subordinate legislation procedures in pursuance of subsection (1) may contain an exception from the requirement of a recommendation in circumstances in which the sums are unlikely to be significant.

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

**C24** S. 68 excluded by [Government of Wales Act 2006 \(c. 32\)](#), ss. 161, 162, [Sch. 11 para. 25\(2\)\(a\)](#), the amending provision coming into force immediately after "the 2007 election" (held on 3.5.2007) subject to [s. 161\(4\)\(5\)](#) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see [ss. 46, 161\(1\)\(4\)\(5\)](#) of the amending Act.

#### *Other provisions about standing orders*

### **69 Preservation of order.**

- (1) The standing orders must include provision for preserving order in proceedings of the Assembly (including proceedings of a committee of the Assembly or of a sub-committee of such a committee).
- (2) In particular, standing orders made for preserving order in such proceedings must include provision for—
  - (a) preventing conduct which would constitute a criminal offence, and
  - (b) a sub judice rule,
 and may include provision for excluding Assembly members from the proceedings and for withdrawing their rights and privileges as Assembly members for the period of their exclusion.

### **70 Openness.**

- (1) The standing orders must include provision—
  - (a) for all proceedings of the Assembly itself to be held in public, and
  - (b) for all proceedings of a committee of the Assembly, or a sub-committee of such a committee, to be held in public except where the standing orders otherwise provide.
- (2) But the standing orders may include provision as to conditions to be complied with by any member of the public attending proceedings of the Assembly (including proceedings of a committee of the Assembly or of a sub-committee of such a committee) and, in particular, provision for excluding from the proceedings any member of the public who does not comply with the conditions.
- (3) The standing orders must include provision for—
  - (a) the publication of a report of the proceedings of the Assembly itself, and
  - (b) the publication of a report of the proceedings of a committee of the Assembly, or a sub-committee of such a committee, unless the proceedings were not held in public,
 as soon as reasonably practicable after the day on which the proceedings take place.
- (4) The standing orders must include provision for any documents in the possession or under the control of the Assembly which contain material relating to any proceedings of the Assembly (including proceedings of a committee of the Assembly or of a sub-committee of such a committee) which have taken place, or are to take place, to be open to inspection by members of the public except where the standing orders otherwise provide.

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- (5) The standing orders must include provision—
- (a) establishing procedures for the investigation of complaints about actions or failures on the part of the Assembly and for dealing with reports by the Welsh Administration Ombudsman and the Health Service Commissioner for Wales of investigations pursuant to complaints relating to the Assembly, and
  - (b) for publicising details of those procedures.

## **71 Participation of Assembly members.**

- (1) The standing orders must include provision specifying the circumstances in which Assembly members who are not members of a subject committee, or of a sub-committee of such a committee, may attend and make representations at proceedings of the committee or sub-committee.
- (2) The standing orders must include provision for any documents in the possession or under the control of the Assembly which contain material relating to any proceedings of the Assembly (including proceedings of a committee of the Assembly or of a sub-committee of such a committee) which have taken place, or are to take place, to be open to inspection by any Assembly member except where the standing orders otherwise provide.

## **72 Integrity.**

- (1) The standing orders must include provision for a register of interests of Assembly members and for—
  - (a) registrable interests (as defined in the standing orders) to be registered in it, and
  - (b) the publication of the register.
- (2) The standing orders must include provision for requiring any Assembly member who has—
  - (a) a financial interest (as defined in the standing orders) in any matter, or
  - (b) any other interest, or an interest of any other kind, specified in the standing orders in any matter,to declare that interest before taking part in any proceedings of the Assembly (including proceedings of a committee of the Assembly or of a sub-committee of such a committee) relating to that matter.
- (3) The standing orders may include provision—
  - (a) for preventing or restricting the participation in any proceedings of the Assembly (including proceedings of a committee of the Assembly or of a sub-committee of such a committee) of an Assembly member if he has a registrable interest, or an interest mentioned in subsection (2), in any matter to which the proceedings relate, and
  - (b) for preventing or restricting the exercise of a function by a member of the executive committee, or the exercise of a function by an Assembly member by virtue of section 59(6), if he has a registrable interest, or an interest mentioned in subsection (2), in any matter to which the function relates.
- (4) The standing orders must include provision prohibiting an Assembly member—

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- (a) from advocating or initiating any cause or matter on behalf of any person, by any means specified in the standing orders, in consideration of any payment or benefit in kind of a description so specified, or
  - (b) from urging, in consideration of any such payment or benefit in kind, another Assembly member to advocate or initiate any cause or matter on behalf of any person by any such means.
- (5) The standing orders may include provision—
- (a) for excluding from proceedings of the Assembly (including proceedings of a committee of the Assembly or of a sub-committee of such a committee) an Assembly member who fails to comply with or contravenes any provision included in the standing orders in pursuance of subsections (1) to (4), and
  - (b) for withdrawing his rights and privileges as an Assembly member for the period of his exclusion.
- (6) An Assembly member who—
- (a) takes part in any proceedings of the Assembly (including proceedings of a committee of the Assembly or of a sub-committee of such a committee) without having complied with, or in contravention of, any provision included in the standing orders in pursuance of subsection (1), (2) or (3)(a),
  - (b) exercises any function in contravention of any provision included in the standing orders in pursuance of subsection (3)(b), or
  - (c) contravenes any provision included in the standing orders in pursuance of subsection (4),
- is guilty of an offence.
- (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (8) A prosecution for an offence under subsection (6) shall not be instituted except by or with the consent of the Director of Public Prosecutions.

### 73 **Publication.**

- (1) Where the Assembly remakes the standing orders, it shall publish them.
- (2) Where the Assembly revises standing orders (without remaking them as a whole), it shall publish either the revisions or the standing orders as revised (as it considers appropriate).

#### *Evidence and documents relating to public bodies*

### 74 **Power to require attendance and production of documents.**

- (1) The Assembly may require any person to whom subsection (2) applies—
  - (a) to attend proceedings of the Assembly for the purpose of giving evidence, or
  - (b) to produce to the Assembly documents in his possession or under his control.
- (2) This subsection applies to—
  - (a) any person who is a member, or a member of the staff, of a body specified in Schedule 5, and

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- (b) any person who holds, or is a member of the staff of a person who holds, an office so specified.
- (3) A requirement imposed on a person under subsection (1)—
- (a) if imposed under paragraph (a) of that subsection, is to attend to give evidence in connection with the affairs of the body or office in question so far as relating to Wales, and
  - (b) if imposed under paragraph (b) of that subsection, is to produce documents which relate to those affairs.
- (4) The powers conferred by subsection (1) may be exercised by and for the purposes of the Audit Committee.
- (5) Those powers may be exercised by and for the purposes of—
- (a) any other committee of the Assembly, apart from the executive committee, or
  - (b) any sub-committee of any such committee, apart from a sub-committee of the executive committee,
- if the committee or sub-committee is expressly authorised to exercise those powers by the standing orders (but may not be exercised by any individual Assembly member or by any member of the Assembly’s staff).
- (6) In order to impose a requirement on a person under subsection (1) the presiding officer or deputy presiding officer must give him notice in writing specifying the body or office in question and—
- (a) the time and place at which he is to attend, or
  - (b) the documents, or types of documents, which he is to produce and the date by which he is to produce them.
- (7) A notice required by subsection (6) to be given to a person must be given at least two weeks before the day on which the proceedings are to take place, or by which the documents are to be produced, unless he waives that requirement.
- (8) If a notice required by subsection (6) to be given to a person is sent to him, by registered post or the recorded delivery service, addressed to his usual or last known address or, where he has given an address for service of the notice, to that address, it shall be taken to be given to him.

## **75 Witnesses and documents: supplementary.**

- (1) Where a requirement has been imposed on a person under section 74(1) to attend proceedings—
- (a) the presiding officer or deputy presiding officer, or the Assembly member who chairs the committee or sub-committee concerned, or
  - (b) such other person as may be authorised by the standing orders,
- may require him to take an oath (or make an affirmation) before he gives evidence at the proceedings and may administer the oath (or affirmation) to him.
- (2) A person to whom a notice under section 74(6) has been given is guilty of an offence if he—
- (a) refuses or fails, without reasonable excuse, to attend proceedings as required by the notice,
  - (b) refuses to take an oath (or make an affirmation) when required to do so in accordance with subsection (1),

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- (c) refuses to answer any question which is properly put to him when attending any proceedings as required by the notice,
  - (d) refuses or fails, without reasonable excuse, to produce any document required by the notice to be produced by him, or
  - (e) intentionally alters, suppresses, conceals or destroys any document required by the notice to be produced by him.
- (3) A person guilty of an offence under subsection (2) is liable on summary conviction to—
- (a) a fine not exceeding level 5 on the standard scale, or
  - (b) imprisonment for a term not exceeding three months.
- (4) A person is not obliged by section 74 to answer any question or produce any document which he would be entitled to refuse to answer or produce in or for the purposes of proceedings in a court in England and Wales; and subsection (2) has effect accordingly.
- (5) The Secretary of State may by order amend Schedule 5 by—
- (a) adding or omitting any body or office, or
  - (b) altering the description of any body or office.
- (6) For the purposes of section 74 and this section—
- (a) a person shall be taken to comply with a requirement to produce a document if he produces a copy of, or an extract of the relevant part of, the document, and
  - (b) “document” means anything in which information is recorded in any form (and references to producing a document are to the production of the information recorded in it in a visible and legible form).

#### *Miscellaneous*

### **76 Attendance of Secretary of State for Wales.**

- (1) The Secretary of State for Wales shall be entitled to attend and participate in any proceedings of the Assembly.
- (2) Subsection (1) does not confer on the Secretary of State for Wales—
- (a) any right to vote, or
  - (b) a right to attend or participate in the proceedings of a committee of the Assembly or any sub-committee of such a committee.
- (3) The standing orders must include provision for any documents which—
- (a) contain material relating to any proceedings of the Assembly itself which have taken place or are to take place, and
  - (b) are made available to all Assembly members,
- to be made available to the Secretary of State for Wales no later than the time when they are made available to Assembly members who are not members of the executive committee.

### **77 Defamation.**

- (1) For the purposes of the law of defamation—

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- (a) any statement made in, for the purposes of or for purposes incidental to proceedings of the Assembly (including proceedings of a committee of the Assembly or of a sub-committee of such a committee), and
  - (b) the publication by or under the authority of the Assembly of a report of such proceedings,
- is absolutely privileged.
- (2) Subsection (1)(a) applies, in particular, to any statement made in—
- (a) evidence given before the Assembly, a committee of the Assembly or a sub-committee of such a committee,
  - (b) a document laid before the Assembly or such a committee or sub-committee,
  - (c) a document prepared for the purposes of, or for purposes incidental to, the transaction of business by the Assembly or such a committee or sub-committee,
  - (d) a document (other than a report to which subsection (1)(b) applies) formulated, made or published by or under the authority of the Assembly or such a committee or sub-committee,
  - (e) any communication—
    - (i) between any person and a person having functions in connection with the registration of interests of Assembly members, or
    - (ii) between any person and an Assembly member,in connection with such registration, or
  - (f) any communication—
    - (i) between any person and a person having functions in connection with the investigation of complaints about actions or failures on the part of the Assembly, or
    - (ii) between any person and an Assembly member,in connection with any such complaint.
- (3) In subsections (1) and (2) “statement” has the same meaning as in the <sup>M31</sup>Defamation Act 1996.
- (4) The Assembly—
- (a) is a legislature for the purposes of Schedule 1 to that Act (qualified privilege for fair and accurate report of public proceedings of legislatures etc.), and
  - (b) shall be treated as if it were a Minister of the Crown for the purposes of paragraph 11(1)(c) of that Schedule (report of proceedings of person appointed by a Minister etc. for the purposes of an inquiry).
- (5) Section 10 of the <sup>M32</sup>Defamation Act 1952 and section 10 of the <sup>M33</sup>Defamation Act Northern Ireland) 1955 (limitation on privilege at elections) have effect in relation to elections of Assembly members as to elections to Parliament.

#### Marginal Citations

**M31** 1996 c. 31.

**M32** 1952 c. 66.

**M33** 1955 c. 11 (N.I.).

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## 78 Contempt of court.

- (1) The strict liability rule shall not apply in relation to any publication—
- (a) made in, for the purposes of or for purposes incidental to proceedings of the Assembly (including proceedings of a committee of the Assembly or of a sub-committee of such a committee), or
  - (b) to the extent that it consists of a report of such proceedings which either is made by or under the authority of the Assembly or is fair and accurate and made in good faith.
- (2) Paragraph (a) of subsection (1) applies, in particular, to any publication made in any evidence, document or communication such as is specified in section 77(2)(a) to (f); and in that subsection “the strict liability rule” and “publication” have the same meanings as in the <sup>M34</sup>Contempt of Court Act 1981.

### Marginal Citations

M34 1981 c. 49.

## 79 Corrupt practices.

The Assembly is a public body for the purposes of the Prevention of Corruption Acts 1889 to 1916.

## PART IV

### ASSEMBLY FINANCE

### Commencement Information

I3 Part IV partly in force: Ss. 80-103 in force at 1.12.1998 by [S.I. 1998/2789, art. 2](#)

### *Payments to Assembly etc.*

## 80 Grants to Assembly.

- (1) The Secretary of State shall from time to time make payments to the Assembly out of money provided by Parliament of such amounts as he may determine.
- (2) Any Minister of the Crown, and any government department, may make to the Assembly payments of such amounts as the Minister or department may determine.

## 81 Statement of estimated payments etc.

- (1) The Secretary of State shall for each financial year make a written statement showing—
  - (a) the total amount of the payments which he estimates will be made by him for that financial year under section 80(1),



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- (b) the total amount of any other payments which he estimates will be made to the Assembly for that financial year by Ministers of the Crown and government departments, and
  - (c) the total amount of the payments which he estimates will be made to the Assembly for that financial year otherwise than by a Minister of the Crown or government department.
- (2) The statement shall also—
- (a) show the total amount of any basic credit approvals which the Secretary of State estimates will be issued by the Assembly for that financial year under section 53 of the <sup>M35</sup>Local Government and Housing Act 1989, and
  - (b) include such other information as the Secretary of State considers appropriate (including, in particular, information relating to amounts of any supplementary credit approvals which he estimates have been, or are to be, issued by the Assembly under section 54 of that Act).
- (3) The statement shall also show the total amount which the Secretary of State for Wales proposes to expend for that financial year out of money provided by Parliament otherwise than on making payments to the Assembly.
- (4) The statement shall include details of how the total amounts referred to in subsections (1)(a), (b) and (c), (2)(a) and (3) have been arrived at.
- (5) The statement for each financial year after the first financial year of the Assembly shall be made no later than four months before the beginning of the financial year; and the statement for the first financial year of the Assembly shall be made as soon as is reasonably practicable.
- (6) The Secretary of State shall lay before the Assembly any statement made under this section.

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

**C25** S. 81 power to amend or repeal conferred (22.12.2000) by 2000 c. 20, s. 15(1)(a); S.I. 2000/3349, art. 2 (with art. 5)

**Marginal Citations**

**M35** 1989 c. 42.

**82 Loans to Assembly by Secretary of State.**

- (1) The Secretary of State may from time to time lend to the Assembly such sums as it appears to the Assembly are required for the purpose of—
- (a) meeting a temporary excess of expenditure by the Assembly over its receipts, or
  - (b) providing the Assembly with a working balance.
- (2) The Treasury may issue to the Secretary of State out of the National Loans Fund such sums as he needs for making loans under this section.
- (3) Any loans which the Secretary of State makes under this section shall be repaid to him at such times, and interest on them shall be paid to him at such rates and at such times, as the Treasury from time to time determine.

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- (4) Sums received by the Secretary of State under subsection (3) shall be paid into the National Loans Fund.
- (5) The aggregate outstanding in respect of the principal of loans made under this section shall not exceed £500 million.
- (6) The Secretary of State may from time to time by order made with the consent of the Treasury substitute for the amount specified in subsection (5) such greater amount as is specified in the order.

### **83 Accounts relating to loans under section 82.**

- (1) The Secretary of State shall for each financial year prepare accounts in such form and manner as the Treasury may direct of—
  - (a) loans made by him under section 82, and
  - (b) repayments and payments of interest made to him under that section.
- (2) The Secretary of State shall send accounts under subsection (1) relating to a financial year to the Comptroller and Auditor General no later than five months after the end of the financial year.
- (3) The Comptroller and Auditor General shall—
  - (a) examine, certify and report on accounts sent to him under subsection (2), and
  - (b) lay copies of the accounts, together with his report, before each House of Parliament.

### **84 Destination of receipts etc.**

- (1) Sums received by the Assembly shall be paid into the Consolidated Fund (but subject as follows).
- (2) Sums received by the Assembly—
  - (a) under section 80 or 82, or
  - (b) under any other provision of this Act or any other enactment for the making of payments or loans to the Assembly by a Minister of the Crown or a government department,
 are not required to be paid into the Consolidated Fund.
- (3) Sums received by the Assembly—
  - (a) under section 54 of the <sup>M36</sup>Local Government Finance Act 1988 (central rating),
  - (b) under section 59 of that Act (contributions in respect of Crown hereditaments), or
  - (c) under paragraph 5 of Schedule 8 to that Act or regulations under sub-paragraph (15) of that paragraph (non-domestic rating contributions),
 are not required to be paid into the Consolidated Fund.
- (4) Sums received by the Assembly shall not be paid into the Consolidated Fund if they are required by any provision of this Act or any other enactment to be dealt with in some other way.

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- (5) Sums received by the Assembly are not required to be paid into the Consolidated Fund if they are authorised (but not required) by any provision of this Act or any other enactment to be dealt with in some other way (and are so dealt with).
- (6) The Treasury may direct that sums received by the Assembly which are, or are of a description, specified in the direction are not required to be paid into the Consolidated Fund.

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

C26 S. 84(1) excluded (20.7.2002) by 2000 c. 14, s. 120(1)

**Marginal Citations**

M36 1988 c. 41.

*Expenditure by Assembly etc.*

**85 Expenditure by Assembly.**

- (1) No expenditure shall be incurred by the Assembly except—
  - (a) in, or in connection with, the exercise of any of the functions of the Assembly, or
  - (b) for a purpose for which expenditure is authorised or required to be incurred by the Assembly by any enactment.
- (2) The ways in which the Assembly may incur expenditure include, in particular, giving financial assistance (whether by way of grant, loan or guarantee) to any person engaged in any activity which the Assembly considers will secure, or help to secure, the attainment of any objective which the Assembly aims to attain in the exercise of any of its functions.
- (3) The Assembly may attach conditions to the giving of financial assistance by the Assembly; and the conditions which may be attached include, in particular, conditions requiring the repayment of the whole or any part of a grant, or the making of any other payments, in any circumstances.

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

C27 S. 85 power to amend or repeal conferred (22.12.2000) by 2000 c. 20, s. 15(1)(b); S.I. 2000/3349, art. 2

**86 Statement of proposed expenditure etc.**

- (1) The Assembly shall before the beginning of each financial year after the first financial year of the Assembly make a written statement showing—
  - (a) the total amount of the expenditure which it proposes to incur for the financial year, and
  - (b) on what it proposes to incur that expenditure.
- (2) The statement shall also show—

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- (a) the total amount of the payments which the Assembly expects will be made by the Secretary of State for the financial year under section 80(1),
  - (b) the total amount of any other payments which the Assembly expects will be made to the Assembly for the financial year by Ministers of the Crown and government departments, and
  - (c) the total amount of the payments which the Assembly expects will be made to the Assembly for the financial year otherwise than by a Minister of the Crown or government department.
- (3) The statement shall also—
- (a) show the total amount of any basic credit approvals which the Assembly has issued, or expects to issue, for the financial year under section 53 of the <sup>M37</sup>Local Government and Housing Act 1989, and
  - (b) include such other information as the Assembly considers appropriate (including, in particular, information relating to amounts of any supplementary credit approvals which the Assembly has issued, or expects to issue, under section 54 of that Act).
- (4) A statement under this section shall be published by the Assembly as soon after being made as is reasonably practicable.

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

**C28** [S. 86](#) power to amend or repeal conferred (22.12.2000) by [2000 c. 20, s. 15\(1\)\(c\)](#); [S.I. 2000/3349, art. 2](#)

**Marginal Citations**

**M37** [1989 c. 42.](#)

**87 National Loans Fund lending.**

- (1) This section applies where—
- (a) a power of a Minister of the Crown to lend money is transferred to the Assembly by an Order in Council under section 22, and
  - (b) any sums required for the exercise of the power are issued out of the National Loans Fund.
- (2) The rate of interest on any loan made by the Assembly in the exercise of the power shall be not less than the lowest rate determined by the Treasury under section 5 of the <sup>M38</sup>National Loans Act 1968 in respect of similar loans made out of the National Loans Fund on the day the loan is made.
- (3) The provision for the issue of the sums shall, so far as relating to the issue of sums required for the exercise of the power by the Assembly, have effect as provision for the issue of the sums to the Secretary of State and for imposing a duty on him to pay them to the Assembly.
- (4) If, before the power is transferred, any repayment of, or payment of interest on, any loan made in the exercise of the power is required to be made to a Minister of the Crown for payment by him into the National Loans Fund, any such repayment or payment made after the transfer shall be made to the Assembly and the Assembly shall then pay it to the Secretary of State for payment by him into that Fund.

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- (5) Subsection (4) applies in relation to loans made, before the transfer, by the Minister of the Crown as well as to loans made, after the transfer, by the Assembly.

#### Marginal Citations

M38 1968 c. 13.

### 88 Accounts relating to funds paid to Assembly for lending.

- (1) The Secretary of State shall for each financial year prepare accounts in such form and manner as the Treasury may direct—
- relevant loan funds paid by him to the Assembly, and
  - sums paid to him by the Assembly which are repayments of, or payments of interest on, loans made out of relevant loan funds.
- (2) In subsection (1) “relevant loan funds” means sums which are—
- issued to the Secretary of State out of the National Loans Fund,
  - paid by him to the Assembly, and
  - lent by the Assembly in exercise of a power to lend money.
- (3) The Secretary of State shall send accounts under subsection (1) relating to a financial year to the Comptroller and Auditor General no later than five months after the end of the financial year.
- (4) The Comptroller and Auditor General shall—
- examine, certify and report on accounts sent to him under subsection (3), and
  - lay copies of the accounts, together with his report, before each House of Parliament.

### 89 Source of sums paid by Assembly.

Any enactment which—

- charges the payment of any sum on the Consolidated Fund or requires or authorises the payment of any sum from that Fund, or
- requires or authorises the payment of any sum out of money provided by Parliament,

shall cease to have effect in so far as that sum is payable by the Assembly.

#### *The Auditor General for Wales*

### 90 Auditor General for Wales.

- There shall be an office of Auditor General for Wales or Archwilydd Cyffredinol Cymru.
- The person for the time being holding that office shall by the name of that office be a corporation sole.
- The Auditor General for Wales shall be appointed by Her Majesty.

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- (4) Subject to subsections (5) and (6), the Auditor General for Wales shall hold office until the end of the period for which he is appointed.
- (5) Her Majesty may relieve the Auditor General for Wales of office before the end of the period for which he was appointed—
  - (a) at his request, or
  - (b) on Her Majesty being satisfied that he is incapable for medical reasons of performing the duties of his office and of requesting to be relieved of it.
- (6) Her Majesty may remove the Auditor General for Wales from office before the end of the period for which he was appointed if, on the ground of misbehaviour, the Secretary of State recommends that Her Majesty should do so; but the Secretary of State shall not so recommend without consulting the Assembly.
- (7) The Auditor General for Wales shall not be regarded as holding office under Her Majesty or as exercising any functions on behalf of the Crown; but he shall be taken to be a Crown servant for the purposes of the <sup>M39</sup>Official Secrets Act 1989.

#### Marginal Citations

M39 1989 c. 6.

## 91 Remuneration.

- (1) The Assembly (or, before the first ordinary election, the Secretary of State) shall—
  - (a) pay the Auditor General for Wales such salary and any such allowances, and
  - (b) make any such payments towards the provision of superannuation benefits for or in respect of him,
 as may be provided for by or under the terms of his appointment.
- (2) The Assembly shall pay to or in respect of a person who has ceased to hold office as Auditor General for Wales such amounts (if any) by way of—
  - (a) pension or gratuities, or
  - (b) provision for those benefits,
 as may have been provided for by or under the terms of his appointment.
- (3) In Schedule 1 to the <sup>M40</sup>Superannuation Act 1972 (offices etc. to which section 1 of that Act applies), in the list of “Offices” insert—
 

“Auditor General for Wales.”
- (4) The Assembly shall pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of any increase attributable to subsection (3) in the sums payable out of money provided by Parliament under the <sup>M41</sup>Superannuation Act 1972.

#### Marginal Citations

M40 1972 c. 11.

M41 1972 c. 11.

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## 92 Staff etc.

- (1) Arrangements may be made between the Auditor General for Wales and the Comptroller and Auditor General for the provision of administrative, professional or technical services to the Auditor General for Wales by the National Audit Office.
- (2) The Auditor General for Wales may, having regard to any arrangements made or capable of being made under subsection (1), appoint such staff or secure the provision of such services as he considers necessary for assisting him in the exercise of his functions.
- (3) No arrangements shall be made—
  - (a) for any of the functions of the Auditor General for Wales or of the Assembly to be exercised by the other or by a member of the other’s staff, or
  - (b) for the provision of any administrative, professional or technical services by the Auditor General for Wales or the Assembly for the other.
- (4) The staff of the Auditor General for Wales shall be appointed on such terms and conditions as he may determine; and he shall pay his staff such remuneration as may be provided for by or under their terms of appointment.
- (5) In Schedule 1 to the<sup>M42</sup>Superannuation Act 1972 (employments etc. to which section 1 of that Act applies), at the appropriate place in the list of “Other Bodies” insert—

“Employment as a member of the staff of the Auditor General for Wales.”
- (6) The Assembly shall pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of any increase attributable to subsection (5) in the sums payable out of money provided by Parliament under the<sup>M43</sup>Superannuation Act 1972.
- (7) No member of the staff of the Auditor General for Wales shall be regarded as holding office under Her Majesty or as exercising any functions on behalf of the Crown; but each member of his staff shall be taken to be a Crown servant for the purposes of the<sup>M44</sup>Official Secrets Act 1989.
- (8) Any function of the Auditor General for Wales may be exercised by—
  - (a) a member of his staff,
  - (b) a member of the staff of the National Audit Office providing services to him in pursuance of arrangements made under subsection (1), or
  - (c) any other person providing services to him,if authorised by him for that purpose.
- (9) An authority under subsection (8) to certify or report on accounts (or statements of accounts) for the Assembly—
  - (a) shall extend only to accounts (or statements) which the presiding officer has certified to the Assembly that the Auditor General for Wales is unable to certify or report on himself, and
  - (b) shall cease on a vacancy arising in the office of Auditor General for Wales.
- (10) The reference in subsection (9)(a) to the presiding officer includes a reference to any person for the time being performing the functions of presiding officer.

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#### Marginal Citations

M42 1972 c. 11.

M43 1972 c. 11.

M44 1989 c. 6.

### 93 Expenses, fees and accounts.

- (1) The expenses of the Auditor General for Wales shall, so far as they cannot be met out of income received by him, be met by the Assembly (or, before the first ordinary election, by the Secretary of State).
- (2) Those expenses include any sums payable by the Auditor General for Wales in consequence of a breach, in the course of the performance of any of his functions, of any contractual or other duty (whether that breach occurs by reason of his act or omission or that of a member of his staff or any other person assisting him in the exercise of his functions).
- (3) The Auditor General for Wales may charge a fee for auditing the accounts of any person other than the Assembly.
- (4) For each financial year after the first financial year of the Assembly the Auditor General for Wales shall prepare, and submit to the Audit Committee, an estimate of the income and expenses of his office.
- (5) Each such estimate shall be submitted to the Audit Committee at least five months before the beginning of the financial year to which it relates.
- (6) The Audit Committee shall examine each such estimate submitted to it and, after having done so, shall lay the estimate before the Assembly with any such modifications as the Committee thinks fit.
- (7) Where the Audit Committee proposes to lay such an estimate before the Assembly with modifications, the Committee shall first consult the Secretary of State and have regard to any advice which he may give.
- (8) The Auditor General for Wales shall, for each financial year, prepare accounts in accordance with directions given to him by the Treasury.
- (9) The directions which the Treasury may give under subsection (8) include, in particular, directions as to—
  - (a) the information to be contained in the accounts and the manner in which it is to be presented,
  - (b) the methods and principles in accordance with which the accounts are to be prepared, and
  - (c) the additional information (if any) that is to accompany the accounts.

VALID FROM 01/04/2005

#### [<sup>F7</sup>93A Fees

- (1) The Auditor General for Wales may charge a fee for auditing a person's accounts.



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- (2) Where the Auditor General for Wales—
- (a) provides services under section 96(3)(b) by carrying out an examination in relation to a person, or
  - (b) at the request of any person other than the Assembly, provides services under section 145A,
- the Auditor General for Wales may charge that person a fee not exceeding the full cost of providing those services.
- (3) Where the Auditor General for Wales—
- (a) provides services to a body under section 96B, or
  - (b) provides services at the request of a body under section 145B of this Act or section 44 of the Public Audit (Wales) Act 2004 (studies at request of local government bodies in Wales),
- the Auditor General for Wales must charge that body a fee which covers the full cost of providing those services.
- (4) For the purposes of this section “body” includes a local government body in Wales (within the meaning given in section 12(1) of the Public Audit (Wales) Act 2004.)]

#### Textual Amendments

- F7** S. 93A inserted (1.4.2005) by [Public Audit \(Wales\) Act 2004 \(c. 23\)](#), [ss. 7, 73](#); [S.I. 2005/558](#), [art. 2](#), [Sch. 1](#) (subject to [Sch. 2 para. 1](#))

## 94 Audit of Auditor General’s accounts.

- (1) The Assembly shall appoint an auditor of the accounts of the Auditor General for Wales.
- (2) The Assembly may not delegate the function of appointing the auditor.
- (3) A person shall not be appointed as the auditor unless—
- (a) he is eligible for appointment as a company auditor under section 25 of the <sup>M45</sup>Companies Act 1989, or
  - (b) he is a member of a body of accountants, established in the United Kingdom or another EEA State, which is for the time being approved by the Assembly; and “EEA State” means any State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, as adjusted by the Protocol signed at Brussels on 17th March 1993.
- (4) The Assembly may delegate to the Audit Committee the function of approving bodies of accountants, or of withdrawing approval from such bodies, but may not otherwise delegate those functions.
- (5) If a person appointed as the auditor ceases to be a person who could be so appointed, his appointment is ended and he ceases to be the auditor.
- (6) The auditor shall be appointed on such terms and conditions as the Assembly may determine; and the Auditor General for Wales shall pay the auditor such remuneration as may be provided for by or under the terms of the auditor’s appointment.

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- (7) Any accounts which the Auditor General for Wales is directed to prepare under section 93(8) for any financial year shall be submitted by him (after he has signed them) to the auditor no later than five months after the end of that financial year.
- (8) The auditor shall carry out an audit of any accounts submitted to him under subsection (7); and on completing the audit the auditor shall certify the accounts and lay them, together with his report on them, before the Assembly.
- (9) The auditor—
- (a) shall have a right of access at all reasonable times to all such documents as appear to him necessary for the purposes of his audit of the accounts of the Auditor General for Wales,
  - (b) shall be entitled to require from any person holding or accountable for any of those documents any assistance, information or explanation which he reasonably thinks necessary for those purposes, and
  - (c) may require the Auditor General for Wales to furnish him at times specified by him with accounts of such of the transactions of the Auditor General for Wales as he may specify.
- (10) The auditor—
- (a) may carry out examinations into the economy, efficiency and effectiveness with which the Auditor General for Wales has used his resources in discharging his functions, and
  - (b) may lay before the Assembly a report of the results of any such examinations.
- (11) For the purpose of carrying out examinations under subsection (10), the auditor—
- (a) shall have a right of access at all reasonable times to all such documents in the custody or under the control of the Auditor General for Wales as he may reasonably require for that purpose, and
  - (b) shall be entitled to require from any person holding or accountable for any of those documents any assistance, information or explanation which he reasonably thinks necessary for that purpose.

#### Marginal Citations

M45 1989 c. 40.

VALID FROM 01/04/2005

#### <sup>F8</sup>94A Accounting officer

- (1) The accounting officer for the Wales Audit Office is the Auditor General for Wales.
- (2) But where—
  - (a) the Auditor General for Wales is incapable of discharging his responsibilities as accounting officer, or
  - (b) the office of Auditor General for Wales is vacant,
 the Audit Committee may designate a member of the staff of the Auditor General for Wales to be the accounting officer for so long as paragraph (a) or (b) applies.

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- (3) The accounting officer for the Wales Audit Office has, in relation to the accounts of the Auditor General for Wales and the finances of the Wales Audit Office, the responsibilities which are from time to time specified by the Audit Committee.
- (4) In this section references to responsibilities include in particular—
  - (a) responsibilities in relation to the signing of accounts,
  - (b) responsibilities for the propriety and regularity of the finances of the Wales Audit Office, and
  - (c) responsibilities for the economy, efficiency and effectiveness with which the resources of the Wales Audit Office are used.
- (5) The responsibilities which may be specified under this section include responsibilities owed to—
  - (a) the Audit Committee, or
  - (b) the House of Commons or its Committee of Public Accounts.
- (6) If requested to do so by the House of Commons Committee of Public Accounts, the Audit Committee may—
  - (a) on behalf of the Committee of Public Accounts take evidence from the accounting officer for the Wales Audit Office, and
  - (b) report to the Committee of Public Accounts and transmit to that Committee any evidence so taken.
- (7) In this section “the Wales Audit Office” means the Auditor General for Wales and the members of his staff.]

#### Textual Amendments

- F8** S. 94A inserted (1.4.2005) by [Public Audit \(Wales\) Act 2004 \(c. 23\)](#), **ss. 10, 73**; S.I. 2005/558, **art. 2**, **Sch. 1**

## 95 Access to documents by Auditor General.

- (1) For the purposes of his examination of any auditable accounts, the Auditor General for Wales—
  - (a) shall have a right of access at all reasonable times to all the documents relating to the accounts of any relevant person,
  - (b) shall be entitled to require from any person holding or accountable for any of those documents any assistance, information or explanation which he reasonably thinks necessary for those purposes, and
  - (c) may require any relevant person to furnish him at times specified by him with accounts of such of that relevant person’s transactions as he may specify.
- (2) In subsection (1) “relevant person”, in relation to any auditable accounts, means—
  - (a) the person by whom they are prepared, and
  - (b) in the case of any accounts which the Assembly is directed to prepare under section 97, any person to whose financial affairs and transactions the auditable accounts are to relate by virtue of directions under subsection (2) of that section.

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- (3) In this section “auditable accounts” means any accounts or statement of accounts falling to be examined by the Auditor General for Wales in accordance with any provision made by or by virtue of this or any other Act.
- (4) For the purpose of carrying out, in accordance with any provision made by or by virtue of this or any other Act, examinations into the economy, efficiency and effectiveness with which any person has used his resources in discharging his functions, the Auditor General for Wales—
  - (a) shall have a right of access at all reasonable times to all such documents in the custody or under the control of that person as he may reasonably require for that purpose, and
  - (b) shall be entitled to require from any person holding or accountable for any of those documents any assistance, information or explanation which he reasonably thinks necessary for that purpose.

## 96 Auditor General for Wales: miscellaneous.

- (1) Where the Assembly is entitled to appoint the auditor of the accounts of any person (other than the Auditor General for Wales), the Assembly may appoint the Auditor General for Wales to be the auditor (even if he would not otherwise be eligible to be appointed).
- (2) Where in such a case the auditor falls to be appointed annually, the Assembly may appoint the Auditor General for Wales to be the auditor for a year, or for two or more years, or indefinitely until further exercise of the power of appointment.
- (3) The Auditor General for Wales may—
  - (a) examine, certify or report on a person’s accounts, or
  - (b) carry out examinations into the economy, efficiency and effectiveness with which a person has used his resources in discharging his functions,
 if provision is made for the Auditor General for Wales to do so by an agreement entered into by the person with either the Assembly or a Minister of the Crown.
- (4) In determining how to exercise his functions under paragraph (b) of subsection (3), the Auditor General for Wales shall take into account the views of the Audit Committee (or, before the first ordinary election, the views of the Secretary of State) as to the examinations which he should carry out under that paragraph.
- (5) Where by an Order in Council under section 22 there is transferred to the Assembly a function of preparing any accounts, the Secretary of State may by order provide for the transfer to the Auditor General for Wales of any function of the Comptroller and Auditor General in relation to those accounts.
- (6) An order under subsection (5) may contain any appropriate consequential, incidental, supplementary or transitional provisions or savings (including provisions in the form of amendments or repeals of enactments).
- (7) An Order in Council under section 22 may include any provision that may be included in an order under subsection (5).
- <sup>F9</sup>(8) If the Treasury designate the Assembly in respect of a financial year for the purposes of section 10 of the Government Resources and Accounts Act 2000 (whole of government accounts), the Auditor General for Wales shall carry out the audit required by section 10(2)(c) of that Act.

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<sup>F9</sup>(9) Where the Treasury make arrangements with the Assembly under section 10(8) of that Act, the Auditor General for Wales shall carry out the audit required by section 10(8) (c).]

#### Textual Amendments

**F9** S. 96(8)(9) inserted (1.4.2001) by 2000 c. 20, s. 29, **Sch. 1 para. 22**; S.I. 2000/3349, **art. 3**

VALID FROM 01/04/2005

#### [<sup>F10</sup>96A Reports in public interest

- (1) Where the Auditor General for Wales thinks that it would be in the public interest for him to bring to the public's attention a matter coming to his notice in the course of an examination or study to which subsection (2) applies, he may prepare a report on that matter.
- (2) This subsection applies to—
  - (a) an examination of auditable accounts (other than accounts falling to be examined under section 96(3)(a)), and
  - (b) an examination or study under section 100, 145 or 145A, except one undertaken at the request of the body or bodies to which it relates.
- (3) The Auditor General for Wales must, as soon as practicable after preparing a report under subsection (1), lay the report before the Assembly.
- (4) In this section “auditable accounts” has the meaning given in section 95(7).]

#### Textual Amendments

**F10** Ss. 96A-96C inserted (1.4.2005) by **Public Audit (Wales) Act 2004 (c. 23)**, **ss. 2, 73**; S.I. 2005/558, **art. 2, Sch. 1**

VALID FROM 01/04/2005

#### [<sup>F10</sup>96B Certification of claims, returns etc.

- (1) The Auditor General for Wales must, if so required by a relevant body, make arrangements for—
  - (a) certifying any claim or return in respect of a grant made or subsidy paid to that body by the Assembly, a Minister of the Crown or a public authority;
  - (b) certifying any account submitted by that body to the Assembly or a Minister of the Crown with a view to obtaining payment under a contract between that body and the Assembly or, as the case may be, the Minister;
  - (c) certifying that body's calculation under paragraph 5(6)(a) of Schedule 8 to the Local Government Finance Act 1988 of the amount of its non-domestic rating contribution for a financial year, and for certifying the amount calculated;

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(d) certifying any return by that body which, by or under any enactment, is required or authorised to be certified by the body’s auditor or under arrangements made by the Auditor General for Wales.

(2) In this section—

“public authority” means a body established by or under the Community Treaties or any enactment; and

“relevant body” means—

- (a) a body whose accounts, or statements of accounts, are “auditable accounts” within the meaning given in section 95(7), or
- (b) a local government body in Wales (within the meaning given in section 12(1) of the Public Audit (Wales) Act 2004).]

### Textual Amendments

**F10** Ss. 96A-96C inserted (1.4.2005) by [Public Audit \(Wales\) Act 2004 \(c. 23\)](#), [ss. 2, 73](#); [S.I. 2005/558](#), [art. 2](#), [Sch. 1](#)

VALID FROM 01/04/2005

### [<sup>F10</sup>96C Ancillary powers of Auditor General

(1) Arrangements may be made between the Auditor General for Wales and a relevant authority—

- (a) for any function of that authority to be exercised by, or by a member of the staff of, the Auditor General for Wales, or
- (b) for administrative, professional or technical services to be provided by him to that authority or by that authority to him.

(2) Any arrangements under subsection (1)(a) for the exercise of any function of a relevant authority do not affect the responsibility of the relevant authority on whose behalf the function is exercised.

(3) The Auditor General for Wales and—

- (a) a relevant authority,
- (b) a qualified auditor, or
- (c) an accountancy body,

may make arrangements to co-operate with, and give assistance to, each other if each considers that to do so would facilitate, or be conducive to, the exercise of his or its own functions.

(4) The Auditor General for Wales may make arrangements under this section on such terms and conditions, including conditions as to payment, as he thinks fit.

(5) In this section—

“accountancy body” means—

- (a) a body which is a recognised supervisory body for the purposes of Part 2 of the Companies Act 1989, or

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(b) a body of accountants, established in the United Kingdom or another EEA State, which is for the time being approved by the Assembly for the purposes of this section;

“EEA State” means any State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, as adjusted by the Protocol signed at Brussels on 17th March 1993;

“qualified auditor” means a person eligible to be appointed as an auditor under section 14 of the Public Audit (Wales) Act 2004 (auditors appointed in respect of local government bodies in Wales); and

“relevant authority” means any government department, any local or other public authority or the holder of any public office.]

#### Textual Amendments

**F10** Ss. 96A-96C inserted (1.4.2005) by Public Audit (Wales) Act 2004 (c. 23), ss. 2, 73; S.I. 2005/558, art. 2, Sch. 1

### *Financial accountability of Assembly etc.*

#### **97 Preparation and audit of Assembly’s annual accounts.**

- (1) The Assembly shall, for each financial year, prepare accounts in accordance with directions given to it by the Treasury.
- (2) The directions which the Treasury may give under subsection (1) include directions to prepare accounts relating to financial affairs and transactions of persons other than the Assembly.
- (3) The directions which the Treasury may give under subsection (1) include, in particular, directions as to—
  - (a) the financial affairs and transactions to which the accounts are to relate,
  - (b) the information to be contained in the accounts and the manner in which it is to be presented,
  - (c) the methods and principles in accordance with which the accounts are to be prepared, and
  - (d) the additional information (if any) that is to accompany the accounts.
- (4) Any accounts which the Assembly is directed under this section to prepare for any financial year shall be submitted by the Assembly to the Auditor General for Wales [<sup>F11</sup>no later than 30th November of the following financial year].
- (5) The Auditor General for Wales shall—
  - (a) examine and certify any accounts submitted to him under this section, and
  - (b) no later than four months after the accounts are submitted to him, lay before the Assembly a copy of them as certified by him together with his report on them.
- (6) In examining any accounts submitted to him under this section, the Auditor General for Wales shall, in particular, satisfy himself—
  - (a) that the expenditure to which the accounts relate has been incurred lawfully and in accordance with the authority which governs it, and



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(b) that money received by the Assembly for a particular purpose or particular purposes has not been expended otherwise than for that purpose or those purposes.

(7) Where—

(a) by virtue of any enactment other than this section the Assembly is under an obligation to prepare accounts dealing with any matters, and

(b) it appears to the Treasury that those matters fall to be dealt with in accounts directed to be prepared under this section,

the Treasury may relieve the Assembly of that obligation for or in respect of such periods as they may direct.

#### Textual Amendments

**F11** Words in s. 97(4) substituted (1.4.2001) by 2000 c. 20, s. 29, **Sch. 1 para. 23(a)**; S.I. 2000/3349, **art. 3**

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

**C29** S. 97(4): power to amend conferred (1.4.2001) by 2000 c. 20, s. 29, **Sch. 1 para. 27**; S.I. 2000/3349, **art. 3**

## 98 Accounting officers.

(1) The Treasury shall designate a member of the Assembly's staff as the Assembly's principal accounting officer.

(2) The Assembly's principal accounting officer shall have—

(a) in relation to the Assembly's accounts and finances, and

(b) in relation to the performance by persons designated as accounting officers in pursuance of any provision of this Act of their responsibilities as accounting officers,

the responsibilities which are from time to time specified by the Treasury.

(3) The Treasury may designate other members of the Assembly's staff as additional accounting officers.

(4) An additional accounting officer shall have—

(a) in relation to such of the Assembly's accounts and finances as may be specified by the Treasury, and

(b) in relation to the performance by persons designated as accounting officers in pursuance of any provision of this Act (other than this section) of their responsibilities as accounting officers,

the responsibilities which are from time to time specified by the Treasury.

(5) The responsibilities that may be specified under this section in relation to the Assembly's accounts and finances (or any of them) include in particular—

(a) responsibilities in relation to the signing of accounts,

(b) responsibilities for the propriety and regularity of the Assembly's finances, and

(c) responsibilities for the economy, efficiency and effectiveness with which the Assembly uses its resources.



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- (6) The responsibilities which may be specified under this section include responsibilities owed to—
- (a) the Assembly or the Audit Committee, or
  - (b) the House of Commons or its Committee of Public Accounts,
- and in the case of an additional accounting officer include responsibilities owed to the Assembly’s principal accounting officer.

## **99 Accounts of Assembly subsidiaries etc.**

- (1) For the purposes of his examination of any accounts of the Assembly, the Auditor General for Wales—
- (a) shall have a right of access at all reasonable times to all the documents relating to the accounts of any Assembly subsidiary (whether or not the accounts of the Assembly being examined relate to the financial affairs and transactions of the subsidiary),
  - (b) shall be entitled to require from any person holding or accountable for any of those documents any assistance, information or explanation which he reasonably thinks necessary for those purposes, and
  - (c) may require any Assembly subsidiary to furnish him at times specified by him with accounts of such of the subsidiary’s transactions as he may specify.
- (2) The Treasury may, by directions given to an Assembly subsidiary, require the subsidiary to include in any accounts which the subsidiary prepares (under, for example, the law relating to companies or charities) such additional information as may be specified in the directions.
- (3) Including information in any accounts in compliance with such directions shall not be treated as a breach of any provision which prohibits, or does not authorise, the inclusion in the accounts of that information.
- (4) In this section “Assembly subsidiary” means—
- (a) any body corporate or other undertaking (as defined in section 259(1) of the <sup>M46</sup>Companies Act 1985) of which the Assembly is a parent undertaking (within the meaning of section 258 of that Act),
  - (b) any trust of which the Assembly is a settlor, or
  - (c) any charitable institution of which the Assembly is a founder but which is neither a body corporate nor a trust.

### **Marginal Citations**

**M46** 1985 c. 6.

## **100 Examinations into Assembly’s use of resources.**

- (1) The Auditor General for Wales may carry out examinations into the economy, efficiency and effectiveness with which the Assembly has used its resources in discharging its functions.
- (2) Subsection (1) shall not be construed as entitling the Auditor General for Wales to question the merits of the policy objectives of the Assembly.

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- (3) In determining how to exercise his functions under this section, the Auditor General for Wales shall take into account the views of the Audit Committee as to the examinations which he should carry out under this section.
- (4) The Auditor General for Wales may lay before the Assembly a report of the results of any examination carried out by him under this section.
- (5) In section 6(3) of the <sup>M47</sup>National Audit Act 1983 (public bodies subject to economy etc. examinations by the Comptroller and Auditor General), after paragraph (a) insert—
  - “(aa) the National Assembly for Wales;”.
- (6) The Auditor General for Wales and the Comptroller and Auditor General may co-operate with, and give assistance to, each other in connection with the carrying out of examinations in respect of the Assembly under this section or section 6 of the <sup>M48</sup>National Audit Act 1983 (economy etc. examinations).

#### Marginal Citations

**M47** 1983 c. 44.

**M48** 1983 c. 44.

### 101 Examinations by Comptroller and Auditor General.

- (1) For the purpose of enabling him to carry out examinations into, and report to Parliament on, the finances of the Assembly, the Comptroller and Auditor General—
  - (a) shall have a right of access at all reasonable times to all such documents in the custody or under the control of the Assembly or any other person audited by the Auditor General for Wales, or of the Auditor General for Wales, as he may reasonably require for that purpose, and
  - (b) shall be entitled to require from any person holding or accountable for any of those documents any assistance, information or explanation which he reasonably thinks necessary for that purpose.
- (2) The Comptroller and Auditor General shall—
  - (a) consult the Auditor General for Wales, and
  - (b) take into account any relevant work done or being done by the Auditor General for Wales,
 before he acts in reliance on subsection (1) or carries out an examination in respect of the Assembly under section 6 of the <sup>M49</sup>National Audit Act 1983 (economy etc. examinations).

#### Marginal Citations

**M49** 1983 c. 44.

### [<sup>F12</sup>101A Whole of Government of Wales accounts.

- (1) This section applies in respect of a financial year for which the Treasury make arrangements with the Assembly under section 10(8) of the Government Resources

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- and Accounts Act 2000 (whole of government accounts: consolidation of Welsh accounts).
- (2) The Assembly shall prepare a set of accounts for the group of bodies which provide information to the Assembly in accordance with the arrangements under section 10(8).
  - (3) Accounts prepared under this section may include information referring wholly or partly to activities which—
    - (a) are not activities of bodies falling within subsection (2), but
    - (b) appear to the Assembly to be activities of a public nature.
  - (4) The accounts shall contain such information in such form as the Treasury may direct.
  - (5) The Treasury shall exercise the power under subsection (4) with a view to ensuring that the accounts—
    - (a) present a true and fair view, and
    - (b) conform to generally accepted accounting practice subject to such adaptations as are necessary in the context.
  - (6) For the purpose of subsection (5)(a) and (b) the Treasury shall in particular—
    - (a) have regard to any relevant guidance issued by the Accounting Standards Board Limited or any other body prescribed for the purposes of section 256 of the Companies Act 1985 (accounting standards), and
    - (b) require the accounts to include, subject to paragraph (a), a statement of financial performance, a statement of financial position and a cash flow statement.
  - (7) The Assembly shall send accounts under this section to the Auditor General for Wales.
  - (8) The Auditor General for Wales shall examine accounts sent to him under this section with a view to satisfying himself that they present a true and fair view.
  - (9) Where the Auditor General for Wales has conducted an examination of accounts he shall—
    - (a) certify them and issue a report, and
    - (b) send the certified accounts and the report to the Assembly.
  - (10) A person who acts as auditor for the purposes of section 10(2)(c) or (8)(c) of the Government Resources and Accounts Act 2000 shall give to the Auditor General for Wales such information and explanations as he may reasonably require for the purposes of this section.
  - (11) The Assembly shall by order specify dates by which the duties under subsections (7) and (9)(b) shall be performed.
  - (12) Before making an order under subsection (11) the Assembly shall consult the Auditor General for Wales.]

#### Textual Amendments

- F12** S. 101A inserted (22.12.2000 for certain purposes and 1.4.2001 otherwise) by 2000 c. 20, s. 29, Sch. 1 para. 24; S.I. 2000/3349, arts. 2, 3

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## 102 Audit Committee reports.

- (1) The Audit Committee may consider, and lay before the Assembly a report on, any accounts, statement of accounts or report laid before the Assembly by—
  - (a) the Auditor General for Wales, or
  - (b) the auditor appointed under section 94.
- (2) If requested to do so by the House of Commons Committee of Public Accounts, the Audit Committee may—
  - (a) on behalf of the Committee of Public Accounts take evidence from the Assembly’s principal accounting officer or any additional accounting officer designated under section 98, and
  - (b) report to the Committee of Public Accounts and transmit to that Committee any evidence so taken.

## 103 Publication of accounts and audit reports etc.

- (1) A document to which this subsection applies shall be published by the Assembly as soon after being laid before it as is reasonably practicable.
- (2) The documents to which subsection (1) applies are—
  - (a) any accounts, statement of accounts or report laid before the Assembly by the Auditor General for Wales,
  - (b) any accounts or report laid before the Assembly by the auditor appointed under section 94, and
  - (c) any estimate or report laid before the Assembly under section 93(6) or 102(1) by the Audit Committee.

### *Funding of school inspections and forestry in Wales*

## 104 [<sup>F13</sup>Her Majesty’s Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru.]

- (1) The provision of funding for [<sup>F13</sup>Her Majesty’s Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru] (“the Chief Inspector”) shall be the responsibility of the Assembly.
- (2) What subsection (1) requires of the Assembly is that it shall provide such funding for the Chief Inspector as it considers appropriate.
- (3) In deciding what funding it considers appropriate to provide for the Chief Inspector, the Assembly shall have regard in particular to what it considers the Chief Inspector needs to spend in order to discharge his functions effectively.
- (4) The Assembly shall before the beginning of each financial year consult the Chief Inspector about the funding it is to provide for him in that financial year <sup>F14</sup> . . .

[<sup>F15</sup>(4A) The Assembly shall—

- (a) approve the plan submitted to it under section 87 of the Learning and Skills Act 2000; and
- (b) determine the amount of the funding it is to provide under this section in accordance with the plan as approved by it.

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- (4B) But before it gives its approval under subsection (4A)(a), the Assembly may require the Chief Inspector to modify the plan.]
- (5) But the consultation required by subsection (4) about the funding to be provided for the Chief Inspector in the first financial year in which his funding is the responsibility of the Assembly shall, if it cannot be carried out before the beginning of that financial year, be carried out as soon as is reasonably practicable.
- (6) Schedule 6 (which makes further provision about the Chief Inspector) has effect.

#### Textual Amendments

- F13** Words in sidenote and s. 104(1) substituted (1.1.2001) by 2000 c. 21, s. 73(3)(a); S.I. 2000/3230, art. 2, Sch.
- F14** Words in s. 104(4) repealed (1.1.2001) by 2000 c. 21, ss. 149, 153, Sch. 9 para. 92(2), Sch. 11; S.I. 2000/3230, art. 2, Sch.
- F15** S. 104(4A)(4B) inserted (1.1.2001) by 2000 c. 21, s. 149, Sch. 9 para. 92(3); S.I. 2000/3230, art. 2, Sch.

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

- C30** S. 104(4) amended (1.1.2001) by 2000 c. 21, s. 87(1); S.I. 2000/3230, art. 2, Sch.

#### Commencement Information

- I4** S. 104 wholly in force at 1.7.1999; s. 104 not in force at Royal Assent; s. 104(6) in force for certain purposes at 1.5.1999 and s. 104 wholly in force at 1.7.1999 by S.I. 1999/1290, arts. 3, 4

## 105 Forestry Commissioners.

- (1) The provision of funding for the exercise by the Forestry Commissioners of their functions in relation to Wales shall be the responsibility of the Assembly.
- (2) What subsection (1) requires of the Assembly is that it shall provide such funding as the Assembly considers appropriate for the exercise by the Forestry Commissioners of their functions in relation to Wales.
- (3) In deciding what funding it considers appropriate to provide for the exercise by the Forestry Commissioners of their functions in relation to Wales, the Assembly shall have regard in particular to what it considers those Commissioners need to spend in order effectively to discharge their functions in relation to Wales.
- (4) The Assembly shall before the beginning of each financial year consult the Forestry Commissioners about the funding it is to provide for them in that financial year; and in determining the amount of that funding the Assembly shall take account of the Forestry Commissioners' estimates of—
- what they will need to spend in that financial year in order effectively to discharge their functions in relation to Wales, and
  - the income which they will receive in that financial year and be entitled to apply towards meeting their expenditure on the exercise of their functions in relation to Wales.
- (5) Schedule 7 (which makes further provision about the Forestry Commissioners and the exercise of their functions in relation to Wales) has effect.

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### Commencement Information

- I5** S. 105 wholly in force at 14.5.2001; s. 105 not in force at Royal Assent; s. 105(5) in force for certain purposes at 1.4.1999 by S.I. 1999/782, art. 2; s. 105(1)-(4) in force and s. 105(5) in force in so far as not already in force at 14.5.2001 by S.I. 2001/1756, art. 2

## PART V

### OTHER PROVISIONS ABOUT THE ASSEMBLY

### Commencement Information

- I6** Part V partly in force: Ss. 106, 108-110, 113-115, 119-124 in force at 1.12.1998 by S.I. 1998/2789, art. 2

### *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.
- (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

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(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.
- (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.

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- (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.
- (2) The court or tribunal may make an order—
  - (a) removing or limiting any retrospective effect of the decision, or
  - (b) suspending the effect of the decision for any period and on any conditions to allow the defect to be corrected.



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- (3) In determining whether to make an order under this section, the court or tribunal 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.

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

C31 S. 110 amended (6.5.1999) by S.I. 1999/1347, rule 8(1)(c)

*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.

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#### Commencement Information

- 17** S. 111 partly in force; s. 111 not in force at Royal Assent see s. 158; s. 111(1) in force and s. 111(2) in force for certain purposes at 1.2.1999 by S.I. 1999/118, art. 2; s. 111(2) in force for certain purposes at 1.5.1999 and for certain purposes at 1.7.1999 by S.I. 1999/1290, arts. 3, 4

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

Schedule 10 (which makes amendments of the <sup>M50</sup>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.

#### Commencement Information

- 18** S. 112 partly in force; s. 112 not in force at Royal Assent see s. 158; s. 112 in force for certain purposes at 1.7.1999 by S.I. 1999/1290, art. 4; s. 112 in force for certain purposes at 1.4.1999 by S.I. 1999/782, art. 2

#### Marginal Citations

- M50** 1993 c. 46.

*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—

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- (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—
- (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.

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## 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 <sup>M51</sup>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.

### **Marginal Citations**

**M51** 1958 c. 51.

## 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 <sup>M52</sup>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

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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 <sup>M53</sup>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.

#### Marginal Citations

M52 1958 c. 51.

M53 1958 c. 51.

### 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,
  - (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 <sup>M54</sup>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,
  - [<sup>F16</sup>(aa) the Care 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 <sup>M55</sup>National Health Service Act 1977, in Wales,
  - (g) the Higher Education Funding Council for Wales,
  - (h) the Local Government Boundary Commission for Wales,
  - [<sup>F17</sup>(ha) the National Council for Education and Training for Wales,]

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- (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 <sup>M56</sup>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.

#### Textual Amendments

- F16** S. 118(2)(aa) inserted (1.4.2001) by 2000 c. 14, ss. 6, 54, 66, **Sch. 1 para. 27(a)**; S.I. 2000/2992, art. 2(2), **Sch. 2**
- F17** S. 118(2)(ha) inserted (19.9.2000 for W.) by 2000 c. 21, s. 149, **Sch. 9 para. 93** (with s. 150); S.I. 2000/2540, art. 2, **Sch.**

#### Marginal Citations

- M54** 1958 c. 51.  
**M55** 1977 c. 49.  
**M56** 1958 c. 51.

### *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.

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- (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).

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

C32 S. 119 modified (1.2.2007) by S.I. 2007/236, arts. 1(1), 137(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.
- (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.



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## **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.

### **Commencement Information**

- 19** [S. 125](#) partly in force; [s. 125](#) not in force at Royal Assent see [s. 158](#); [s. 125](#) in force for certain purposes at 1.2.1999 by [S.I. 1999/118, art. 2](#); [s. 125](#) in force for certain purposes at 1.4.1999 by [S.I. 1999/782, art. 2](#); [s. 125](#) in force for certain purposes at 1.7.1999 by [S.I. 1999/1290, art. 4](#)



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## PART VI

### REFORM OF WELSH PUBLIC BODIES

#### *The Welsh Development Agency*

#### **126 Extension of functions.**

- (1) Section 1 of the <sup>M57</sup>Welsh Development Agency Act 1975 (functions of Agency and purposes for which they may be exercised) is amended as follows.
- (2) In subsection (2) (purposes for which functions may be exercised)—
  - (a) in paragraph (a) (furtherance of economic development of Wales or a part of Wales), after “economic” insert “ and social ”, and
  - (b) in paragraph (b) (promotion of industrial efficiency in Wales), for “industrial efficiency” substitute “ efficiency in business ”.
- (3) In subsection (3) (functions)—
  - (a) in paragraph (a) (promotion of Wales as location of industrial development), for “of industrial development” substitute “ for businesses ”,
  - (b) in paragraphs (b), (c), (f), (g) and (j) (functions relating to industrial undertakings), for “industrial undertakings” (in each place) substitute “ businesses ”,
  - (c) in paragraph (d) (promotion etc. of an industry or an undertaking in an industry), for “an industry or any undertaking in an industry” substitute “ businesses, or a particular business or particular businesses ”, and
  - (d) after that paragraph insert—

“(da) to make land available for development;”.
- (4) In subsection (8) (power to make grants not to be used in connection with functions of providing finance for carrying on of industrial undertakings), for “shall not be used in connection with those functions” substitute “ may only be exercised in connection with those functions in accordance with a programme approved by the Secretary of State under subsection (15) below ”.

#### **Marginal Citations**

**M57** 1975 c. 70.

#### **127 Land acquisition and disposal etc.**

Schedule 13 (amendments of Welsh Development Agency Act 1975 and other enactments for conferring on Welsh Development Agency functions relating to the acquisition of land etc.) has effect.

#### **128 Other amendments.**

Schedule 14 (other amendments relating to Welsh Development Agency) has effect.

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### *The Development Board for Rural Wales*

#### **129 Cessation of functions.**

- (1) The functions of the Development Board for Rural Wales shall cease to exist.
- (2) Schedule 15 (amendments of enactments relating to that Board in consequence of subsection (1)) has effect.

#### **130 Transfer of property, staff etc. to Welsh Development Agency.**

- (1) There shall be transferred to and vest in the Welsh Development Agency by virtue of this subsection all property, rights and liabilities to which the Development Board for Rural Wales is entitled or subject when the functions of that Board cease to exist.
- (2) A certificate issued by the Secretary of State that any property has been transferred by subsection (1) shall be conclusive evidence of the transfer.
- (3) Subsection (1) has effect in relation to property, rights or liabilities to which it applies in spite of any provision (of whatever nature) which would prevent or restrict the transfer of the property, rights or liabilities otherwise than by that subsection.
- (4) Subsection (1) does not have effect to continue in force any contract of employment; but the Secretary of State may by order make provision for the transfer of staff of the Development Board for Rural Wales.
- (5) An order under subsection (4) may make any appropriate consequential, incidental, supplementary or transitional provisions or savings.

#### **Commencement Information**

**I10** [S. 130](#) wholly in force; [s. 130](#) not in force at Royal Assent see [s. 158](#); [s. 130\(1\)-\(3\)](#) in force at 1.10.2000 by [S.I. 1998/2244](#), [art. 4](#); [s. 130\(4\)\(5\)](#) in force at 2.9.2000 by [S.I. 1998/2244](#), [art. 3](#)

#### **131 Transitional provisions.**

- (1) Nothing in section 129 or Schedule 15, or in any repeal made by this Act, affects the validity of anything done by or in relation to the Development Board for Rural Wales before its functions cease to exist.
- (2) There may be continued by or in relation to the Welsh Development Agency anything (including legal proceedings) which—
  - (a) relates to any of the functions of the Development Board for Rural Wales or to any property, rights or liabilities transferred by section 130(1), and
  - (b) is in the process of being done by or in relation to that Board when its functions cease to exist.
- (3) Anything which—
  - (a) was done by the Development Board for Rural Wales for the purpose of or in connection with any of its functions or any property, rights or liabilities transferred by section 130(1), and
  - (b) is in effect immediately before its functions cease to exist,
 shall have effect as if done by the Welsh Development Agency.

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- (4) The Welsh Development Agency shall be substituted for the Development Board for Rural Wales in any instruments, contracts or legal proceedings which—
- (a) relate to any of the functions of that Board or to any property, rights or liabilities transferred by section 130(1), and
  - (b) are made or commenced before its functions cease to exist.

### 132 Winding-down.

- (1) The Development Board for Rural Wales shall give to the Welsh Development Agency all the information, prepare all the documents and do all other things which appear to that Agency appropriate for the purpose of facilitating—
- (a) the carrying into effect of sections 130, 131 and 133 and Schedule 15, or
  - (b) the exercise of any functions imposed on that Agency, or conferred on the Secretary of State, by this section;
- and the Development Board for Rural Wales may do anything else which appears to it appropriate for that purpose.
- (2) The Development Board for Rural Wales shall comply with section 3(1)(e) of the <sup>M58</sup>Development of Rural Wales Act 1976 (reports)—
- (a) in relation to the last accounting year ending before its functions cease to exist (if it has not done so before then), and
  - (b) in relation to the period between the end of that accounting year and the time when its functions cease to exist (to which period that provision shall apply as if it were an accounting year).
- (3) As from the time when the functions of the Development Board for Rural Wales cease to exist, the Welsh Development Agency shall make available to that Board such facilities as that Board may reasonably require for exercising its functions under this section.
- (4) The statement of accounts prepared by the Welsh Development Agency in accordance with paragraph 8(1) of Schedule 3 to the <sup>M59</sup>Welsh Development Agency Act 1975 in respect of the accounting year in which the functions of the Development Board for Rural Wales cease to exist shall include a statement of accounts relating to the activities of that Board—
- (a) in respect of the last accounting year ending before the time when those functions cease to exist (if that Board has not before that time prepared a statement of accounts in accordance with section 14(1) of the <sup>M60</sup>Development of Rural Wales Act 1976 in relation to that accounting year), and
  - (b) in respect of the period between the end of that accounting year and that time.
- (5) The Secretary of State may pay to members of the Development Board for Rural Wales—
- (a) any remuneration which he considers appropriate in respect of the performance of their duties as members of that Board after the time when its functions cease to exist, and
  - (b) any allowances which he determines should be paid to them in respect of expenses properly incurred by them in the performance of those duties after that time.
- (6) The Secretary of State may determine that, as from the time when the functions of the Development Board for Rural Wales cease to exist or any later time, the number of

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members of that Board shall be reduced to a number which he considers appropriate (and may, accordingly, remove any such members from office).

- (7) In this section “accounting year” means the period of twelve months ending with 31st March.

#### Commencement Information

**I11** S. 132 wholly in force; s. 132 not in force at Royal Assent see s. 158; s. 132(1)(6) in force at 2.9.1998 and s. 132(2)-(5)(7) in force at 1.10.1998 by S.I. 1998/2244, arts. 3, 4

#### Marginal Citations

**M58** 1976 c. 75.  
**M59** 1975 c. 70.  
**M60** 1976 c. 75.

### 133 Abolition etc.

- (1) The Development Board for Rural Wales shall cease to exist when the Secretary of State, being satisfied that its duties under section 132 have been discharged, by order so directs.
- (2) No amendment or repeal made by this Act or by virtue of subsection (3) affects—
- the continuance of the Development Board for Rural Wales for the purpose of exercising its functions under section 132, or
  - the continued operation for that purpose of any enactment relating to the Development Board for Rural Wales.
- (3) The Secretary of State may by order make any consequential, incidental, supplementary or transitional provisions, and any savings, which appear to him to be appropriate in consequence of or otherwise in connection with—
- the functions of the Development Board for Rural Wales ceasing to exist under section 129,
  - the transfer of property, rights and liabilities of that Board by section 130(1),
  - the abolition of that Board, or
  - the repeal by this Act of any provision of the <sup>M61</sup>Development of Rural Wales Act 1976.
- (4) An order under subsection (3) may include provisions in the form of amendments or repeals of any of sections 129 to 132, Schedule 15 or any other enactment.

#### Commencement Information

**I12** S. 133 wholly in force; s. 133 not in force at Royal Assent see s. 158; s. 133(3)(4) in force at 2.9.1998 and s. 133(1)(2) in force at 1.10.1998 by S.I. 1998/2244, arts. 3, 4

#### Marginal Citations

**M61** 1976 c. 75.

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### *The Land Authority for Wales*

#### **134 Cessation of functions.**

The functions of the Land Authority for Wales shall cease to exist.

#### **135 Consequential amendments.**

- (1) The following amendments relating to the Land Authority for Wales have effect in consequence of section 134.
- (2) In—
  - (a) paragraph 1(2)(xxiv) of Schedule 25 to the <sup>M62</sup>Water Act 1989,
  - (b) paragraph 1(1)(iv) of Schedule 16 to the <sup>M63</sup>Electricity Act 1989, and
  - (c) paragraph 2(1)(xxviii) of Schedule 4 to the <sup>M64</sup>Gas Act 1995,(which deem persons to be statutory undertakers for the purposes of certain enactments), for “Parts XII and” substitute “ Part ”.
- (3) In section 31(1)(c) of the <sup>M65</sup>Acquisition of Land Act 1981 (acquisition under certain provisions of statutory undertakers’ land without a certificate), for “said Act of” substitute “ Local Government, Planning and Land Act ”.

#### **Marginal Citations**

- M62** 1989 c. 15.  
**M63** 1989 c. 29.  
**M64** 1995 c. 45.  
**M65** 1981 c. 67.

#### **136 Transfer of property, staff etc. to Welsh Development Agency.**

- (1) There shall be transferred to and vest in the Welsh Development Agency by virtue of this subsection all property, rights and liabilities to which the Land Authority for Wales is entitled or subject when the functions of that Authority cease to exist.
- (2) A certificate issued by the Secretary of State that any property has been transferred by subsection (1) shall be conclusive evidence of the transfer.
- (3) Subsection (1) has effect in relation to property, rights or liabilities to which it applies in spite of any provision (of whatever nature) which would prevent or restrict the transfer of the property, rights or liabilities otherwise than by that subsection.
- (4) Subsection (1) does not have effect to continue in force any contract of employment; but the Secretary of State may by order make provision for the transfer of staff of the Land Authority for Wales.
- (5) An order under subsection (4) may make any appropriate consequential, incidental, supplementary or transitional provisions or savings.

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### Commencement Information

**I13** S. 136 wholly in force; s. 136 not in force at Royal Assent see s. 158; s. 136(4)(5) in force at 2.9.1998 and s. 136(1)-(3) in force at 1.10.1998 by S.I. 1998/2244, arts. 3, 4

## 137 Transitional provisions.

- (1) Nothing in section 134 or 135, or in any repeal made by this Act, affects the validity of anything done by or in relation to the Land Authority for Wales before its functions cease to exist.
- (2) There may be continued by or in relation to the Welsh Development Agency anything (including legal proceedings) which—
  - (a) relates to any of the functions of the Land Authority for Wales or to any property, rights or liabilities transferred by section 136(1), and
  - (b) is in the process of being done by or in relation to that Authority when its functions cease to exist.
- (3) Anything which—
  - (a) was done by the Land Authority for Wales for the purpose of or in connection with any of its functions or any property, rights or liabilities transferred by section 136(1), and
  - (b) is in effect immediately before its functions cease to exist,
 shall have effect as if done by the Welsh Development Agency.
- (4) The Welsh Development Agency shall be substituted for the Land Authority for Wales in any instruments, contracts or legal proceedings which—
  - (a) relate to any of the functions of that Authority or to any property, rights or liabilities transferred by section 136(1), and
  - (b) are made or commenced before its functions cease to exist.

## 138 Winding-down.

- (1) The Land Authority for Wales shall give to the Welsh Development Agency all the information, prepare all the documents and do all other things which appear to that Agency appropriate for the purpose of facilitating—
  - (a) the carrying into effect of sections 134 to 137 and section 139, or
  - (b) the exercise of any functions imposed on that Agency, or conferred on the Secretary of State, by this section;
 and the Land Authority for Wales may do anything else which appears to it appropriate for that purpose.
- (2) The Land Authority for Wales shall comply with paragraph 6 of Schedule 21 to the <sup>M66</sup>Local Government, Planning and Land Act 1980 (reports)—
  - (a) in relation to the last accounting year ending before its functions cease to exist (if it has not done so before then), and
  - (b) in relation to the period between the end of that accounting year and the time when its functions cease to exist (to which period that paragraph shall apply as if it were an accounting year).

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- (3) As from the time when the functions of the Land Authority for Wales cease to exist, the Welsh Development Agency shall make available to that Authority such facilities as that Authority may reasonably require for exercising its functions under this section.
- (4) The statement of accounts prepared by the Welsh Development Agency in accordance with paragraph 8(1) of Schedule 3 to the <sup>M67</sup>Welsh Development Agency Act 1975 in respect of the accounting year in which the functions of the Land Authority for Wales cease to exist shall include a statement of accounts relating to the activities of that Authority—
  - (a) in respect of the last accounting year ending before the time when those functions cease to exist (if that Authority has not before that time prepared a statement of accounts in accordance with paragraph 3 of Schedule 21 to the <sup>M68</sup>Local Government, Planning and Land Act 1980 in relation to that accounting year), and
  - (b) in respect of the period between the end of that accounting year and that time.
- (5) The Secretary of State may pay to members of the Land Authority for Wales—
  - (a) any remuneration which he considers appropriate in respect of the performance of their duties as members of that Authority after the time when its functions cease to exist, and
  - (b) any allowances which he determines should be paid to them in respect of expenses properly incurred by them in the performance of those duties after that time.
- (6) The Secretary of State may determine that, as from the time when the functions of the Land Authority for Wales cease to exist or any later time, the number of members of that Authority shall be reduced to a number which he considers appropriate (and may, accordingly, remove any such members from office).
- (7) In this section “accounting year” means the period of twelve months ending with 31st March.

#### Commencement Information

**I14** S. 138 wholly in force; s. 138 not in force at Royal Assent see s. 158; s. 138(1)(6) in force at 2.9.1998 and s. 138(2)-(5)(7) in force at 1.10.1998 by S.I. 1998/2244, arts. 3, 4

#### Marginal Citations

**M66** 1980 c. 65.

**M67** 1975 c. 70.

**M68** 1980 c. 65.

### 139 Abolition etc.

- (1) The Land Authority for Wales shall cease to exist when the Secretary of State, being satisfied that its duties under section 138 have been discharged, by order so directs.
- (2) No amendment or repeal made by this Act or by virtue of subsection (3) affects—
  - (a) the continuance of the Land Authority for Wales for the purpose of exercising its functions under section 138, or
  - (b) the continued operation for that purpose of any enactment relating to the Land Authority for Wales.



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- (3) The Secretary of State may by order make any consequential, incidental, supplementary or transitional provisions, and any savings, which appear to him to be appropriate in consequence of or otherwise in connection with—
- (a) the functions of the Land Authority for Wales ceasing to exist under section 134,
  - (b) the transfer of the property, rights and liabilities of that Authority by section 136(1), or
  - (c) the abolition of that Authority.
- (4) An order under subsection (3) may include provisions in the form of amendments or repeals of any of sections 134 to 138 or any other enactment.

**Commencement Information**

**I15** S. 139 wholly in force; s. 139 not in force at Royal Assent see s. 158; s. 139(3)(4) in force at 2.9.1998 and s. 139(1)(2) in force at 1.10.1998 by S.I. 1998/2244, arts. 3, 4

*Housing for Wales*

**140 Transfer of functions, property, staff etc. to Secretary of State.**

- (1) The functions of Housing for Wales shall be transferred to the Secretary of State in accordance with the provisions of Schedule 16 which amends the enactments relating to that body for the purpose of—
- (a) transferring its functions to the Secretary of State, and
  - (b) making provision consequential on the transfer.
- (2) There shall be transferred to and vest in the Secretary of State for Wales by virtue of this subsection all property, rights and liabilities to which Housing for Wales is entitled or subject when its functions are transferred to the Secretary of State in accordance with the provisions of Schedule 16.
- (3) A certificate issued by the Secretary of State that any property has been transferred by subsection (2) shall be conclusive evidence of the transfer.
- (4) Subsection (2) has effect in relation to property, rights or liabilities to which it applies in spite of any provision (of whatever nature) which would prevent or restrict the transfer of the property, rights or liabilities otherwise than by that subsection.
- (5) Subsection (2) does not have effect to continue in force any contract of employment; but the Secretary of State may by order make provision for the transfer of staff of Housing for Wales.
- (6) An order under subsection (5) may make any appropriate consequential, incidental, supplementary or transitional provisions or savings.

**Commencement Information**

**I16** S. 140 wholly in force; s. 140 not in force at Royal Assent see s. 158; s. 140(5)(6) in force at 2.9.1998 and s. 140(1)-(4) in force at 1.11.1998 by S.I. 1998/2244, arts. 3, 5



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## **141 Transitional provisions.**

- (1) Nothing in section 140 or Schedule 16, or in any repeal made by this Act, affects the validity of anything done by or in relation to Housing for Wales before its functions are transferred.
- (2) There may be continued by or in relation to the Secretary of State for Wales anything (including legal proceedings) which—
  - (a) relates to any of the functions of Housing for Wales or to any property, rights or liabilities transferred by section 140(2), and
  - (b) is in the process of being done by or in relation to Housing for Wales when its functions are transferred.
- (3) Anything which—
  - (a) was done by Housing for Wales for the purpose of or in connection with any of its functions or by Housing for Wales or the Housing Corporation for the purpose of or in connection with any property, rights or liabilities transferred by section 140(2), and
  - (b) is in effect immediately before its functions are transferred,shall have effect as if done by the Secretary of State for Wales.
- (4) The Secretary of State for Wales shall be substituted—
  - (a) for Housing for Wales in any instruments, contracts or legal proceedings which relate to any of the functions of Housing for Wales and are made or commenced before its functions are transferred, and
  - (b) for Housing for Wales or the Housing Corporation in any instruments, contracts or legal proceedings which relate to any property, rights or liabilities transferred by section 140(2) and are so made or commenced.

## **142 Winding-down.**

- (1) Housing for Wales shall give to the Secretary of State all the information, prepare all the documents and do all other things which appear to the Secretary of State appropriate for the purpose of facilitating—
  - (a) the carrying into effect of sections 140, 141 and 143 and Schedule 16, or
  - (b) the exercise of any functions transferred to the Secretary of State by Schedule 16 or conferred or imposed on him by this section;and Housing for Wales may do anything else which appears to it appropriate for that purpose.
- (2) Housing for Wales shall comply with section 78(1) and (2) (annual reports) and section 97(1) to (3) (accounts) of the <sup>M69</sup>Housing Associations Act 1985—
  - (a) in relation to the last financial year ending before its functions are transferred (if it has not done so before then), and
  - (b) in relation to the period between the end of that financial year and the time when its functions are transferred (to which period those provisions shall apply as if it were a financial year).
- (3) As from the time when the functions of Housing for Wales are transferred, the Secretary of State shall make available to Housing for Wales such facilities as it may reasonably require for exercising its functions under this section.

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- (4) Section 78(3) of the <sup>M70</sup>Housing Associations Act 1985 (duty of Secretary of State to lay reports before Parliament) shall apply in relation to a report made pursuant to subsection (2).
- (5) Section 97(4) of that Act (duty of Secretary of State to prepare accounts) shall, so far as it relates to Housing for Wales, apply in relation to the period between—
  - (a) the end of the last financial year before its functions are transferred, and
  - (b) the time when its functions are transferred,
 as if it were a financial year.
- (6) The Secretary of State may pay to members of Housing for Wales—
  - (a) any remuneration which he considers appropriate in respect of the performance of their duties as members of Housing for Wales after the time when its functions are transferred, and
  - (b) any allowances which he determines should be paid to them in respect of expenses properly incurred by them in the performance of those duties after that time.
- (7) The Secretary of State may determine that, as from the time when the functions of Housing for Wales are transferred or any later time, the number of members of Housing for Wales shall be reduced to a number which he considers appropriate (and may, accordingly, remove any such members from office).
- (8) The Secretary of State shall meet the costs of remunerating auditors and any other costs incurred by Housing for Wales in connection with the exercise of any of its functions under this section.

#### Commencement Information

**I17** S. 142 wholly in force; s. 142 not in force at Royal Assent see s. 158; s. 142(1)(7)(8) in force at 2.9.1998 and s. 142(2)-(6) in force at 1.11.1998 by S.I. 1998/2244, arts. 3, 5

#### Marginal Citations

**M69** 1985 c. 69.

**M70** 1985 c. 69.

### 143 Abolition etc.

- (1) Housing for Wales shall cease to exist when the Secretary of State, being satisfied that its duties under section 142 have been discharged, by order so directs.
- (2) No amendment or repeal made by this Act or by virtue of subsection (3) affects—
  - (a) the continuance of Housing for Wales for the purpose of exercising its functions under section 142, or
  - (b) the continued operation for that purpose of any enactment relating to Housing for Wales.
- (3) The Secretary of State may by order make any consequential, incidental, supplementary or transitional provisions, and any savings, which appear to him to be appropriate in consequence of or otherwise in connection with—
  - (a) the transfer of functions, property, rights and liabilities of Housing for Wales by section 140(1) and (2) and Schedule 16, or

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- (b) the abolition of Housing for Wales.
- (4) An order under subsection (3) may include provisions in the form of amendments or repeals of sections 140 to 142, Schedule 16 or any other enactment.

#### Commencement Information

**I18** S. 143 wholly in force; s. 143 not in force at Royal Assent see s. 158; s. 143(3)(4) in force at 2.9.1998 and s. 143(1)(2) in force at 1.10.1998 by S.I. 1998/2244, art. 3, 5

### Accountability

#### 144 Accounts, audit and reports.

- (1) The Secretary of State may by order make provision about—
  - (a) the accounts of any body specified in Part I or II of Schedule 17,
  - (b) the audit of any such body's accounts, or
  - (c) reports by any such body on its exercise of its functions.
- (2) An order under subsection (1) may not make any provision about, or about the audit of, the accounts kept in pursuance of section 98(1) of the <sup>M71</sup>National Health Service Act 1977 (accounts subject to audit by auditors appointed by the Audit Commission) by any body specified in Part II of Schedule 17.
- (3) An order under subsection (1) may include provision imposing, varying or abolishing requirements in respect of any accounts or reports or the audit of any accounts and, in particular, may provide for—
  - (a) designating accounting officers and specifying their responsibilities,
  - (b) the preparation by a body of accounts extending to financial affairs and transactions of any undertaking (as defined in section 259(1) of the <sup>M72</sup>Companies Act 1985) of which the body is (or, if it were an undertaking as so defined, would be) a parent undertaking (within the meaning of section 258 of that Act),
  - (c) the granting to auditors, and persons considering reports by any auditor or body, of rights of access to documents and of rights to obtain information, explanations and assistance from persons holding or accountable for documents,
  - (d) the giving of directions by the Assembly (or, before the first ordinary election, by the Secretary of State), and
  - (e) the publication and public inspection of documents.
- (4) The Secretary of State may by order make provision for designating accounting officers of any body specified in Part III of Schedule 17 and specifying their responsibilities.
- (5) An order under subsection (1) or (4) may contain any appropriate consequential, incidental, supplementary or transitional provisions or savings (including provisions in the form of amendments or repeals of enactments).
- (6) An Order in Council under section 22 may include any provision that may be included in an order under subsection (1) or (4).

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- (7) If requested to do so by the House of Commons Committee of Public Accounts, the Audit Committee may—
- (a) on behalf of the Committee of Public Accounts take evidence from a person designated in pursuance of subsection (3)(a) or (4) as an accounting officer of a body specified in Schedule 17, and
  - (b) report to the Committee of Public Accounts and transmit to that Committee any evidence so taken.
- (8) The Secretary of State may by order amend any of the Parts of Schedule 17 by—
- (a) adding any public body (other than the Auditor General for Wales, [<sup>F18</sup>Her Majesty’s Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru], the Welsh Administration Ombudsman [<sup>F19</sup>the Children’s Commissioner for Wales], the Health Service Commissioner for Wales, a county council, a county borough council or a community council) whose functions relate exclusively to Wales or an area of Wales,
  - (b) omitting any body, or
  - (c) altering the description of any body.
- (9) In this section—
- (a) “audit”, in relation to any accounts, includes their examination and certification and reporting on them or on any examination of them, and
  - (b) “body” includes office.

#### Textual Amendments

**F18** Words in s. 144(8)(a) substituted (1.1.2001) by 2000 c. 21 s. 73(3)(a); S.I. 2000/3230, art. 2, Sch.

**F19** Words in s. 144(8)(a) inserted (13.11.2000) by 2000 c. 14, s. 72, Sch. 2 para. 18; S.I. 2000/2992, art. 2(1), Sch. 1

#### Marginal Citations

**M71** 1977 c. 49.

**M72** 1985 c. 6.

## 145 Examinations into use of resources.

- (1) The Auditor General for Wales may carry out examinations into the economy, efficiency and effectiveness with which a body or office specified in Schedule 17 has used its resources in discharging its functions.
- (2) Subsection (1) shall not be construed as entitling the Auditor General for Wales to question the merits of the policy objectives of any body or office in respect of which an examination is carried out.
- (3) In determining how to exercise his functions under this section, the Auditor General for Wales shall take into account the views of the Audit Committee (or, before the first ordinary election, the views of the Secretary of State) as to the examinations which he should carry out under this section.
- (4) The Auditor General for Wales may lay before the Assembly a report of the results of any examination carried out by him under this section.

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**Changes to legislation:** Government of Wales Act 1998 is up to date with all changes known to be in force on or before 31 March 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)

- (5) The Auditor General for Wales and the Comptroller and Auditor General may cooperate with, and give assistance to, each other in connection with the carrying out of examinations under this section, or section 6 or 7 of the <sup>M73</sup>National Audit Act 1983 (economy etc. examinations), in respect of a body or office specified in Schedule 17.
- (6) The Comptroller and Auditor General shall—
- (a) consult the Auditor General for Wales, and
  - (b) take into account any relevant work done or being done by the Auditor General for Wales,
- before he carries out an examination under section 6 or 7 of the <sup>M74</sup>National Audit Act 1983 (economy etc. examinations) in respect of a body or office specified in Schedule 17.

#### Marginal Citations

**M73** 1983 c. 44.

**M74** 1983 c. 44.

VALID FROM 01/04/2005

#### <sup>F20</sup>145A Studies for improving economy etc in services

- (1) The Auditor General for Wales may undertake or promote studies designed to enable him to make recommendations for improving economy, efficiency and effectiveness in the discharge of the functions of any relevant body or bodies.
- (2) The Auditor General for Wales may also undertake or promote other studies relating to the provision of services by any relevant body or bodies.
- (3) Subsections (1) and (2) do not entitle the Auditor General for Wales to question the merits of the policy objectives of any relevant body.
- (4) In determining how to exercise his functions under this section, the Auditor General for Wales shall take into account the views of the Audit Committee as to the studies which he should undertake or promote under this section.
- (5) For the purposes of this section each of the following is a “relevant body”—
  - (a) a person who prepares auditable accounts within the meaning given in section 95(7);
  - (b) any other person (other than a local government body in Wales) in relation to whom, by virtue of provision made by or under this or any other Act, the Auditor General for Wales carries out examinations or studies relating to the economy, efficiency and effectiveness with which that person has used his resources in discharging his functions;
  - (c) a person (other than a registered social landlord in Wales) in respect of whom the Auditor General for Wales has functions by virtue of provision made under section 146A.
- (6) Where the Auditor General for Wales undertakes or promotes a study under this section he may arrange for a report containing—
  - (a) the results of the study, and

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(b) his recommendations (if any),  
to be laid before the Assembly.

(7) In this section—

“local government body in Wales” has the meaning given in section 12(1) of the Public Audit (Wales) Act 2004; and

“registered social landlord in Wales” has the meaning given in section 146A(2).]

#### Textual Amendments

**F20** S. 145A inserted (1.4.2005) by Public Audit (Wales) Act 2004 (c. 23), ss. 3, 73; S.I. 2005/558, art. 2, Sch. 1

VALID FROM 01/04/2005

#### [<sup>F21</sup>145B Studies at request of educational bodies

(1) The Auditor General for Wales may undertake studies designed to enable him to make recommendations for improving economy, efficiency and effectiveness in the discharge of the functions of a body specified in the first column of the Table, if requested to do so by the body (or one of the bodies) specified in relation to it in the second column of the Table.

<i>Subject of study</i>	<i>Requesting body</i>
The governing body of an institution in Wales within the higher education sector.	The governing body or the Higher Education Funding Council for Wales.
The governing body of an institution in Wales receiving financial support under Part 1 of the Education Act 1994.	The governing body or the appropriate funding agency.
The governing body of an institution in Wales within the further education sector.	The governing body or the National Council for Education and Training for Wales.

(2) Subsection (1) does not entitle the Auditor General for Wales to question the merits of the policy objectives of a body.

(3) Where the Auditor General for Wales undertakes a study under subsection (1) he may, with the consent of the body that requested the study, arrange for a report containing—

- (a) the results of the study, and
- (b) his recommendations (if any),

to be laid before the Assembly.

(4) The Auditor General for Wales may, at the request of the Higher Education Funding Council for Wales, give the council advice in connection with the discharge of the

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council's functions under section 124B(2)(b) of the Education Reform Act 1988 or paragraph 18(2)(b) of Schedule 7 to that Act.

- (5) The Auditor General for Wales may, at the request of a higher education corporation or further education corporation in Wales—
- (a) advise them in connection with the appointment of persons to audit their accounts;
  - (b) arrange for their accounts for a financial year to be audited by one or more members of the staff of the Auditor General for Wales appointed by the corporation.
- (6) In subsection (5)—
- (a) “higher education corporation” and “further education corporation” have the same meaning as in the Further and Higher Education Act 1992;
  - (b) references to the accounts of a higher education corporation include references to a statement of accounts prepared by the corporation under section 124B of the Education Reform Act 1988 or paragraph 18 of Schedule 7 to that Act.
- (7) This section must be construed as one with the Education Act 1996; and references in any enactment to the Education Acts include this section.]

#### Textual Amendments

**F21** S. 145B inserted (1.4.2005) by [Public Audit \(Wales\) Act 2004 \(c. 23\)](#), ss. 4, 73; S.I. 2005/558, art. 2, Sch. 1

VALID FROM 01/04/2005

#### [<sup>F22</sup>145C] Studies relating to registered social landlords

- (1) The Assembly and the Auditor General for Wales may agree on one or more programmes of studies designed to enable the Auditor General for Wales to make recommendations for improving economy, efficiency and effectiveness in the discharge of the functions of registered social landlords in Wales.
- (2) If a programme is agreed, the Auditor General for Wales shall ensure that studies giving effect to the programme are undertaken by him or on his behalf.
- (3) It shall be a term of every such programme that the Assembly make good to the Auditor General for Wales the full costs incurred by him in undertaking the programme.
- (4) This section does not entitle the Auditor General for Wales to question the merits of the policy objectives of a registered social landlord in Wales.
- (5) Where a study is undertaken under this section by the Auditor General for Wales or on his behalf, he may arrange for a report containing—
  - (a) the results of the study, and
  - (b) his recommendations (if any),to be laid before the Assembly.



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- (6) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed under section 95(3)(a) or (b) in relation to a study under this section.
- (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (8) The Auditor General for Wales may disclose to the Assembly information obtained by him or a person acting on his behalf in the course of a study under this section.
- (9) “Registered social landlord in Wales” means a body which is—
  - (a) registered as a social landlord under Chapter 1 of Part 1 of the Housing Act 1996, and
  - (b) mentioned in any of paragraphs (a) to (c) of section 56(2) of that Act.]

#### Textual Amendments

**F22** S. 145C inserted (1.4.2005) by [Public Audit \(Wales\) Act 2004 \(c. 23\)](#), **ss. 5, 73**; S.I. 2005/558, **art. 2**, **Sch. 1**

VALID FROM 31/01/2008

#### [<sup>F23</sup>145D] Advice and assistance for registered social landlords

- (1) The Auditor General for Wales may, if he thinks it appropriate to do so, provide advice or assistance to a registered social landlord in Wales for the purpose of the exercise by the registered social landlord of its functions.
- (2) Advice or assistance under this section may be provided on such terms and conditions, including conditions as to payment, as the Auditor General for Wales thinks fit.
- (3) This section has effect without prejudice to paragraph 21 of Schedule 8 to the Government of Wales Act 2006 (arrangements between Auditor General for Wales and certain bodies).
- (4) In this section, “registered social landlord in Wales” means a body which is—
  - (a) registered as a social landlord under Chapter 1 of Part 1 of the Housing Act 1996, and
  - (b) mentioned in any of paragraphs (a) to (c) of section 56(2) of that Act.]

#### Textual Amendments

**F23** S. 145D inserted (E.W.) (31.1.2008) by Local Government and Public Involvement in [Health Act 2007 \(c. 28\)](#), **ss. 166, 245**; S.I. 2008/172, **art. 2(g)** (as amended by S.I. 2008/337, **art. 3**)



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## 146 Transfer etc. of functions of Comptroller and Auditor General.

- (1) The Secretary of State may by order provide for any function of the Comptroller and Auditor General, so far as relating to a body or office falling within subsection (2), to be transferred to, or become a function also of, the Auditor General for Wales.
- (2) The bodies and offices falling within this subsection are—
  - (a) any body or office specified in Schedule 17, and
  - (b) any body or office (other than one specified in Schedule 17) whose functions relate exclusively to Wales or an area of Wales (but not the Auditor General for Wales, [<sup>F24</sup>Her Majesty’s Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru], the Welsh Administration Ombudsman, the Health Service Commissioner for Wales, a county council, a county borough council or a community council).
- (3) An order under subsection (1) may contain any appropriate consequential, incidental, supplementary or transitional provisions or savings (including provisions in the form of amendments or repeals of enactments).
- (4) An Order in Council under section 22 may include any provision that may be included in an order under subsection (1).

### Textual Amendments

**F24** Words in s. 146(2)(b) substituted (1.1.2001) by 2000 c. 21, s. 73(3)(a); S.I. 2000/3230, art. 2, Sch.

VALID FROM 01/04/2005

### [<sup>F25</sup>146A Transfer etc of functions of Assembly

- (1) The Assembly may, with the consent of the Auditor General for Wales, by order provide for any of its supervisory functions in respect of a public body or a registered social landlord in Wales—
  - (a) to be exercised on its behalf by the Auditor General for Wales, or
  - (b) to be transferred to the Auditor General for Wales.
- (2) In this section—

“public body” means—

  - (a) a body exercising functions of a public nature, or
  - (b) a body entirely or substantially funded from public money,

(and for this purpose “body” includes office);

“registered social landlord in Wales” means a body which is—

  - (a) registered as a social landlord under Chapter 1 of Part 1 of the Housing Act 1996, and
  - (b) mentioned in any of paragraphs (a) to (c) of section 56(2) of that Act;

“supervisory functions”, in respect of a public body or a registered social landlord in Wales, means functions of examining, inspecting, reviewing or studying the financial or other management of the public body or registered social landlord or the way in which it discharges any of its functions.

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- (3) The Assembly may direct the Auditor General for Wales to prepare a report on his exercise, generally or in respect of a specific body or matter, of any function transferred to him by an order under subsection (1)(b).
- (4) The Auditor General for Wales must lay before the Assembly any report prepared by him in accordance with a direction under subsection (3).
- (5) An order under subsection (1) may contain any appropriate consequential, incidental, supplementary or transitional provisions or savings (including provisions in the form of amendments or repeals of enactments).]

#### Textual Amendments

**F25** S. 146A inserted (1.4.2005) by [Public Audit \(Wales\) Act 2004 \(c. 23\)](#), **ss. 1, 73**; S.I. 2005/558, art. 2, **Sch. 1**

### 147 Environment Agency.

- (1) The Secretary of State may by order—
  - (a) make provision for any function of the Comptroller and Auditor General relating to the Environment Agency to become a function also of the Auditor General for Wales so far as it relates to any of the Agency’s Welsh functions or to any funding provided to the Agency by the Assembly, or
  - (b) make provision about reports to the Assembly by the Environment Agency on the Agency’s activities in exercise of its Welsh functions (including provision for the giving of directions by the Assembly about such reports).
- (2) An order under subsection (1) may 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 in Council under section 22 may include any provision that may be included in an order under subsection (1).
- (4) In this section references to the Environment Agency’s Welsh functions are to its functions so far as exercisable in relation to Wales or to a cross-border body, or an English border area, in relation to which environmental functions of the Assembly are exercisable; and “environmental functions of the Assembly” means functions of the Assembly in a field in which the Environment Agency also has functions.

#### Miscellaneous

### 148 Health Authorities.

**F26** .....

#### Textual Amendments

**F26** S. 148 repealed (1.10.2002 for E.W.) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\)](#), s. 37, **Sch. 8 para. 27**, **Sch. 9 Pt. 3**; S.I. 2002/2478, arts. 2(1), **3(1)(e)(ii)** (subject to

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art. 3(3) and with transitional provisions in art. 4) (S.I. 2002/2532, arts. 1(3), 2, Sch. purports to bring Sch. 8 para. 27 of the repealing Act into force on 10.10.2002 in relation to Wales only)

#### 149 Agricultural wages committees.

In section 2 of the <sup>M75</sup>Agricultural Wages Act 1948 (agricultural wages committees for counties and combinations of counties), in the proviso to subsection (1) (exceptions to proposition that there be one committee for each county in England and Wales), at the end insert “and

- (c) there may, if the Minister thinks it expedient, be established as aforesaid a committee for the combination of all the counties in Wales instead of separate committees for counties or combinations of counties in Wales.”

#### Marginal Citations

M75 1948 c. 47.

#### 150 Abolition of Residuary Body for Wales.

- (1) Paragraph 18 of Schedule 13 to the <sup>M76</sup>Local Government (Wales) Act 1994 (provisions for winding up of Residuary Body for Wales) is amended as follows.
- (2) In sub-paragraph (2) (meaning of “the transitional period” within which the Residuary Body must try to complete its work and at the end of which it is to be wound up), for “period of five years beginning with the establishment of the Residuary Body” substitute “ period beginning with the establishment of the Residuary Body and ending with 31st March 1999 ”.
- (3) Omit—
  - (a) in sub-paragraph (3), “Subject to sub-paragraph (4),”, and
  - (b) sub-paragraph (4),(under which the Secretary of State may specify a period longer than the transitional period as the period at the end of which the Residuary Body is to be wound up).
- (4) For sub-paragraphs (5) to (7) (duty of Residuary Body to submit scheme for its winding up and to make arrangements for transfers etc. and power of Secretary of State to make orders) substitute—
  - “(5) The Residuary Body shall, before the end of the period of three months beginning with the day on which the Government of Wales Act 1998 is passed, submit to the Secretary of State a scheme for the winding up of the Residuary Body.
  - (6) The scheme shall include in relation to the Residuary Body’s remaining functions, property, rights and liabilities—
    - (a) a statement of arrangements made by the Residuary Body for their transfer by the Residuary Body to another body or bodies,
    - (b) proposals for their transfer by the Secretary of State to another body or bodies, or

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(c) such a statement in relation to some of them and such proposals in relation to the rest.

(7) The Secretary of State may by order make provision for giving effect to the scheme (with or without modifications) and for the transfer of functions, property, rights and liabilities of the Residuary Body to another body or bodies (whether or not as proposed in the scheme).”

#### Marginal Citations

M76 1994 c. 19.

## PART VII

### SUPPLEMENTARY

#### 151 Power to amend enactments.

- (1) The Secretary of State may by order make in any enactment—
- (a) contained in an Act passed before or in the same session as this Act, or
  - (b) made before the passing of this Act or in the session in which this Act is passed,
- such amendments or repeals as appear to him to be appropriate in consequence of this Act.
- (2) An Order in Council under section 22 may include any provision that may be included in an order under subsection (1).

#### 152 Repeals.

Schedule 18 (which contains repeals, including repeals of spent enactments) has effect.

#### Commencement Information

**I19** S. 152 partly in force; S. 152 not in force at Royal Assent, see s. 158; s. 152 in force for certain purposes at 2.9.1998, 1.10.1998, and 1.11.1998 by S.I. 1998/2244, arts. 3, 4, 5; s. 152 in force for certain purposes at 1.2.1999 by S.I. 1999/118, art. 2; s. 152 in force for certain purposes at 1.4.1999 by S.I. 1999/782, art. 2; s. 152 in force for certain purposes at 1.7.1999 by S.I. 1999/1290, art. 4

#### 153 Transitional provisions etc.

- (1) The Secretary of State may by order make such transitional, consequential, incidental or supplementary provision, or such savings, as he considers appropriate for the purpose of or in connection with the coming into force of any provision of this Act.
- (2) If section 107 comes into force before the Human Rights Act 1998 has come into force (or come fully into force), that section shall have effect until the time when that Act is fully in force as it will have effect after that time.

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## 154 Orders and directions.

- (1) Any power of a Minister of the Crown or the Assembly under this Act to make an order shall be exercisable by statutory instrument.
- (2) No order to which this subsection applies shall be made unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.
- (3) Subsection (2) applies—
  - (a) to an order under section 11, 75(5), 108(2) or (3), 144(8) or 155(2), and
  - (b) to an order under section 96(5), 117, 133(3), 139(3), 143(3), 144(1) or (4), 146(1), 147(1) or 151 or paragraph 1 of Schedule 7 which contains provisions in the form of amendments or repeals of enactments contained in an Act.
- (4) No order shall be made under section 82(6) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the House of Commons.
- (5) A statutory instrument containing an order to which this subsection applies shall (unless a draft of the statutory instrument has been approved by a resolution of each House of Parliament) be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Subsection (5) applies—
  - (a) to an order under section 3, 15(5), 17, 25, 36(5), 39, 49(1), 96(5), 106(3), 108(7), 117, 118(1)(f), 130(4), 133(3), 136(4), 139(3), 140(5), 143(3), 144(1) or (4), 146(1), 147(1), 151 or 153, paragraph 2 of Schedule 6, paragraph 1 of Schedule 7 or paragraph 17(9) of Schedule 9, and
  - (b) subject to subsection (7), to an order under section 108(1).
- (7) A statutory instrument containing only an order under subsection (1) of section 108 revoking a previous order under that subsection—
  - (a) shall not be subject to annulment in pursuance of a resolution of either House of Parliament, but
  - (b) shall be laid before Parliament.
- (8) Any power conferred by this Act to give a direction includes power to vary or revoke the direction.

## 155 Interpretation.

- (1) In this Act—

“Community law” means—

  - (a) all the rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties, and
  - (b) all the remedies and procedures from time to time provided for by or under the Community Treaties,

“delegate” includes further delegate,  
“enactment” includes subordinate legislation,  
“functions” includes powers and duties,  
“Minister of the Crown” includes the Treasury,

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“subordinate legislation” has the same meaning as in the <sup>M77</sup>Interpretation Act 1978, and

“Wales” includes the sea adjacent to Wales out as far as the seaward boundary of the territorial sea;

and related expressions shall be construed accordingly.

- (2) The Secretary of State may by order determine, or make provision for determining, for the purposes of the definition of “Wales” any boundary between—
- (a) the parts of the sea which are to be treated as adjacent to Wales, and
  - (b) those which are not,
- and may make different determinations or provision for different purposes; and an Order in Council under section 22 may include any provision that may be included in an order under this subsection.
- (3) In this Act “financial year” means the twelve months ending with 31st March; and the first financial year of the Assembly is the financial year ending with the 31st March following the day of the first ordinary election.
- (4) Section 13 of the <sup>M78</sup>National Audit Act 1983 (interpretation of references to the Committee of Public Accounts) applies for the purposes of this Act as for those of that Act.

#### Marginal Citations

**M77** 1978 c. 30.

**M78** 1983 c. 44.

## 156 Defined expressions.

In this Act the expressions listed below are defined by, or otherwise fall to be construed in accordance with, the provisions indicated—

the Assembly	section 1(1)
Assembly constituency	section 2(2) and Schedule 1
Assembly electoral region	section 2(2) and Schedule 1
Assembly First Secretary	section 53
Assembly general subordinate legislation	section 58(6)
Assembly members	section 2(3)
Assembly Secretary	section 53
Audit Committee	section 60
Auditor General for Wales	section 90(1)
Committee of Public Accounts	section 155(4)
Community law	section 155(1)
constituency vote	section 4(2)
the Convention rights	section 107(5)

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cross-border body	paragraph 3(2) of Schedule 3
delegate	section 155(1)
deputy presiding officer	section 52(1)(b) and (2)
electoral region figure	section 6(3)
electoral region vote	section 4(3)
enactment	section 155(1)
English border area	paragraph 3(2) of Schedule 3
executive committee	section 56
financial year	section 155(3)
first financial year of the Assembly	section 155(3)
functions	section 155(1)
largest party with an executive role	section 59(7)
local government scheme	section 113(1)
Minister of the Crown	section 155(1)
ordinary election	section 2(4)
Partnership Council	section 113(2)
presiding officer	section 52(1)(a) and (2)
regional committee	section 61
regional returning officer	section 11(6)
registered political party	section 4(8)
regulatory appraisal	section 65(1)
relevant Parliamentary procedural provision	section 44(3)
subject committee	section 57
subordinate legislation	section 155(1)
subordinate legislation procedures	section 64
subordinate legislation scrutiny committee	section 58
Wales	section 155(1) and (2)
Welsh Administration Ombudsman	section 111
Welsh public records	section 118

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## 157 Financial provisions.

- (1) There shall be paid out of money provided by Parliament—
- (a) any expenditure incurred by any Minister of the Crown or government department under or by virtue of this Act, and

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- (b) any increase attributable to this Act in the sums payable out of money so provided under any other enactment.
- (2) There shall be paid out of the National Loans Fund any increase attributable to this Act in the sums payable out of that Fund under any other enactment.
- (3) There shall be paid into the National Loans Fund any increase attributable to this Act in the sums payable into that Fund under any other enactment.
- (4) There shall be paid into the Consolidated Fund any sums received by the Secretary of State under or by virtue of this Act (apart from any required to be paid into the National Loans Fund).

### 158 Commencement.

- (1) Parts I and II, the provisions of Part III other than sections 50 and 51, Parts IV to VI and section 152 (and Schedule 18) shall not come into force until such day as the Secretary of State may by order appoint.
- (2) Different days may be appointed under this section for different purposes.

#### Subordinate Legislation Made

- P1** S. 158 power partly exercised: different dates appointed for specified provisions by [S.I. 1998/2244](#)  
S. 158 power partly exercised: 1.12.1998 appointed for specified provisions by [S.I. 1998/2789](#)  
S. 158 power partly exercised: 1.2.1999 appointed for specified provisions by [S.I. 1999/118](#)  
S. 158 power partly exercised: 1.4.1999 appointed for specified provisions by [S.I. 1999/782](#)  
S. 158 power partly exercised: different dates appointed for specified provisions by [S.I. 1999/1290](#)  
S. 158 power partly exercised: 14.5.2001 appointed for specified provisions by [S.I. 2001/1756](#)

### 159 Short title.

This Act may be cited as the Government of Wales Act 1998.



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## SCHEDULES

### SCHEDULE 1

Section 2.

#### ASSEMBLY CONSTITUENCIES AND ASSEMBLY ELECTORAL REGIONS

##### Commencement Information

**I20** Sch. 1 in force at 1.12.1998 by S.I. 1998/2789, art. 2

##### *General*

- 1 The Assembly constituencies shall be the parliamentary constituencies in Wales.
- 2
  - (1) There shall be five Assembly electoral regions.
  - (2) The Assembly electoral regions shall be the five European Parliamentary constituencies in Wales provided for by the <sup>M79</sup>European Parliamentary Constituencies (Wales) Order 1994.
  - (3) There shall be four Assembly seats for each Assembly electoral region.

##### Marginal Citations

**M79** S.I. 1994/428.

- 3 Paragraphs 1 and 2(2) and (3) are subject to any Order in Council under the <sup>M80</sup>Parliamentary Constituencies Act 1986 (“the 1986 Act”), as that Act has effect as extended by this Schedule.

##### Marginal Citations

**M80** 1986 c. 56.

##### *Consideration of, and of number of seats for, Assembly electoral regions*

- 4 When the Boundary Commission for Wales (“the Commission”) provisionally determine (in pursuance of the 1986 Act) to recommend the making of alterations affecting any parliamentary constituencies, the Commission shall consider whether any alteration—

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- (a) in the Assembly electoral regions, or
  - (b) in the allocation of seats to the Assembly electoral regions,
- will be required in order to give effect to the rules set out in paragraph 8.

*Notices of proposed recommendations affecting Assembly electoral regions*

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

*Local inquiries in respect of Assembly electoral regions*

- 6 (1) The Commission may, if they think fit, cause a local inquiry to be held in respect of any Assembly electoral region or regions.
- (2) Where, on the publication of the notice under paragraph 5(1) of a proposed recommendation of the Commission for an alteration affecting any Assembly

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electoral regions, the Commission receive any representations objecting to the proposed recommendation from—

- (a) an interested local authority, or
- (b) a body of electors numbering 500 or more,

the Commission shall not make the recommendation unless, since the publication of the notice, a local inquiry has been held in respect of those Assembly electoral regions.

(3) Where a local inquiry was held in respect of those Assembly electoral regions before the publication of notice mentioned in sub-paragraph (2), that sub-paragraph shall not apply if the Commission, after considering—

- (a) the matters discussed at the local inquiry,
- (b) the nature of the representations received on the publication of the notice, and
- (c) any other relevant circumstances,

are of opinion that a further local inquiry would not be justified.

(4) In sub-paragraph (2)—

“interested local authority” means the council of a county or county borough whose area is wholly or partly included in the Assembly electoral regions affected by the proposed recommendation, and

“elector” means a person who, at the time when the representations are made, is registered in the register of local government electors at an address within any of the Assembly constituencies included in any of those Assembly electoral regions.

(5) Section 250(2) and (3) of the <sup>M81</sup>Local Government Act 1972 (witnesses at local inquiries) shall apply in relation to any local inquiry which the Commission may cause to be held in pursuance of this paragraph.

#### Marginal Citations

M81 1972 c. 70.

#### *Reports to show any alterations affecting Assembly electoral regions*

7 (1) This paragraph applies where the Commission submit to the Secretary of State—

- (a) a report under subsection (1) of section 3 of the 1986 Act recommending alterations in parliamentary constituencies, or
- (b) a report under subsection (3) of that section.

(2) The report shall show any alteration—

- (a) in the Assembly electoral regions, or
- (b) in the allocation of seats to the Assembly electoral regions,

which the Commission recommend in order to give effect to the rules set out in paragraph 8.

(3) If, in the opinion of the Commission, no alteration is required for that purpose, they shall state that in the report.

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- (4) If the report recommends any alteration in any Assembly electoral regions, it shall state the name (in English and in Welsh) by which the Commission recommend that the Assembly electoral regions (as proposed to be altered) should be known.
- (5) The Commission shall send a copy of the report to the Assembly.

#### *The rules*

- 8 (1) The rules referred to in paragraphs 4 and 7(2) are—
- (1) Each Assembly constituency shall be wholly included in one Assembly electoral region.
  - (2) The regional electorate for an Assembly electoral region shall be as near the regional electorate for each other Assembly electoral region as is reasonably practicable, having regard (where appropriate) to special geographical considerations.
  - (3) The total number of Assembly seats for the Assembly electoral regions shall be—
    - (a) one half of the total number of the Assembly constituencies, or
    - (b) (if that total number is not exactly divisible by two) one half of the number produced by adding one to that total number.
  - (4) The number of Assembly seats for the Assembly electoral regions shall be—
    - (a) one fifth of the total number of Assembly seats for the electoral Assembly regions, or
    - (b) (if that total number is not exactly divisible by five) either one fifth of the highest number which is less than that total number and exactly divisible by five or the number produced by adding one to one fifth of that highest number (as provided by sub-paragraphs (2) to (4)).
- (2) If the total number of Assembly seats for the electoral Assembly regions is not exactly divisible by five, the Commission shall calculate the difference between—
- (a) the total number of seats for the Assembly electoral regions, and
  - (b) the highest number which is less than that total number and exactly divisible by five,
- and that is the number of residual seats to be allocated by the Commission.
- (3) The Commission shall not allocate more than one residual seat to an Assembly electoral region.
  - (4) The Commission shall divide the regional electorate for each Assembly electoral region by the aggregate of—
    - (a) the number of Assembly constituencies in the Assembly electoral region, and
    - (b) one fifth of the highest number which is less than the total number of seats for the electoral Assembly regions and exactly divisible by five,
 and, in allocating the residual seat or seats to an Assembly electoral region or Assembly electoral regions, shall have regard to the desirability of allocating the residual seat or seats to the Assembly electoral region or regions for which that calculation produces the highest number or numbers.

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### *Orders in Council giving effect to reports of Commission*

- 9 (1) An Order in Council under the 1986 Act for giving effect, with or without modifications, to the recommendations contained in a report of the Commission may specify different dates for its coming into force—
- (a) for the purposes of elections to the House of Commons, and
  - (b) for the purposes of the return of Assembly members.
- (2) The coming into force of an Order in Council under the 1986 Act shall not affect the operation of section 8 or 9, or the constitution of the Assembly, at any time before the next ordinary election.

### *Interpretation*

- 10 (1) For the purposes of any report of the Commission the regional electorate for an Assembly electoral region is the number of persons who, on the enumeration date, are registered in the register of local government electors at addresses within any of the Assembly constituencies included in the Assembly electoral region.
- (2) In sub-paragraph (1) “the enumeration date” means the date on which notice that the Commission intended to consider making the report was published in accordance with section 5(1) of the 1986 Act.
- 11 In this Schedule—
- “the 1986 Act” means the <sup>M82</sup>Parliamentary Constituencies Act 1986, and
  - “the Commission” means the Boundary Commission for Wales.

#### **Marginal Citations**

**M82** 1986 c. 56.

## SCHEDULE 2

Section 22(2).

### FIELDS IN WHICH FUNCTIONS ARE TO BE TRANSFERRED BY FIRST ORDER IN COUNCIL

#### **Commencement Information**

**I21** Sch. 2 in force at 1.12.1998 by S.I. 1998/2789, art. 2

- 1 Agriculture, forestry, fisheries and food.
- 2 Ancient monuments and historic buildings.

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- 3 Culture (including museums, galleries and libraries).
- 4 Economic development.
- 5 Education and training.
- 6 The environment.
- 7 Health and health services.
- 8 Highways.
- 9 Housing.
- 10 Industry.
- 11 Local government.
- 12 Social services.
- 13 Sport and recreation.
- 14 Tourism.
- 15 Town and country planning.
- 16 Transport.
- 17 Water and flood defence.
- 18 The Welsh language.

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## SCHEDULE 3

Section 22(5).

### TRANSFER ETC. OF FUNCTIONS: FURTHER PROVISIONS

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

**C33** Sch. 3 modified (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), [ss. 8\(4\)\(5\)](#), [53\(1\)](#); [S.I. 2005/1126](#), [art. 2\(2\)\(e\)](#)

#### Commencement Information

**I22** Sch. 3 in force at 1.12.1998 by [S.I. 1998/2789](#), [art. 2](#)

## PART I

### FUNCTIONS TRANSFERABLE ETC

#### *Existing and future functions*

- 1 (1) Subject to sub-paragraph (2), an Order in Council under section 22 may make provision about any function of a Minister of the Crown (including a function conferred or imposed after the passing of this Act).
- (2) Such an Order in Council may not make provision about any function conferred or imposed by any provision of this Act except—
- (a) section 3(4),
  - (b) section 36(5),
  - (c) paragraph 17(9) of Schedule 9,
  - (d) sections 126 to 143, and
  - (e) Part VII so far as relating to the provisions specified in paragraphs (a) to (d).

#### *Functions relating to culture*

- 2 If and to the extent that any function is exercisable by a Minister of the Crown in relation to the Welsh language or any other aspect of Welsh culture it shall be regarded for the purposes of section 22 as exercisable by the Minister in relation to Wales.

#### *Cross-border functions*

- 3 (1) The power conferred by section 22 to make an Order in Council about a function so far as exercisable by a Minister of the Crown in relation to Wales includes (as well as power to make provision about a function so far as exercisable by a Minister of the Crown in relation to the whole or any part of Wales) power to make provision about a function so far as exercisable by a Minister of the Crown in relation to—
- (a) a cross-border body, or
  - (b) subject to sub-paragraph (3), an English border area.

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(2) In this Act—

“cross-border body” means any body (including a government department) or undertaker exercising functions, or carrying on activities, in or with respect to Wales (or any part of Wales) and anywhere else, and

“English border area” means a part of England adjoining Wales (but not the whole of England).

(3) An Order in Council under section 22 may only include provision about a function so far as exercisable by a Minister of the Crown in relation to an English border area if—

- (a) the function relates to water resources management, water supply, rivers or other watercourses, control of pollution of water resources, sewerage or land drainage, and
- (b) the Order in Council makes (or another such Order in Council has made) corresponding provision about the function so far as so exercisable in relation to a part of Wales adjoining England or the whole of Wales.

*Functions exercisable beyond the territorial sea*

4 (1) The power conferred by section 22(1)(c) includes power to direct that any function under—

- (a) Part II of the <sup>M83</sup>Food and Environment Protection Act 1985 (deposits in the sea), or
- (b) Part IV of the <sup>M84</sup>Petroleum Act 1998 (abandonment of offshore installations),

so far as exercisable by a Minister of the Crown in relation to Welsh controlled waters shall be exercisable by the Minister only after consultation with the Assembly.

(2) In this paragraph “Welsh controlled waters” means so much of the sea beyond the seaward boundary of the territorial sea as is adjacent to Wales.

(3) The power conferred by section 22(3) includes (in particular) power to determine, or make provision for determining, for the purposes of the definition of “Welsh controlled waters” any boundary between—

- (a) the parts of the sea which are to be treated as adjacent to Wales, and
- (b) those which are not,

including power to make different determinations or provision for different purposes; and an order under section 155(2) may include any provision that by virtue of this sub-paragraph may be included in an Order in Council under section 22.

**Marginal Citations**

**M83** 1985 c. 48.

**M84** 1998 c. 17.



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## PART II

### CONTINUING ROLE FOR TRANSFEROR ETC

#### *Community obligations*

- 5 Any power of a Minister of the Crown to make subordinate legislation which has been transferred by an Order in Council under section 22 shall continue to be exercisable by the Minister of the Crown (as it would be had it not been transferred) for the purpose of—
- (a) implementing any Community obligation of the United Kingdom, or enabling any such obligation to be implemented, or enabling any rights enjoyed or to be enjoyed by the United Kingdom under or by virtue of the Community Treaties to be exercised, or
  - (b) dealing with matters arising out of or related to any such obligation or rights or the operation of section 2(1) of the <sup>M85</sup>European Communities Act 1972.

#### **Marginal Citations**

**M85** 1972 c. 68.

#### *Intervention in case of functions relating to water etc.*

- 6 (1) Where it appears to the Secretary of State that the exercise of a relevant transferred environmental function (or the failure to exercise such a function) in any particular case might have a serious adverse impact on—
- (a) water resources,
  - (b) water supply, or
  - (c) the quality of water,
- in England, he may intervene under this paragraph in that case.
- (2) If the Secretary of State intervenes in a case under this paragraph—
- (a) he may in that case exercise the function concerned, and
  - (b) that function shall not in that case be exercisable by the Assembly.
- (3) For the purposes of sub-paragraph (1) a function is a relevant transferred environmental function if it is a function—
- (a) under Part I of the <sup>M86</sup>Environmental Protection Act 1990, or
  - (b) under Part II, III or VII of the <sup>M87</sup>Water Resources Act 1991,
  - [<sup>F27</sup>(c) under, or under regulations under section 2 of, the Pollution Prevention and Control Act 1999,]
- and it has been transferred to the Assembly by an Order in Council under section 22 which states that this paragraph is to apply in relation to it.
- (4) An intervention by the Secretary of State under this paragraph shall be made by giving notice to the Assembly.
- (5) The notice—

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- (a) shall state the reason for the Secretary of State’s intervention,
  - (b) may make provision about the effect of any steps previously taken by the Assembly or any other person, and
  - (c) may extend the time for the taking of any steps by the Secretary of State or any other person (even if the time for taking them would otherwise have expired before the notice is given).
- (6) Where the Secretary of State has made an intervention under this paragraph in a case he shall, in addition to the notice under sub-paragraph (4), give notice to—
- (a) any person who has previously been given notice of any steps taken, or proposed to be taken, in the case,
  - (b) the Environment Agency (if concerned in the case), and
  - (c) any water undertaker or sewerage undertaker concerned in the case.

#### Textual Amendments

**F27** Sch. 3 para. 6(3)(c) inserted (21.3.2000) by 1999 c. 24, s. 6(1), **Sch. 2 para. 20**; S.I. 2000/800, **art. 2**

#### Marginal Citations

**M86** 1990 c. 43.

**M87** 1991 c. 57.

#### *Agreement or consultation*

- 7 An Order in Council under section 22 which includes provision—
- (a) transferring to the Assembly any function so far as exercisable by a Minister of the Crown in relation to a cross-border body or an English border area, or
  - (b) directing that any function shall be exercisable by the Assembly in relation to a cross-border body or an English border area concurrently with the Minister of the Crown by whom it is exercisable,
- may provide that (either generally or to such extent as may be specified in the Order in Council) the function may be exercised by the Assembly only with the agreement of, or after consultation with, a Minister of the Crown.
- 8 If an Order in Council under section 22 includes provision transferring to the Assembly the function of determining a formula for the purposes of section 80 of the <sup>M88</sup>Local Government and Housing Act 1989 (calculation of Housing Revenue Account subsidy), the Order in Council may provide that the Assembly shall not exercise the function without the agreement of the Secretary of State to the inclusion in the formula of any variable framed (in whatever way) by reference to rent rebates.

#### Marginal Citations

**M88** 1989 c. 42.

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- 9 (1) This paragraph applies where a function is exercisable by a Minister of the Crown—
- (a) only with the agreement of, or after consultation with, another Minister of the Crown, or
  - (b) only with the authorisation of Parliament or either House of Parliament.
- (2) If an Order in Council under section 22 transfers the function, it shall be exercisable by the Assembly free from that requirement unless the Order in Council provides otherwise.
- (3) If an Order in Council under that section directs that the function shall be exercisable by the Assembly concurrently with the Minister of the Crown by whom it is exercisable, the Order in Council may provide that it shall be exercisable by the Assembly free from that requirement.

### PART III

#### SUPPLEMENTARY

##### *Interpretation*

- 10 References in section 22 and this Schedule to a Minister of the Crown include references to—
- (a) two or more Ministers of the Crown acting jointly, and
  - (b) an officer of a Minister of the Crown or of a government department,
- and, in relation to functions of such an officer, the references in section 22(1) and this Schedule to the Assembly include a member of the Assembly's staff.
- 11 References in sections 22 to 25 and this Schedule to a Minister of the Crown include a member of the Scottish Executive.

##### *Saving*

- 12 An Order in Council under section 22—
- (a) transferring a function exercisable by a Minister of the Crown, or
  - (b) directing that a function shall be so exercisable only with the agreement of, or after consultation with, the Assembly,
- shall not affect the validity of anything done by or in relation to the Minister before the coming into force of the Order in Council.

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## SCHEDULE 4

Section 28.

## PUBLIC BODIES SUBJECT TO REFORM BY ASSEMBLY

**Commencement Information**

**I23** Sch. 4 in force at 1.12.1998 by S.I. 1998/2789, art. 2

**PART I**

## BODIES WHICH MAY LOSE OR GAIN FUNCTIONS

- 1 An agricultural dwelling-house advisory committee for an area wholly in, or consisting of, Wales.
- 2 An agricultural wages committee for an area wholly in, or consisting of, Wales.
- 3 The Ancient Monuments Board for Wales.
- [<sup>F28</sup>3A The Care Council for Wales.]

**Textual Amendments**

**F28** Sch. 4 para. 3A inserted (1.4.2001) by 2000 c. 14, ss. 6, 54, 66, Sch. 1 para. 27(b); S.I. 2000/2992, art. 2(2)

- 4 The committee established under section 11 of the <sup>M89</sup>Environment Act 1995 to advise about the carrying out in Wales of the Environment Agency's functions.

**Marginal Citations**

**M89** 1995 c. 25.

- [<sup>F29</sup>5 The National Council for Education and Training for Wales.]

**Textual Amendments**

**F29** Sch. 4 para. 5 substituted (1.4.2001 for W.) by 2000 c. 21, ss. 149, 154(5), Sch. 9 para. 94 (with s. 150); S.I. 2001/1274, art. 2(1), Sch. Pt. I

- 6 The sub-committee for Wales of the advisory committee for England, Wales and Northern Ireland constituted under section 32 of the <sup>M90</sup>Hill Farming Act 1946 to advise about the exercise of powers under that Act.

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### Marginal Citations

**M90** 1946 c. 73.

- 7 The Historic Buildings Council for Wales.
- 8 The Library Advisory Council for Wales (known as the Library and Information Services Council (Wales)).
- 9 The Qualifications, Curriculum and Assessment Authority for Wales.
- 10 The Wales Tourist Board.
- 11 The Welsh Development Agency.
- 12 The Welsh Industrial Development Advisory Board.
- 13 The Welsh Language Board.

## PART II

### BODIES WHICH MAY LOSE FUNCTIONS OR GAIN FUNCTIONS WITH CONSENT

- 14 The committees referred to in section 19(1) of, or paragraph 1(1)(a) or (b) of Schedule 6 to, the <sup>M91</sup>National Health Service Act 1977 (advisory committees for Wales).

### Marginal Citations

**M91** 1977 c. 49.

## PART III

### BODIES WHICH MAY ONLY GAIN FUNCTIONS

- 15 The Countryside Council for Wales.
- 16 The Higher Education Funding Council for Wales.
- 17 <sup>F30</sup> .....

### Textual Amendments

**F30** Sch. 4 Pt. 3 para. 17 omitted by virtue of The Nursing and Midwifery Order 2001 (S.I. 2002/253), art. 54(3), Sch. 5 para. 15 (with art. 3(18)) (the amendment coming into force in accordance with art. 1(2) (3) of the amending S.I.)

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## PART IV

### BODIES WHICH MAY ONLY GAIN FUNCTIONS AND ONLY WITH CONSENT

- 18 The Arts Council of Wales.
- 19 The National Library of Wales.
- 20 The National Museum of Wales.
- 21 The Royal Commission on Ancient and Historical Monuments of Wales.
- 22 The Sports Council for Wales.

## SCHEDULE 5

Section 74.

### BODIES AND OFFICES COVERED BY SECTION 74

#### Commencement Information

**I24** Sch. 5 in force at 1.12.1998 by [S.I. 1998/2789](#), **art. 2**

- 1 The bodies specified in Schedule 4.
- 2 The Advisory Committee on Pesticides.
- 3 The Committee on Agricultural Valuation.
- 4 The Agricultural Wages Board for England and Wales.
- 5 The Apple and Pear Research Council.
- 6 The Committee on Aquaculture Research and Development.
- 7 The Audit Commission for Local Authorities and the National Health Service in England and Wales.
- 8 The British Tourist Authority.
- 9 The British Waterways Board.
- 10 The British Wool Marketing Board.

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11 F31 .....

**Textual Amendments**

**F31** Sch. 5 para. 11 repealed (1.4.2002) by The Abolition of the Central Council for Education and Training in Social Work Order 2002 (S.I. 2002/797), **art. 2(b)**

12 The Clinical Standards Advisory Group.

[<sup>F32</sup>12A The Commission for Health Improvement.]

**Textual Amendments**

**F32** Sch. 5 para. 12A inserted (30.6.1999) by 1999 c. 8, **ss. 66(3), 67(4)**

13 A Community Health Council for a district wholly in Wales.

14 The Standing Dental Advisory Committee.

15 The Dental Practice Board.

16 The Committee on Dental and Surgical Materials.

17 The Environment Agency.

18 The Family Health Services Appeal Authority.

19 Food from Britain.  
[<sup>F33</sup>Food Standards Agency.  
Food Standards Agency advisory committee for Wales.]

**Textual Amendments**

**F33** Words in Sch. 5 para. 19 inserted (1.4.2000) by virtue of 1999 c. 28, s. 40(1), **Sch. 5 para. 45** (with **ss. 38, 40(2)**); S.I. 2000/1066, **art. 2**

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20 F34 .....

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### Textual Amendments

**F34** Sch. 5 para. 20 repealed (1.10.2002 for E.W.) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\)](#), ss. 2(5), 37(2), **Sch. 2 Pt. 2 para. 66(2)**, **Sch. 9 Pt. 1**; S.I. 2002/2478, arts. 2(1), **3(1)(d)** (subject to [art. 3\(3\)](#) and with transitional provisions in [art. 4](#)) (S.I. 2002/2532, arts. 1(3), 2, [Sch.](#) purports to bring Sch. 2 Pt. 2 para. 66(2) of the repealing Act into force on 10.10.2002 in relation to Wales only)

VALID FROM 01/04/2005

20A The Health Protection Agency.

21 The advisory committee for England, Wales and Northern Ireland constituted under section 32 of the <sup>M92</sup>Hill Farming Act 1946 to advise about the exercise of powers under that Act.

### Marginal Citations

**M92** 1946 c. 73.

22 The Home Grown Cereals Authority.

23 The Horticultural Development Council.

24 The Joint Nature Conservation Committee.

25 The Local Government Boundary Commission for Wales.

VALID FROM 10/10/2002

25A A Local Health Board.

26 The Meat and Livestock Commission.

27 The Standing Medical Advisory Committee.

28 The Mental Health Act Commission.



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- 29 The Milk Development Council.
- 30 The Museums and Galleries Commission.
- 31 The National Biological Standards Board.
- 32 A National Health Service trust all or some of whose hospitals, establishments or other facilities are situated in Wales.
- 33 The Trustees of the National Heritage Memorial Fund.
- 34 The National Lottery Charities Board.
- 35 The National Radiological Protection Board.
- 36 The Standing Nursing and Midwifery Advisory Committee.
- 37 The Standing Pharmaceutical Advisory Committee.
- 38 The Potato Industry Development Council (known as the British Potato Council).
- 39 The Public Health Laboratory Service Board.
- 40 The Residuary Milk Marketing Board.
- 41 The Sea Fish Industry Authority.
- 42 A Special Health Authority performing functions only or mainly in respect of Wales.
- 43 The Sugar Beet Research and Education Committee.
- 44 The United Kingdom Sports Council.
- 45 The United Kingdom Transplant Support Service Authority.

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VALID FROM 01/04/2005

46 The Wales Centre for Health.

## SCHEDULE 6

Section 104.

[<sup>F35</sup>HER MAJESTY’S CHIEF INSPECTOR OF EDUCATION AND TRAINING IN WALES OR  
 PRIF AROLYGYDD EI MAWRHYDI DROS ADDYSG A HYFFORDDIANT YNG NGHYMURU]

### Textual Amendments

**F35** Words in Heading to Sch. 6 substituted (1.1.2001) by 2000 c. 21 s. 73(3)(a); S.I. 2000/3230, art. 2, Sch.

### Modifications etc. (not altering text)

**C34** Sch. 6 restricted (16.2.2000) by S.I. 2000/253, arts. 1(2), 11

### *Interpretation*

1 In this Schedule—

“the Chief Inspector” means [<sup>F36</sup>Her Majesty’s Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru], and

“the Office of the Chief Inspector” means the Chief Inspector and the persons who (in accordance with section 4(3) of, and Schedule 1 to, the <sup>M93</sup>School Inspections Act 1996) are members of his staff.

### Textual Amendments

**F36** Words in Sch. 6 para. 1 substituted (1.1.2001) by 2000 c. 21 s. 73(3)(a); S.I. 2000/3230, art. 2, Sch.

### Marginal Citations

**M93** 1996 c. 57.

### *Status of the Office of the Chief Inspector*

2 The Secretary of State may by order provide that the Office of the Chief Inspector is, for the purposes of the enactments specified in the order, to be treated as if it were a government department.

### *Status of the Chief Inspector and his staff*

3 (1) Despite the provision made by section 104—

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- (a) the functions of the Chief Inspector and his staff shall continue to be regarded as exercised on behalf of the Crown, and
  - (b) service as a member of the Chief Inspector’s staff shall continue to be service in Her Majesty’s Home Civil Service.
- (2) Whether service as the Chief Inspector is service in Her Majesty’s Home Civil Service shall continue to be a matter which falls to be determined in accordance with the terms of the Chief Inspector’s appointment, but the Chief Inspector shall in any event be a person to whom section 1 of the <sup>M94</sup>Superannuation Act 1972 (superannuation schemes for civil servants) applies.

#### Marginal Citations

M94 1972 c. 11.

#### Receipts

- 4 (1) The Treasury may direct that any requirement that sums be paid into the Consolidated Fund shall not have effect in relation to sums received by the Chief Inspector if the sums are, or are of a description, specified in the direction.
- (2) Any sums received by the Chief Inspector which are not required to be paid into the Consolidated Fund shall be applied by him towards meeting his expenses.

#### Accounts

- 5 (1) The Chief Inspector shall keep proper accounting records.
- (2) The Chief Inspector shall, for each financial year, prepare accounts in accordance with directions given to him by the Treasury.
- (3) The directions which the Treasury may give under sub-paragraph (2) include, in particular, directions as to—
- (a) the information to be contained in the accounts and the manner in which it is to be presented,
  - (b) the methods and principles in accordance with which the accounts are to be prepared, and
  - (c) the additional information (if any) that is to accompany the accounts.

#### Audit

- 6 (1) The accounts prepared by the Chief Inspector for any financial year shall be submitted by him to the Auditor General for Wales [<sup>F37</sup>no later than 30th November of the following financial year].
- (2) The Auditor General for Wales shall—
- (a) examine and certify any accounts submitted to him under this paragraph, and
  - (b) no later than four months after the accounts are submitted to him, lay before the Assembly a copy of them as certified by him together with his report on them.
- (3) In examining any accounts submitted to him under this paragraph, the Auditor General for Wales shall, in particular, satisfy himself that the expenditure to which

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the accounts relate has been incurred lawfully and in accordance with the authority which governs it.

#### Textual Amendments

**F37** Words in [Sch. 6 para. 6\(1\)](#) substituted (1.4.2001) by [2000 c. 20, s. 29, Sch. 1 para. 23\(b\)](#); [S.I. 2000/3349, art. 3\(1\)](#)

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

**C35** [Sch. 6 para. 6\(1\)](#): power to amend conferred (1.4.2001) by [2000 c. 20, s. 29, Sch. 1 para. 27](#); [S.I. 2000/3349, art. 3\(1\)](#)

#### *Accounting officer*

- 7 (1) The accounting officer for the Office of the Chief Inspector shall be the Chief Inspector.
- (2) But where the Chief Inspector is incapable of discharging his responsibilities as accounting officer, or where the office of Chief Inspector is vacant, the Treasury may designate a member of the Chief Inspector’s staff to be the accounting officer for so long as the incapacity or vacancy continues.
- (3) The accounting officer for the Office of the Chief Inspector shall have, in relation to the accounts of the Chief Inspector and the finances of the Office of the Chief Inspector, the responsibilities which are from time to time specified by the Treasury.
- (4) In this paragraph references to responsibilities include in particular—
- (a) responsibilities in relation to the signing of accounts,
  - (b) responsibilities for the propriety and regularity of the finances of the Office of the Chief Inspector, and
  - (c) responsibilities for the economy, efficiency and effectiveness with which the resources of the Office of the Chief Inspector are used.
- (5) The responsibilities which may be specified under this paragraph include responsibilities owed to—
- (a) the Assembly or the Audit Committee, or
  - (b) the House of Commons or its Committee of Public Accounts.
- (6) If requested to do so by the House of Commons Committee of Public Accounts, the Audit Committee may—
- (a) on behalf of the Committee of Public Accounts take evidence from the accounting officer for the Office of the Chief Inspector, and
  - (b) report to the Committee of Public Accounts and transmit to that Committee any evidence so taken.

#### *Examinations into use of resources*

- 8 (1) The Auditor General for Wales may carry out examinations into the economy, efficiency and effectiveness with which the Chief Inspector has used the resources of the Office of the Chief Inspector in discharging his functions.

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- (2) Sub-paragraph (1) shall not be construed as entitling the Auditor General for Wales to question the merits of the policy objectives of the Chief Inspector.
- (3) In determining how to exercise his functions under this paragraph, the Auditor General for Wales shall take into account the views of the Audit Committee as to the examinations which he should carry out under this paragraph.
- (4) The Auditor General for Wales may lay before the Assembly a report of the results of any examination carried out by him under this paragraph.
- (5) The Auditor General for Wales and the Comptroller and Auditor General may cooperate with, and give assistance to, each other in connection with the carrying out of examinations in respect of the Chief Inspector under this paragraph or section 7 of the <sup>M95</sup>National Audit Act 1983 (economy etc. examinations).

#### Marginal Citations

**M95** 1983 c. 44.

#### *Examinations by the Comptroller and Auditor General*

- 9 (1) For the purpose of enabling him to carry out examinations into, and report to Parliament on, the finances of the Office of the Chief Inspector, the Comptroller and Auditor General—
  - (a) shall have a right of access at all reasonable times to all such documents in the custody or under the control of the Chief Inspector, or of the Auditor General for Wales, as he may reasonably require for that purpose, and
  - (b) shall be entitled to require from any person holding or accountable for any of those documents any assistance, information or explanation which he reasonably thinks necessary for that purpose.
- (2) The Comptroller and Auditor General shall—
  - (a) consult the Auditor General for Wales, and
  - (b) take into account any relevant work done or being done by the Auditor General for Wales,
 before he acts in reliance on sub-paragraph (1) or carries out an examination in respect of the Chief Inspector under section 7 of the <sup>M96</sup>National Audit Act 1983 (economy etc. examinations).

#### Marginal Citations

**M96** 1983 c. 44.

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## SCHEDULE 7

Section 105.

## FORESTRY COMMISSIONERS

*Separate exercise of functions in relation to Wales*

- 1 (1) The Secretary of State may by order make provision for securing—
- (a) the separate exercise in relation to Wales of functions of the Forestry Commissioners, and
  - (b) the exercise of functions by the Forestry Commissioners in relation to Wales free from so much of any requirements as would oblige them to have regard to circumstances outside Wales or to interests other than those of Wales.
- (2) An order under this paragraph may include provisions in the form of amendments or repeals of the <sup>M97</sup>Forestry Act 1967 or any other enactment.
- (3) The functions of the Forestry Commissioners—
- (a) may be exercised in relation to Wales whether or not they are exercised in relation to England or Scotland, and
  - (b) may be exercised differently in relation to Wales on the one hand and England or Scotland on the other.

**Commencement Information**

**I25** Sch. 7 para. 1 wholly in force; Sch. 7 para. 1 not in force at Royal Assent; Sch. 7 para. 1(1)(2) in force at 1.4.1999 by S.I. 1999/782, art. 2; Sch. 7 para. 1(3) in force at 14.5.2001 by S.I. 2001/1756, art. 2

**Marginal Citations**

**M97** 1967 c. 10.

- 2 (1) This paragraph applies where a function of the Forestry Commissioners to make any subordinate legislation is exercised by the making of a statutory instrument containing only provision relating to Wales.
- (2) Any relevant Parliamentary procedural provision within section 44(3)(a), (b) or (c) which relates to the function shall not have effect in relation to the exercise of the function.
- (3) Instead (but subject to sub-paragraph (4)), the subordinate legislation shall not be made unless a draft of the statutory instrument containing it has been laid before and approved by the Assembly.
- (4) But the subordinate legislation may be made without compliance with sub-paragraph (3) if the Forestry Commissioners determine that, in the particular circumstances, it is not reasonably practicable to comply with that sub-paragraph.
- (5) If the subordinate legislation is made without compliance with sub-paragraph (3)—
- (a) the statutory instrument containing it shall be laid before the Assembly after it is made, and
  - (b) any Assembly member shall be entitled to move, within the period of forty working days (construed in accordance with section 67(7)) beginning

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with the day on which the instrument is laid before the Assembly, that the subordinate legislation be revoked.

- (6) If, pursuant to a motion made within that period, the Assembly resolves that the subordinate legislation be revoked, the resolution revokes it.
- (7) The provision imposing or conferring the function of making the subordinate legislation includes power to make any provision which appears appropriate in consequence of its revocation by the resolution.
- (8) Neither the passing of a resolution under sub-paragraph (6) revoking any subordinate legislation nor the making of any subordinate legislation under sub-paragraph (7) in consequence of the revocation—
  - (a) affects the validity of anything done under the revoked subordinate legislation before its revocation, or
  - (b) prevents the making of new subordinate legislation.

#### *Status of Commissioners and staff*

- 3 Nothing in section 105 or this Schedule affects the status of the Forestry Commissioners as a government department or the status of the officers and servants appointed or employed by them.

#### *Receipts*

- 4 (1) Any sums received by the Forestry Commissioners—
  - (a) under section 105, or
  - (b) (subject to sub-paragraphs (2) and (3)) in respect of any transactions carried out by them in the exercise of any of their functions in relation to Wales,shall be applied by them towards meeting their expenditure on the exercise of their functions in relation to Wales.
- (2) The Treasury may direct that any sums within sub-paragraph (1)(b) which are, or are of a description, specified in the direction shall be paid into the Consolidated Fund.
- (3) The Assembly may direct that any sums within sub-paragraph (1)(b) which are, or are of a description, specified in the direction shall be paid to the Assembly.
- (4) A direction under sub-paragraph (3) may be varied or revoked by a direction under sub-paragraph (2) (as well as by another direction under sub-paragraph (3)).

#### *Accounts*

- 5 (1) The Forestry Commissioners shall keep proper accounting records relating to their Welsh finances.
- (2) In this Schedule references to the Welsh finances of the Forestry Commissioners are to—
  - (a) sums within paragraph 4(1) received by them, and
  - (b) expenditure by them on the exercise of their functions in relation to Wales.
- (3) The Forestry Commissioners shall, for each financial year, prepare accounts relating to their Welsh finances in accordance with directions given to them by the Treasury.

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- (4) The directions which the Treasury may give under sub-paragraph (3) include, in particular, directions as to—
- (a) the information to be contained in the accounts and the manner in which it is to be presented,
  - (b) the methods and principles in accordance with which the accounts are to be prepared, and
  - (c) the additional information (if any) that is to accompany the accounts.

#### *Audit*

- 6 (1) The accounts prepared by the Forestry Commissioners under paragraph 5 for any financial year shall be submitted by them to the Auditor General for Wales [<sup>F38</sup>no later than 30th November of the following financial year].
- (2) The Auditor General for Wales shall—
- (a) examine and certify any accounts submitted to him under this paragraph, and
  - (b) no later than four months after the accounts are submitted to him, lay before the Assembly a copy of them as certified by him together with his report on them.
- (3) In examining any accounts submitted to him under this paragraph, the Auditor General for Wales shall, in particular, satisfy himself that the expenditure to which the accounts relate has been incurred lawfully and in accordance with the authority which governs it.

#### **Textual Amendments**

**F38** Words in [Sch. 7 para. 6\(1\)](#) substituted (1.4.2001) by [2000 c. 20, s. 29, Sch. 1 para. 23\(c\)](#)

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

**C36** [Sch. 7 para. 6\(1\)](#): power to amend conferred (1.4.2001) by [2000 c. 20, s. 29, Sch. 1 para. 27](#)

#### *Accounting officer*

- 7 (1) The Treasury shall designate one of the Forestry Commissioners or an officer of the Forestry Commissioners as the Forestry Commissioners' accounting officer for Wales.
- (2) The person designated as the Forestry Commissioners' accounting officer for Wales shall have, in relation to the Welsh finances of the Forestry Commissioners and to accounts relating to the Welsh finances of the Forestry Commissioners, the responsibilities which are from time to time specified by the Treasury.
- (3) In this paragraph references to responsibilities include in particular—
- (a) responsibilities in relation to the signing of accounts,
  - (b) responsibilities for the propriety and regularity of finances, and
  - (c) responsibilities for the economy, efficiency and effectiveness with which the resources of the Forestry Commissioners are used in discharging their functions in relation to Wales.



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- (4) The responsibilities which may be specified under this paragraph include responsibilities owed to—
  - (a) the Assembly or the Audit Committee, or
  - (b) the House of Commons or its Committee of Public Accounts.
- (5) If requested to do so by the House of Commons Committee of Public Accounts, the Audit Committee may—
  - (a) on behalf of the Committee of Public Accounts take evidence from the Forestry Commissioners' accounting officer for Wales, and
  - (b) report to the Committee of Public Accounts and transmit to that Committee any evidence so taken.

#### *Examinations into use of resources*

- 8 (1) The Auditor General for Wales may carry out examinations into the economy, efficiency and effectiveness with which the Forestry Commissioners have used their resources in discharging their functions in relation to Wales.
- (2) Sub-paragraph (1) shall not be construed as entitling the Auditor General for Wales to question the merits of the policy objectives of the Forestry Commissioners.
- (3) In determining how to exercise his functions under this paragraph, the Auditor General for Wales shall take into account the views of the Audit Committee as to the examinations which he should carry out under this paragraph.
- (4) The Auditor General for Wales may lay before the Assembly a report of the results of any examination carried out by him under this paragraph.
- (5) The Auditor General for Wales and the Comptroller and Auditor General may co-operate with, and give assistance to, each other in connection with the carrying out of examinations in respect of the Forestry Commissioners under this paragraph or section 6 of the <sup>M98</sup>National Audit Act 1983 (economy etc. examinations).

#### **Marginal Citations**

**M98** 1983 c. 44.

#### *Examinations by the Comptroller and Auditor General*

- 9 (1) For the purpose of enabling him to carry out examinations into, and report to Parliament on, the Welsh finances of the Forestry Commissioners, the Comptroller and Auditor General—
  - (a) shall have a right of access at all reasonable times to all such documents in the custody or under the control of the Forestry Commissioners, or of the Auditor General for Wales, as he may reasonably require for that purpose, and
  - (b) shall be entitled to require from any person holding or accountable for any of those documents any assistance, information or explanation which he reasonably thinks necessary for that purpose.
- (2) The Comptroller and Auditor General shall—

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- (a) consult the Auditor General for Wales, and
- (b) take into account any relevant work done or being done by the Auditor General for Wales,

before he acts in reliance on sub-paragraph (1) or carries out an examination in respect of the Forestry Commissioners under section 6 of the <sup>M99</sup>National Audit Act 1983 (economy etc. examinations).

#### Commencement Information

**I26** Sch. 7 para. 9 wholly in force; Sch. 7 para. 9 not in force at Royal Assent; Sch. 7 para. 9(2) in force for certain purposes at 1.4.1999 by S.I. 1999/782, art. 2; Sch. 7 para. 9(2) in so far as not already in force and Sch. 7 para. 9(1) in force at 14.5.2001 by S.I. 2001/1756, art. 2

#### Marginal Citations

**M99** 1983 c. 44.

### Reports

- 10 (1) The Forestry Commissioners shall, no later than such time after the end of each financial year as the Assembly directs, make a report in such form as the Assembly directs about the exercise of the Forestry Commissioners' functions in relation to Wales during that financial year.
- (2) The Forestry Commissioners shall lay before the Assembly any report made under sub-paragraph (1) and the Assembly shall publish it.

### Interpretation

- 11 References in this Schedule to the Welsh finances of the Forestry Commissioners shall be construed in accordance with paragraph 5(2).

## SCHEDULE 8

Section 109.

### DEVOLUTION ISSUES

#### Commencement Information

**I27** Sch. 8 in force at 1.12.1998 by S.I. 1998/2789, art. 2

## PART I

### PRELIMINARY

- 1 (1) In this Schedule “devolution issue” means—
- (a) a question whether a function is exercisable by the Assembly,

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- (b) a question whether a purported or proposed exercise of a function by the Assembly is, or would be, within the powers of the Assembly (including a question whether a purported or proposed exercise of a function by the Assembly is, or would be, outside its powers by virtue of section 106(7) or 107(1)),
  - (c) a question whether the Assembly has failed to comply with a duty imposed on it (including a question whether the Assembly has failed to comply with any obligation which is an obligation of the Assembly by virtue of section 106(1) or (6)), or
  - (d) a question whether a failure to act by the Assembly is incompatible with any of the Convention rights.
- (2) In this Schedule—
- (a) “the Judicial Committee” means the Judicial Committee of the Privy Council, and
  - (b) “civil proceedings” means any proceedings other than criminal proceedings.
- 2 A devolution issue shall not be taken to arise in any proceedings merely because of any contention of a party to the proceedings which appears to the court or tribunal before which the proceedings take place to be frivolous or vexatious.

## PART II

### PROCEEDINGS IN ENGLAND AND WALES

#### *Application of Part II*

- 3 This Part of this Schedule applies in relation to devolution issues in proceedings in England and Wales.

#### *Institution of proceedings*

- 4 (1) Proceedings for the determination of a devolution issue may be instituted by the Attorney General.
- (2) Sub-paragraph (1) does not limit any power to institute proceedings exercisable apart from that sub-paragraph by any person.

#### *Notice of devolution issue*

- 5 (1) A court or tribunal shall order notice of any devolution issue which arises in any proceedings before it to be given to the Attorney General and the Assembly (unless a party to the proceedings).
- (2) A person to whom notice is given in pursuance of sub-paragraph (1) may take part as a party in the proceedings, so far as they relate to a devolution issue.

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*Reference of devolution issue to High Court or Court of Appeal*

- 6 A magistrates' court may refer any devolution issue which arises in civil proceedings before it to the High Court.
- 7 (1) A court may refer any devolution issue which arises in civil proceedings before it to the Court of Appeal.
- (2) Sub-paragraph (1) does not apply—
- (a) to a magistrates' court, the Court of Appeal or the House of Lords, or
  - (b) to the High Court if the devolution issue arises in proceedings on a reference under paragraph 6.
- 8 A tribunal from which there is no appeal shall refer any devolution issue which arises in proceedings before it to the Court of Appeal; and any other tribunal may make such a reference.
- 9 A court, other than the Court of Appeal or the House of Lords, may refer any devolution issue which arises in criminal proceedings before it to—
- (a) the High Court if the proceedings are summary proceedings, or
  - (b) the Court of Appeal if the proceedings are proceedings on indictment.

*References from Court of Appeal to Judicial Committee*

- 10 The Court of Appeal may refer any devolution issue which arises in proceedings before it (otherwise than on a reference under paragraph 7, 8 or 9) to the Judicial Committee.

*Appeals from superior courts to Judicial Committee*

- 11 An appeal against a determination of a devolution issue by the High Court or the Court of Appeal on a reference under paragraph 6, 7, 8 or 9 shall lie to the Judicial Committee, but only—
- (a) with leave of the court concerned, or
  - (b) failing such leave, with special leave of the Judicial Committee.

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### PART III

#### PROCEEDINGS IN SCOTLAND

##### *Application of Part III*

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

##### *Institution of proceedings*

- 13 (1) Proceedings for the determination of a devolution issue may be instituted by the Advocate General for Scotland.
- (2) Sub-paragraph (1) does not limit any power to institute proceedings exercisable apart from that sub-paragraph by any person.

##### *Intimation of devolution issue*

- 14 (1) A court or tribunal shall order intimation of any devolution issue which arises in any proceedings before it to be given to the Advocate General for Scotland and the Assembly (unless a party to the proceedings).
- (2) A person to whom intimation is given in pursuance of sub-paragraph (1) may take part as a party in the proceedings, so far as they relate to a devolution issue.

##### *Reference of devolution issue to higher court*

- 15 A court, other than any court consisting of three or more judges of the Court of Session or the House of Lords, may refer any devolution issue which arises in civil proceedings before it to the Inner House of the Court of Session.
- 16 A tribunal from which there is no appeal shall refer any devolution issue which arises in proceedings before it to the Inner House of the Court of Session; and any other tribunal may make such a reference.
- 17 A court, other than any court consisting of two or more judges of the High Court of Justiciary, may refer any devolution issue which arises in criminal proceedings before it to the High Court of Justiciary.

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### *References from superior courts to Judicial Committee*

- 18 Any court consisting of three or more judges of the Court of Session may refer any devolution issue which arises in proceedings before it (otherwise than on a reference under paragraph 15 or 16) to the Judicial Committee.
- 19 Any court consisting of two or more judges of the High Court of Justiciary may refer any devolution issue which arises in proceedings before it (otherwise than on a reference under paragraph 17) to the Judicial Committee.

### *Appeals from superior courts to Judicial Committee*

- 20 An appeal against a determination of a devolution issue by the Inner House of the Court of Session on a reference under paragraph 15 or 16 shall lie to the Judicial Committee.
- 21 An appeal against a determination of a devolution issue by—
- (a) a court of two or more judges of the High Court of Justiciary (whether in the ordinary course of proceedings or on a reference under paragraph 17), or
  - (b) a court of three or more judges of the Court of Session from which there is no appeal to the House of Lords,
- shall lie to the Judicial Committee, but only with leave of the court concerned or, failing such leave, with special leave of the Judicial Committee.

## **PART IV**

### PROCEEDINGS IN NORTHERN IRELAND

#### *Application of Part IV*

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

#### *Institution of proceedings*

- 23 (1) Proceedings for the determination of a devolution issue may be instituted by the Attorney General for Northern Ireland.
- (2) Sub-paragraph (1) does not limit any power to institute proceedings exercisable apart from that sub-paragraph by any person.

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### *Notice of devolution issue*

- 24 (1) A court or tribunal shall order notice of any devolution issue which arises in any proceedings before it to be given to the Attorney General for Northern Ireland and the Assembly (unless a party to the proceedings).
- (2) A person to whom notice is given in pursuance of sub-paragraph (1) may take part as a party in the proceedings, so far as they relate to a devolution issue.

### *Reference of devolution issue to Court of Appeal*

- 25 A court, other than the Court of Appeal in Northern Ireland or the House of Lords, may refer any devolution issue which arises in any proceedings before it to the Court of Appeal in Northern Ireland.
- 26 A tribunal from which there is no appeal shall refer any devolution issue which arises in proceedings before it to the Court of Appeal in Northern Ireland; and any other tribunal may make such a reference.

### *References from Court of Appeal to Judicial Committee*

- 27 The Court of Appeal in Northern Ireland may refer any devolution issue which arises in proceedings before it (otherwise than on a reference under paragraph 25 or 26) to the Judicial Committee.

### *Appeals from Court of Appeal to Judicial Committee*

- 28 An appeal against a determination of a devolution issue by the Court of Appeal in Northern Ireland on a reference under paragraph 25 or 26 shall lie to the Judicial Committee, but only—
- (a) with leave of the Court of Appeal in Northern Ireland, or
  - (b) failing such leave, with special leave of the Judicial Committee.

## **PART V**

### **GENERAL**

### *Proceedings in the House of Lords*

- 29 Any devolution issue which arises in judicial proceedings in the House of Lords shall be referred to the Judicial Committee unless the House considers it more appropriate, having regard to all the circumstances, that they should determine the issue.

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### *Direct references to Judicial Committee*

- 30 (1) The relevant law officer or the Assembly may require any court or tribunal to refer to the Judicial Committee any devolution issue which has arisen in any proceedings before it to which he or it is a party.
- (2) In sub-paragraph (1) “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.
- 31 (1) The Attorney General or the Assembly may refer to the Judicial Committee any devolution issue which is not the subject of proceedings.
- (2) Where a reference is made under sub-paragraph (1) by the Attorney General in relation to a devolution issue which relates to the proposed exercise of a function by the Assembly—
- (a) the Attorney General shall notify the Assembly of that fact, and
  - (b) the Assembly shall not exercise the function in the manner proposed during the period beginning with the receipt of the notification and ending with the reference being decided or otherwise disposed of.

### *The Judicial Committee*

- 32 Any decision of the Judicial Committee in proceedings under this Schedule—
- (a) shall be stated in open court, and
  - (b) shall be binding in all legal proceedings (other than proceedings before the Judicial Committee).
- 33 No member of the Judicial Committee shall sit and act as a member of the Judicial Committee in proceedings under this Schedule unless he holds or has held—
- (a) the office of a Lord of Appeal in Ordinary, or
  - (b) high judicial office as defined in section 25 of the <sup>M100</sup>Appellate Jurisdiction Act 1876 (ignoring for this purpose section 5 of the <sup>M101</sup>Appellate Jurisdiction Act 1887).

#### **Marginal Citations**

**M100** 1876 c. 59.

**M101** 1887 c. 70.

- 34 (1) Her Majesty may by Order in Council—



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- (a) confer on the Judicial Committee in relation to proceedings under this Schedule such powers as appear to be appropriate,
  - (b) apply the <sup>M102</sup>Judicial Committee Act 1833 in relation to proceedings under this Schedule with exceptions and modifications, and
  - (c) make rules for regulating the procedure with respect to proceedings under this Schedule before the Judicial Committee.
- (2) An Order in Council under this paragraph may contain any appropriate consequential, incidental, supplementary or transitional provisions or savings (including provisions in the form of amendments or repeals of enactments).
- (3) No recommendation shall be made to Her Majesty in Council to make an Order in Council under this paragraph which contains provisions in the form of amendments or repeals of enactments contained in an Act unless a draft of the statutory instrument containing the Order in Council has been laid before, and approved by a resolution of, each House of Parliament.
- (4) A statutory instrument containing an Order in Council which makes provision falling within sub-paragraph (1)(a) or (b) shall (unless a draft of it has been approved by a resolution of each House of Parliament) be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Marginal Citations

M102 1833 c. 41.

#### Costs

- 35
- (1) A court or tribunal before which any proceedings take place may take account of any additional expense of the kind mentioned in sub-paragraph (3) in deciding any question as to costs or expenses.
  - (2) In deciding any such question, the court or tribunal may award the whole or part of the additional expense as costs or expenses to the party who incurred it (whatever the decision on the devolution issue).
  - (3) The additional expense is any additional expense which the court or tribunal considers that any party to the proceedings has incurred as a result of the participation of any person in pursuance of paragraph 5, 14 or 24.

#### Procedure of courts and tribunals

- 36
- 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 Schedule including, in particular, provision—
- (a) for prescribing the stage in the proceedings at which a devolution issue is to be raised or referred,
  - (b) for the staying or sisting of proceedings for the purpose of any proceedings under this Schedule, and

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- (c) for determining the manner in which and the time within which any notice or intimation is to be given.

*References to be for decision*

- 37 Any function conferred by this Schedule to refer a devolution issue to a court shall be construed as a function of referring the issue to the court for decision.

SCHEDULE 9

Section 111.

WELSH ADMINISTRATION OMBUDSMAN

**Commencement Information**

- I28** Sch. 9 wholly in force at 1.7.1999; Sch. 9 not in force at Royal Assent see s. 158; Sch. 9 Pt. I in force (1.2.1999) by S.I. 1999/118, art. 2; Sch. 9 para. 17(9) in force 1.5.1999 and Sch. 9 paras. 14-16, 17(1)-(8)(10), 18-17 in force at 1.7.1999 by S.I. 1999/1290, arts. 3, 4

**PART I**

THE OMBUDSMAN

*Appointment*

- 1 (1) The Welsh Administration Ombudsman shall be appointed by Her Majesty.
- (2) Subject to sub-paragraphs (3) and (4), the Welsh Administration Ombudsman shall hold office until the end of the year of service in which he attains the age of 65.
- (3) Her Majesty may relieve the Welsh Administration Ombudsman of office before the end of that year of service—
- (a) at his request, or
  - (b) on Her Majesty being satisfied that he is incapable for medical reasons of performing the duties of his office and of requesting to be relieved of it.
- (4) Her Majesty may remove the Welsh Administration Ombudsman from office before the end of the year of service in which he attains the age of 65 if, on the ground of misbehaviour, the Secretary of State recommends that Her Majesty should do so; but the Secretary of State shall not so recommend without consulting the Assembly.

*Status*

- 2 (1) The person for the time being holding the office of Welsh Administration Ombudsman shall by the name of that office be a corporation sole.

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- (2) The Welsh Administration Ombudsman shall be regarded as holding office under Her Majesty and as exercising his functions on behalf of the Crown.
- (3) Service as the Welsh Administration Ombudsman shall not be service in Her Majesty's Home Civil Service but he shall be taken to be a Crown servant for the purposes of the <sup>M103</sup>Official Secrets Act 1989.

#### Marginal Citations

M103 1989 c. 6.

#### *Acting Welsh Administration Ombudsman*

- 3 (1) Where the office of Welsh Administration Ombudsman becomes vacant, Her Majesty may, at any time during the period of twelve months beginning with the date on which the vacancy arose, appoint a person to act as the Welsh Administration Ombudsman.
- (2) Subject to sub-paragraphs (3) to (5), an acting Welsh Administration Ombudsman shall hold office in accordance with the terms of his appointment.
- (3) An acting Welsh Administration Ombudsman shall not hold office after—
  - (a) the appointment of a new Welsh Administration Ombudsman, or
  - (b) the end of the period of twelve months beginning with the date on which the vacancy arose,whichever occurs first.
- (4) Her Majesty may at any time relieve an acting Welsh Administration Ombudsman of office—
  - (a) at his request, or
  - (b) on Her Majesty being satisfied that he is incapable for medical reasons of performing the duties of his office and of requesting to be relieved of it.
- (5) Her Majesty may remove an acting Welsh Administration Ombudsman from office at any time if, on the ground of misbehaviour, the Secretary of State recommends that Her Majesty should do so; but the Secretary of State shall not so recommend without consulting the Assembly.
- (6) A person appointed under this paragraph shall, while he holds office, be regarded for all purposes (except those of paragraph 1 and this paragraph) as the Welsh Administration Ombudsman.

#### *Remuneration*

- 4 (1) The Assembly shall—
  - (a) pay the Welsh Administration Ombudsman such salary and any such allowances, and
  - (b) make any such payments towards the provision of superannuation benefits for or in respect of him,

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as may be provided for by or under the terms of his appointment.

- (2) But where a person is both Parliamentary Commissioner for Administration and Welsh Administration Ombudsman he shall not be entitled to any salary as Welsh Administration Ombudsman.
- (3) The Assembly shall pay to or in respect of a person who has ceased to hold office as Welsh Administration Ombudsman such amounts (if any) by way of—
  - (a) pension or gratuities, or
  - (b) provision for those benefits,
 as may have been provided for by or under the terms of his appointment.
- (4) In Schedule 1 to the <sup>M104</sup>Superannuation Act 1972 (offices etc. to which section 1 of that Act applies), in the list of “Offices” insert—
 

“Welsh Administration Ombudsman.”
- (5) The Assembly shall pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of any increase attributable to subparagraph (4) in the sums payable out of money provided by Parliament under the <sup>M105</sup>Superannuation Act 1972.

#### **Marginal Citations**

**M104** 1972 c. 11.

**M105** 1972 c. 11.

#### *Staff and advisers*

- 5 (1) The Welsh Administration Ombudsman may appoint such staff as he considers necessary for assisting him in the exercise of his functions.
- (2) The Welsh Administration Ombudsman shall include among his staff such persons having a command of the Welsh language as he considers are needed to enable him to investigate complaints in Welsh.
- (3) Service as a member of the staff of the Welsh Administration Ombudsman shall be service in Her Majesty’s Home Civil Service.
- (4) The Assembly shall pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of any increase attributable to subparagraph (3) in the sums payable out of money provided by Parliament under the <sup>M106</sup>Superannuation Act 1972.
- (5) Any function of the Welsh Administration Ombudsman may be exercised by—
  - (a) a member of his staff,
  - (b) a member of the staff of the Health Service Commissioner for Wales, or
  - (c) an officer of the Parliamentary Commissioner for Administration or of either of the other Health Service Commissioners,
 if authorised by the Welsh Administration Ombudsman for that purpose; and references in any enactment to a member of the staff of the Welsh Administration

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Ombudsman include any person exercising any function of his by virtue of paragraph (b) or (c).

- (6) To assist him in the exercise of his functions the Welsh Administration Ombudsman may obtain advice from any person who, in his opinion, is qualified to give it.
- (7) The Welsh Administration Ombudsman may pay to any person from whom he obtains advice under sub-paragraph (6) any such fees or allowances as he may determine.
- (8) No arrangements shall be made—
  - (a) for any of the functions of the Welsh Administration Ombudsman or of the Assembly to be exercised by the other or by a member of the other's staff, or
  - (b) for the provision of any administrative, professional or technical services by the Welsh Administration Ombudsman or the Assembly for the other.

**Marginal Citations**

M106 1972 c. 11.

*Reports*

- 6 (1) The Welsh Administration Ombudsman—
  - (a) shall annually prepare and lay before the Assembly a general report on the performance of his functions, and
  - (b) may from time to time prepare and lay before the Assembly such other reports with respect to his functions as he thinks fit.
- (2) The Assembly shall, and the Welsh Administration Ombudsman may, publish reports laid before the Assembly under this paragraph.

*Expenses*

- 7 (1) The expenses of the Welsh Administration Ombudsman shall, so far as they cannot be met out of income received by him, be met by the Assembly.
- (2) Those expenses include any sums payable by the Welsh Administration Ombudsman in consequence of a breach, in the course of the performance of any of his functions, of any contractual or other duty (whether that breach occurs by reason of his act or omission or that of a member of his staff or any other person assisting him in the exercise of his functions).

*Estimates*

- 8 (1) For each financial year after the first financial year of the Assembly, the Welsh Administration Ombudsman shall prepare, and submit to the executive committee, an estimate of the income and expenses of his office.

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- (2) Each such estimate shall be submitted to the executive committee at least five months before the beginning of the financial year to which it relates.
- (3) The executive committee shall examine each such estimate submitted to it and, after having done so, shall lay the estimate before the Assembly with any such modifications as the committee thinks fit.
- (4) Where the executive committee proposes to lay such an estimate before the Assembly with modifications, the committee shall first consult the Secretary of State and have regard to any advice which he may give.

### *Accounts*

- 9 (1) The Welsh Administration Ombudsman shall keep proper accounting records.
- (2) The Welsh Administration Ombudsman shall, for each financial year, prepare accounts in accordance with directions given to him by the Treasury.
- (3) The directions which the Treasury may give under sub-paragraph (2) include, in particular, directions as to—
  - (a) the information to be contained in the accounts and the manner in which it is to be presented,
  - (b) the methods and principles in accordance with which the accounts are to be prepared, and
  - (c) the additional information (if any) that is to accompany the accounts.

### *Audit*

- 10 (1) The accounts prepared by the Welsh Administration Ombudsman for any financial year shall be submitted by him to the Auditor General for Wales [<sup>F39</sup>no later than 30th November of the following financial year].
- (2) The Auditor General for Wales shall—
  - (a) examine and certify any accounts submitted to him under this paragraph, and
  - (b) no later than four months after the accounts are submitted to him, lay before the Assembly a copy of them as certified by him together with his report on them.
- (3) In examining any accounts submitted to him under this paragraph, the Auditor General for Wales shall, in particular, satisfy himself that the expenditure to which the accounts relate has been incurred lawfully and in accordance with the authority which governs it.

#### **Textual Amendments**

**F39** Words in [Sch. 9 para. 10\(1\)](#) substituted (1.4.2001) by [2000 c. 20, s. 29, Sch. 1 para. 23\(d\)](#); [S.I. 2000/3349, art. 3\(1\)](#)

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

**C37** Sch. 9 para. 10(1): power to amend conferred (1.4.2001) by 2000 c. 20, s. 29, Sch. 1 para. 27; S.I. 2000/3349, art. 3(1)

*Accounting officer*

- 11 (1) The accounting officer for the Office of the Welsh Administration Ombudsman shall be the Welsh Administration Ombudsman.
- (2) But where—
- (a) the Welsh Administration Ombudsman is incapable of discharging his responsibilities as accounting officer, or
  - (b) the office of Welsh Administration Ombudsman is vacant (and there is no acting Welsh Administration Ombudsman),
- the Treasury may designate a member of the Welsh Administration Ombudsman’s staff to be the accounting officer for so long as paragraph (a) or (b) applies.
- (3) The accounting officer for the Office of the Welsh Administration Ombudsman shall have, in relation to the accounts of the Welsh Administration Ombudsman and the finances of the Office of the Welsh Administration Ombudsman, the responsibilities which are from time to time specified by the Treasury.
- (4) In this paragraph references to responsibilities include in particular—
- (a) responsibilities in relation to the signing of accounts,
  - (b) responsibilities for the propriety and regularity of the finances of the Office of the Welsh Administration Ombudsman, and
  - (c) responsibilities for the economy, efficiency and effectiveness with which the resources of the Office of the Welsh Administration Ombudsman are used.
- (5) The responsibilities which may be specified under this paragraph include responsibilities owed to—
- (a) the Assembly, the executive committee or the Audit Committee, or
  - (b) the House of Commons or its Committee of Public Accounts.
- (6) If requested to do so by the House of Commons Committee of Public Accounts, the Audit Committee may—
- (a) on behalf of the Committee of Public Accounts take evidence from the accounting officer for the Office of the Welsh Administration Ombudsman, and
  - (b) report to the Committee of Public Accounts and transmit to that Committee any evidence so taken.
- (7) In this paragraph and paragraphs 12 and 13 “the Office of the Welsh Administration Ombudsman” means the Welsh Administration Ombudsman and the members of his staff.



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### *Examinations into use of resources*

- 12 (1) The Auditor General for Wales may carry out examinations into the economy, efficiency and effectiveness with which the Welsh Administration Ombudsman has used the resources of the Office of the Welsh Administration Ombudsman in discharging his functions.
- (2) Sub-paragraph (1) shall not be construed as entitling the Auditor General for Wales to question the merits of the policy objectives of the Welsh Administration Ombudsman.
- (3) In determining how to exercise his functions under this paragraph, the Auditor General for Wales shall take into account the views of the Audit Committee as to the examinations which he should carry out under this paragraph.
- (4) The Auditor General for Wales may lay before the Assembly a report of the results of any examination carried out by him under this paragraph.
- (5) The Auditor General for Wales and the Comptroller and Auditor General may co-operate with, and give assistance to, each other in connection with the carrying out of examinations in respect of the Welsh Administration Ombudsman under this paragraph or section 7 of the <sup>M107</sup>National Audit Act 1983 (economy etc. examinations).

#### **Marginal Citations**

**M107** 1983 c. 44.

### *Examinations by the Comptroller and Auditor General*

- 13 (1) For the purpose of enabling him to carry out examinations into, and report to Parliament on, the finances of the Office of the Welsh Administration Ombudsman, the Comptroller and Auditor General—
- (a) shall have a right of access at all reasonable times to all such documents in the custody or under the control of the Welsh Administration Ombudsman, or of the Auditor General for Wales, as he may reasonably require for that purpose, and
- (b) shall be entitled to require from any person holding or accountable for any of those documents any assistance, information or explanation which he reasonably thinks necessary for that purpose.
- (2) The Comptroller and Auditor General shall—
- (a) consult the Auditor General for Wales, and
- (b) take into account any relevant work done or being done by the Auditor General for Wales,
- before he acts in reliance on sub-paragraph (1) or carries out an examination in respect of the Welsh Administration Ombudsman under section 7 of the <sup>M108</sup>National Audit Act 1983 (economy etc. examinations).



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### Marginal Citations

M108 1983 c. 44.

## PART II

### INVESTIGATION OF COMPLAINTS

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

C38 Sch. 9 Pt. II extended (1.7.1999 subject to art. 4(2)-(6) of the amending Act) by S.I. 1999/1791, art. 4(1)

#### *Bodies subject to investigation*

- 14 (1) The bodies subject to investigation by the Welsh Administration Ombudsman are—
- (a) the Assembly, and
  - (b) subject to any notes in paragraph 15(1), the bodies listed in sub-paragraph (2).
- (2) The bodies referred to in sub-paragraph (1) are—
- (a) the Arts Council of Wales,
  - <sup>F40</sup>(ab) whether the applicant is included in the list kept under section 81 of the Care Standards Act 2000; and]
  - (b) the Countryside Council for Wales,
  - (c) the Environment Agency,
  - (d) the Forestry Commissioners,
  - (e) the Office of [<sup>F41</sup>Her Majesty's Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru],
  - (f) the Sports Council for Wales,
  - (g) urban development corporations established for urban development areas wholly in Wales,
  - (h) the Wales Tourist Board,
  - (i) the Welsh Development Agency, and
  - (j) the Welsh Language Board.
- (3) Subject to paragraph 16, the Assembly may by order amend sub-paragraph (2) by—
- (a) adding any body,
  - (b) omitting any body, or
  - (c) altering the description of any body.
- (4) For the purposes of this paragraph and paragraphs 15 and 16 references to a body include an unincorporated body (as well as a body corporate); and references in this Schedule to a body subject to investigation by the Welsh Administration Ombudsman shall be construed accordingly.

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- (5) References in the following provisions of this Schedule to action taken in the exercise of functions of a body subject to investigation by the Welsh Administration Ombudsman include action taken in the exercise of any functions of—
- (a) any of its members, or
  - (b) any of its officers or members of its staff.

#### Textual Amendments

- F40** Sch. 9 para. 14(2)(ab) inserted (1.4.2001) by 2000 c. 14, ss. 6, 54, 66, **Sch. 1 para. 27(c)**; S.I. 2000/2992, **art. 2(1)**
- F41** Words in Sch. 9 para. 14(2)(e) substituted (1.1.2001) by 2000 c. 21 s. 73(3)(a); S.I. 2000/3230, **art. 2, Sch.**

- 15 (1) The notes referred to in paragraph 14(1)(b) are—

1. In the case of a body which has functions exercisable otherwise than in relation to Wales (as well as in relation to Wales or a part of Wales) no investigation may be conducted by the Welsh Administration Ombudsman in respect of action in connection with the exercise of the body's functions otherwise than in relation to Wales.

2. In the case of the Environment Agency no investigation may be conducted by the Welsh Administration Ombudsman in respect of action in connection with the exercise of its flood defence functions (within the meaning of the <sup>M109</sup>Water Resources Act 1991).

3. In the case of an urban development corporation no investigation may be conducted by the Welsh Administration Ombudsman in respect of action in connection with the exercise of its functions in relation to town and country planning.

- (2) Subject to paragraph 16, the Assembly may by order amend sub-paragraph (1) by—
- (a) adding any note,
  - (b) omitting any note, or
  - (c) amending any note.
- (3) If and to the extent that a function is exercisable in relation to the Welsh language or any other aspect of Welsh culture it shall be regarded for the purposes of this paragraph and paragraph 16 as exercisable in relation to Wales.

#### Marginal Citations

**M109** 1991 c. 57.

- 16 (1) An order under paragraph 14(3) may only add a body to paragraph 14(2) if—
- (a) the body has functions exercisable in relation to Wales or a part of Wales (whether or not they are also exercisable otherwise than in relation to Wales),
  - (b) some or all of those functions are in a field in which the Assembly has functions, and
  - (c) the body falls within sub-paragraph (2).

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- (2) A body falls within this sub-paragraph if—
- (a) it is established under an enactment or by virtue of Her Majesty's prerogative or is established in any other way by a Minister of the Crown or government department or by the Assembly,
  - (b) at least half of its expenditure on the exercise of functions in relation to Wales (or, where its functions relate only to a part of Wales, in relation to the part of Wales to which they relate) is met directly from payments made by the Assembly, and
  - (c) it is wholly or partly constituted by appointment made by Her Majesty, a Minister of the Crown or government department or the Assembly.
- (3) An order under paragraph 14(3) shall not add to paragraph 14(2) a body whose sole activity is, or whose main activities are, included among any one or more of the following—
- (a) the provision of education,
  - (b) the development of curricula, the conduct of examinations or the validation of educational courses,
  - (c) the provision of training otherwise than under the <sup>M110</sup>Industrial Training Act 1982,
  - (d) the control of entry to any profession or the regulation of the conduct of members of any profession, and
  - (e) the investigation of complaints by members of the public regarding the actions of any person or body or the supervision or review of, or of steps taken following, such an investigation,
- or a body operating in an exclusively or predominantly commercial manner or carrying on under national ownership an industry or undertaking or part of an industry or undertaking.
- (4) The Assembly may not make an order under paragraph 15(2) if the result would be that the Welsh Administration Ombudsman could investigate action in connection with the exercise of a body's functions otherwise than in relation to Wales.
- (5) In the case of a body which has functions exercisable in a field in which the Assembly does not have functions (as well as in a field in which it does)—
- (a) where the Assembly by order under paragraph 14(3) adds the body to paragraph 14(2) it shall (by order under paragraph 15(2)) add to paragraph 15(1) a note relating to the body, and
  - (b) the Assembly may not make an order under paragraph 15(2) if the result would be that the Welsh Administration Ombudsman could investigate action in connection with the exercise of the body's functions in a field in which the Assembly does not have functions.
- (6) In the case of a body which is an authority to which the <sup>M111</sup>Parliamentary Commissioner Act 1967 applies—
- (a) where the Assembly by order under paragraph 14(3) adds the body to paragraph 14(2) it shall (by order under paragraph 15(2)) add to paragraph 15(1) a note relating to the body, and
  - (b) the Assembly may not make an order under paragraph 15(2) if the result would be that the Welsh Administration Ombudsman could investigate action which can be investigated under the <sup>M112</sup>Parliamentary Commissioner Act 1967.

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#### **Marginal Citations**

**M110** 1982 c. 10.

**M111** 1967 c. 13.

**M112** 1967 c. 13.

#### *Matters which may be investigated*

- 17 (1) The Welsh Administration Ombudsman may investigate any action taken by or on behalf of a body subject to investigation by him if—
- (a) the action was taken in the exercise of administrative functions of that body, and
  - (b) a written complaint is duly made to him (in accordance with paragraph 18) by or on behalf of a person who claims to have sustained injustice in consequence of maladministration in connection with the action (“the person aggrieved”).
- (2) For the purposes of this Schedule administrative functions exercisable by any person appointed as a member of the administrative staff of a relevant tribunal—
- (a) by a body subject to investigation by the Welsh Administration Ombudsman, or
  - (b) with the consent (whether as to remuneration and other terms and conditions of service or otherwise) of such a body,
- shall be taken to be administrative functions of the body.
- (3) The Welsh Administration Ombudsman shall not conduct an investigation in respect of any action in respect of which the person aggrieved has or had—
- (a) a right of appeal, reference or review to or before a tribunal constituted under any enactment or by virtue of Her Majesty’s prerogative, or
  - (b) a remedy by way of proceedings in any court of law,
- unless the Welsh Administration Ombudsman is satisfied that, in the particular circumstances, it is not reasonable to expect the person aggrieved to resort or have resorted to it.
- (4) The Welsh Administration Ombudsman shall not conduct an investigation in respect of any action if the person aggrieved has or had the opportunity to make a complaint under a procedure operated by the body in the exercise of whose functions the action was taken unless he is satisfied—
- (a) that the procedure has been invoked and exhausted, or
  - (b) that, in the particular circumstances, it is not reasonable to expect the procedure to be or have been invoked or exhausted.
- (5) The Welsh Administration Ombudsman shall not conduct an investigation in respect of—
- (a) action taken by or with the authority of a body for the purposes of investigating crime,
  - (b) the commencement or conduct of any civil or criminal proceedings before any court of law in the United Kingdom,

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- (c) action which could be investigated under the <sup>M113</sup>Health Service Commissioners Act 1993,
  - (d) action taken by any member of the administrative staff of a relevant tribunal so far as taken at the direction, or on the authority (whether express or implied), of any person acting in his capacity as a member of the tribunal,
  - (e) action taken in matters relating to contractual or other commercial transactions, other than compulsory land transactions, or
  - (f) action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters in relation to relevant service.
- (6) In sub-paragraph (5)—
- “compulsory land transactions” means transactions for or relating to—
- (a) the acquisition of land compulsorily or in circumstances in which it could be acquired compulsorily, or
  - (b) the disposal as surplus of land acquired compulsorily or in such circumstances, and
- “relevant service” means service—
- (a) in any office or employment under the Crown or under any body subject to investigation by the Welsh Administration Ombudsman, or
  - (b) in any office or employment, or under any contract for services, in respect of which power to take action, or to determine or approve the action to be taken, in personnel matters is vested in Her Majesty or any such body.
- (7) The Assembly may by order amend sub-paragraph (5) or (6) so as to exclude any actions or matters from the provisions of sub-paragraph (5).
- (8) In determining whether to initiate, continue or discontinue an investigation, the Welsh Administration Ombudsman shall (subject to the preceding provisions of this paragraph) act in accordance with his own discretion; but the Welsh Administration Ombudsman may not question the merits of a decision taken without maladministration in the exercise of a discretion.
- (9) In this paragraph “relevant tribunal” means a tribunal specified by order made by the Secretary of State; and references to a tribunal include the person constituting a tribunal consisting of one person.
- (10) References in this Schedule to “action” include failure to act (and related expressions shall be construed accordingly).

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

**C39** Sch. 9 para. 17(9): functions transferred (W.) (1.7.1999 subject to art. 2(b)-(f) of the amending S.I.) by S.I. 1999/672, art. 2(a), **Sch. 1**

**Commencement Information**

**I29** Sch. 9 para. 17 wholly in force at 1.7.1999; Sch. 9 para. 17 not in force at Royal Assent; Sch. 9 para. 17(9) in force at 1.5.1999 and Sch. 9 para. 17(1)-(8) and (10) in force at 1.7.1999 by S.I. 1999/1290, **arts. 3, 4**

**Marginal Citations**

**M113** 1993 c. 46.

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### Complaints

- 18 (1) A complaint may be made to the Welsh Administration Ombudsman by any individual or body of persons (whether or not incorporated) except—
- (a) the Assembly,
  - (b) a local authority or other authority or body constituted for purposes of the public service or of local government,
  - (c) a body constituted for the purposes of carrying on under national ownership an industry or undertaking or part of an industry or undertaking, and
  - (d) any other authority or body whose members are appointed by Her Majesty, any Minister of the Crown or government department or the Assembly or whose revenues consist wholly or mainly of money provided by Parliament or the Assembly.
- (2) Subject to sub-paragraphs (3) and (4), a complaint shall not be entertained by the Welsh Administration Ombudsman unless made by the person aggrieved himself.
- (3) Where an individual by whom a complaint might have been made to the Welsh Administration Ombudsman has died, or is for any reason unable to act for himself, the complaint may be made by—
- (a) his personal representatives,
  - (b) a member of his family, or
  - (c) another individual, or any body, suitable to represent him.
- (4) Where a body by whom a complaint might have been made to the Welsh Administration Ombudsman is for any reason unable to act for itself, the complaint may be made by an individual, or another body, suitable to represent it.
- (5) A complaint to the Welsh Administration Ombudsman shall not be entertained unless it is made to him not later than twelve months after the day on which the person aggrieved first had notice of the matters alleged in the complaint; but the Welsh Administration Ombudsman may conduct an investigation pursuant to a complaint not made within that period if he considers that there are special circumstances which make it proper to do so.
- (6) A body subject to investigation by the Welsh Administration Ombudsman may itself refer to him a complaint made to the body about action taken by or on behalf of the body in the exercise of administrative functions of the body if the complaint was made—
- (a) in writing,
  - (b) by a person who could have made a complaint to the Welsh Administration Ombudsman about the action, and
  - (c) not more than twelve months after the day on which the person aggrieved first had notice of the matters alleged in the complaint or such later day as the Welsh Administration Ombudsman considers appropriate in any particular case.
- (7) But a body subject to investigation by the Welsh Administration Ombudsman may not refer a complaint under sub-paragraph (6) more than twelve months after the day on which the body received the complaint.

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- (8) Any question whether a complaint is duly made or referred to the Welsh Administration Ombudsman shall be determined by him; but a complaint duly referred to him shall be deemed to be duly made to him.

#### *Investigation procedure*

- 19 (1) Where the Welsh Administration Ombudsman proposes to conduct an investigation pursuant to a complaint made to him, he shall afford to—
- (a) the body concerned, and
  - (b) any person who is alleged in the complaint to have taken or authorised the action complained of,
- an opportunity to comment on any allegations contained in the complaint.
- (2) The investigation shall be conducted in private but in other respects the procedure for conducting the investigation shall be such as the Welsh Administration Ombudsman considers appropriate in the circumstances of the case; and, in particular, the Welsh Administration Ombudsman—
- (a) may obtain information from such persons and in such manner, and make such inquiries, as he thinks fit, and
  - (b) may determine whether any person may be represented, by counsel or solicitor or otherwise, in the investigation.
- (3) The Welsh Administration Ombudsman may, if he thinks fit, pay to the person by whom the complaint was made and to any other person who attends or supplies information for the purposes of an investigation—
- (a) sums in respect of expenses properly incurred by them, and
  - (b) allowances by way of compensation for the loss of their time,
- in accordance with such scales, and subject to such conditions, as may be determined by the Welsh Administration Ombudsman.
- (4) The conduct of an investigation shall not affect—
- (a) any action taken, or
  - (b) any power or duty to take further action with respect to any matters subject to the investigation.

#### *Evidence*

- 20 (1) For the purposes of an investigation by the Welsh Administration Ombudsman he may require—
- (a) any member of, or any officer or member of the staff of, the body concerned, or
  - (b) any other person who in his opinion is able to supply information or produce documents relevant to the investigation,
- to supply such information or produce such documents.
- (2) For the purposes of any such investigation the Welsh Administration Ombudsman shall have the same powers as the High Court in respect of—

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- (a) the attendance and examination of witnesses (including the administration of oaths and affirmations and the examination of witnesses abroad), and
  - (b) the production of documents.
- (3) No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or supplied to persons in Her Majesty's service, whether imposed by any enactment or by any rule of law, shall apply to the disclosure of information for the purposes of an investigation by the Welsh Administration Ombudsman.
- (4) The Crown shall not be entitled in relation to any investigation by the Welsh Administration Ombudsman to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.
- (5) Subject to sub-paragraph (4), no person shall be compelled for the purposes of an investigation by the Welsh Administration Ombudsman to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the High Court.

#### *Obstruction and contempt*

- 21 (1) The Welsh Administration Ombudsman may certify an offence to the High Court where—
- (a) a person, without lawful excuse, obstructs him or any member of his staff in the performance of his functions, or
  - (b) a person is guilty of any act or omission in relation to an investigation which, if that investigation were proceedings in the High Court, would constitute contempt of court.
- (2) Where an offence is so certified the High Court may inquire into the matter; and after hearing—
- (a) any witnesses who may be produced against or on behalf of the person charged with the offence, and
  - (b) any statement that may be offered in defence,
- the High Court may deal with the person charged with the offence in any manner in which it could deal with him if he had committed the same offence in relation to the High Court.
- (3) Nothing in this paragraph shall be construed as applying to the taking of any such action as is mentioned in paragraph 19(4).

#### *Reports*

- 22 (1) Where the Welsh Administration Ombudsman has conducted an investigation pursuant to a complaint made to him, he shall prepare a report of the results of the investigation and shall send copies of it to—
- (a) the person who made the complaint,
  - (b) any Assembly member who, to the Welsh Administration Ombudsman's knowledge, assisted that person in making the complaint (or, if he is no longer an Assembly member, such Assembly member as the Welsh Administration Ombudsman thinks appropriate),



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- (c) the body concerned,
  - (d) any person who is alleged in the complaint to have taken or authorised the action complained of, and
  - (e) the Assembly First Secretary.
- (2) Where the Welsh Administration Ombudsman decides not to conduct an investigation pursuant to a complaint made to him, he shall prepare a statement of his reasons for not conducting an investigation and shall send copies of it to—
- (a) the person who made the complaint, and
  - (b) any Assembly member who, to the Welsh Administration Ombudsman's knowledge, assisted that person in making the complaint (or, if he is no longer an Assembly member, such Assembly member as the Welsh Administration Ombudsman thinks appropriate).

#### *Action in response to reports*

- 23 (1) Where the Assembly First Secretary receives a copy of a report under paragraph 22(1) of the results of an investigation of any action taken in the exercise of a function, he shall send a copy of it to any Assembly Secretary who is accountable to the Assembly (in accordance with section 56) for the exercise of the Assembly's functions in any fields in which the function falls.
- (2) Where in a report under paragraph 22(1) the Welsh Administration Ombudsman states that injustice to the person aggrieved has been caused in consequence of maladministration, the body concerned shall consider the report and within—
- (a) the period of three months beginning with the date on which the body received the report, or
  - (b) such longer period as the Welsh Administration Ombudsman may agree in writing,
- shall notify the Welsh Administration Ombudsman of the action taken or proposed to be taken.
- (3) The Welsh Administration Ombudsman shall prepare a further report if he—
- (a) does not receive the notification required by sub-paragraph (2) within the period allowed by or under that sub-paragraph,
  - (b) is not satisfied with the action taken or proposed to be taken, or
  - (c) does not within the period of three months beginning with the end of the period allowed by or under sub-paragraph (2), or such longer period as the Welsh Administration Ombudsman may agree in writing, receive confirmation from the body that action has been taken, as proposed, to his satisfaction.
- (4) The further report shall set out those facts and make such recommendations as the Welsh Administration Ombudsman thinks fit to make with respect to action which, in his opinion, should be taken—
- (a) to remedy the injustice to the person aggrieved, and
  - (b) to prevent similar injustice being caused in the future;
- and a copy of the further report shall be sent to each of the persons to whom a copy of the report under paragraph 22(1) was sent.

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- (5) Where the Assembly First Secretary receives a copy of a further report arising from an investigation of any action taken in the exercise of a function, he shall send a copy of it to any Assembly Secretary who is accountable to the Assembly (in accordance with section 56) for the exercise of the Assembly's functions in any fields in which the function falls.
- (6) Where the Assembly First Secretary receives a copy of a further report arising from an investigation of any action taken in the exercise of functions of the Assembly, he shall also—
- (a) lay a copy of it before the Assembly, and
  - (b) (unless action to the satisfaction of the Welsh Administration Ombudsman has been taken or proposed) give to the Assembly notice of his intention to move that the Assembly resolve to approve the recommendations specified in it.
- (7) The standing orders must make provision for any motion of which notice has been given pursuant to sub-paragraph (6)(b) to be moved as soon as is reasonably practicable (unless action to the satisfaction of the Welsh Administration Ombudsman has been taken or proposed).

*Reports: supplementary*

- 24 (1) Apart from identifying any body investigated, a report under paragraph 22(1), a further report under paragraph 23(3) or a report under paragraph 6 shall not—
- (a) mention the name of any person, or
  - (b) include any particulars which, in the opinion of the Welsh Administration Ombudsman, are likely to identify any person and can be omitted without impairing the effectiveness of the report or further report,
- unless, after taking account of the public interest (as well as the interests of any person who made a complaint and other persons), the Welsh Administration Ombudsman considers it necessary for the report or further report to mention his name or include such particulars.
- (2) For the purposes of the law of defamation, the following are absolutely privileged—
- (a) the publication of any matter by the Welsh Administration Ombudsman in a report or statement under paragraph 22, a further report under paragraph 23(3) or a report under paragraph 6,
  - (b) the publication of any matter in communications between—
    - (i) an Assembly member or member of the Assembly's staff, a member of any other body subject to investigation by the Welsh Administration Ombudsman or an officer or member of the staff of any such body, and
    - (ii) the Welsh Administration Ombudsman or a member of his staff,
 in connection with a complaint to the Welsh Administration Ombudsman,
  - (c) the publication of any matter in communications between any person and an Assembly member in connection with a complaint by the person to the Welsh Administration Ombudsman, and

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- (d) the publication of any matter in communications between any person and the Welsh Administration Ombudsman or a member of his staff in connection with a complaint by the person to the Welsh Administration Ombudsman.

### *Confidentiality of information*

- 25 (1) Information obtained by the Welsh Administration Ombudsman or a member of his staff in the course of or for the purposes of an investigation shall not be disclosed except—
- (a) for the purposes of the investigation and of any report of it,
  - (b) for the purposes of any proceedings for—
    - (i) an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained by him or a member of his staff, or
    - (ii) an offence of perjury alleged to have been committed in the course of an investigation by him,
  - (c) for the purposes of an inquiry with a view to the taking of proceedings within paragraph (b),
  - (d) for the purposes of any proceedings under paragraph 21, or
  - (e) in accordance with paragraph 26.
- (2) Neither the Welsh Administration Ombudsman nor any members of his staff shall be called upon to give evidence in any proceedings (other than proceedings referred to in sub-paragraph (1)) of matters coming to his or their knowledge in the course of an investigation.
- (3) A Minister of the Crown may give notice in writing to the Welsh Administration Ombudsman with respect to—
- (a) any document or information specified in the notice, or
  - (b) any class of document or information so specified,
- that in the opinion of the Minister the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of the State or otherwise contrary to the public interest.
- (4) Where such a notice is given neither the Welsh Administration Ombudsman nor any member of his staff shall be required or authorised to disclose to any person or for any purpose any document or information specified in the notice or any document or information of a class so specified.
- [<sup>F42</sup>(5) Information obtained from the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000 shall be treated for the purposes of sub-paragraph (1) as obtained for the purposes of an investigation and, in relation to such information, the reference in paragraph (a) of that subsection to the investigation shall have effect as a reference to any investigation.]

#### **Textual Amendments**

**F42** Sch. 9 para. 25(5) inserted (30.1.2001) by 2000 c. 36, ss. 76(2), 87(2)(b), Sch. 7 para. 7 (with ss. 56, 78)

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- 26 (1) Sub-paragraph (2) applies where—
- (a) the Welsh Administration Ombudsman also holds office as the Parliamentary Commissioner for Administration or a Health Service Commissioner (“a Commissioner”), and
  - (b) a person initiates a complaint to him in his capacity as a Commissioner which relates partly to a matter with respect to which that person has previously initiated, or subsequently initiates, a complaint to him as Welsh Administration Ombudsman.
- (2) Information obtained by the Welsh Administration Ombudsman or a member of his staff in the course of or for the purposes of investigating the complaint made to him in his capacity as Welsh Administration Ombudsman may be disclosed for the purposes of his carrying out his functions in relation to the other complaint.

*Consultation and co-operation with other Ombudsmen*

- 27 (1) Where the Welsh Administration Ombudsman, at any stage in the course of conducting an investigation, forms the opinion that the complaint relates partly to a matter which could be the subject of an investigation—
- (a) by the Parliamentary Commissioner for Administration under the <sup>M114</sup>Parliamentary Commissioner Act 1967,
  - (b) by a Health Service Commissioner under the <sup>M115</sup>Health Service Commissioners Act 1993, or
  - (c) by a Local Commissioner under Part III of the <sup>M116</sup>Local Government Act 1974,
- he shall consult about the complaint with the appropriate Commissioner and, if he considers it necessary, he shall inform the person who made the complaint of the steps necessary to make a complaint to that Commissioner.
- (2) Where the Welsh Administration Ombudsman consults with a Commissioner in accordance with sub-paragraph (1), the consultations may extend to any matter relating to the complaint, including—
- (a) the conduct of any investigation pursuant to the complaint, and
  - (b) the form, content and publication of any report of such an investigation.
- (3) Where a body subject to investigation by the Welsh Administration Ombudsman is also—
- (a) an authority to which the <sup>M117</sup>Parliamentary Commissioner Act 1967 applies,
  - (b) a body subject to investigation by a Health Service Commissioner under the <sup>M118</sup>Health Service Commissioners Act 1993, or
  - (c) an authority to which Part III of the <sup>M119</sup>Local Government Act 1974 applies,
- the Welsh Administration Ombudsman and the Parliamentary Commissioner for Administration, the Health Service Commissioner concerned or the Local Commissioner concerned shall co-operate with each other to any such extent as appears appropriate when exercising any function in relation to the body.
- (4) Nothing in paragraph 25(1) applies in relation to the disclosure of information in the course of consultations or other co-operation under this paragraph.

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#### Marginal Citations

- M114 1967 c. 13.
- M115 1993 c. 46.
- M116 1974 c. 7.
- M117 1967 c. 13.
- M118 1993 c. 46.
- M119 1974 c. 7.

#### [<sup>F43</sup> Disclosure of information to Information Commissioner]

#### Textual Amendments

- F43** Sch. 9 para. 28 and crossheading preceding it inserted (30.1.2001) by 2000 c. 36, ss. 76(2), 87(2), Sch. 7 para. 8 (with ss. 56, 78)

- <sup>F44</sup>28 (1) The Welsh Administration Ombudsman may disclose to the Information Commissioner any information obtained by, or furnished to, the Welsh Administration Ombudsman under or for the purposes of this Schedule if the information appears to the Welsh Administration Ombudsman to relate to—
- (a) a matter in respect of which the Information Commissioner could exercise any power conferred by—
    - (i) Part V of the Data Protection Act 1998 (enforcement),
    - (ii) section 48 of the Freedom of Information Act 2000 (practice recommendations), or
    - (iii) Part IV of that Act (enforcement), or
  - (b) the commission of an offence under—
    - (i) any provision of the Data Protection Act 1998 other than paragraph 12 of Schedule 9 (obstruction of execution of warrant), or
    - (ii) section 77 of the Freedom of Information Act 2000 (offence of altering etc. records with intent to prevent disclosure).
- (2) Nothing in paragraph 25(1) applies in relation to the disclosure of information in accordance with this paragraph.

#### Textual Amendments

- F44** Sch. 9 para. 28 and crossheading preceding it inserted (30.1.2001) by 2000 c. 36, ss. 76(2), 87(2), Sch. 7 para. 8 (with ss. 56, 78)

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## SCHEDULE 10

Section 112.

### AMENDMENTS OF HEALTH SERVICE COMMISSIONERS ACT 1993

#### Commencement Information

**I30** Sch. 10 partly in force; Sch. 10 not in force at Royal Assent; Sch. 10 paras. 2, 3(3)(4), 5, 8-12, 15(3), 16 and 17 in force at 1.7.1999 by S.I. 1999/1290, art. 4; Sch. 10 paras. 1, 3(1)(2), 4, 6, 7, 13, 14 and 15(1)(2)(4) in force at 1.4.1999 by S.I. 1999/782, art. 2

- 1 The <sup>M120</sup>Health Service Commissioners Act 1993 has effect subject to the following amendments.

#### Marginal Citations

**M120** 1993 c. 46.

- 2 In section 1(3) (which introduces Schedule 1), for “the Commissioners and other administrative matters” substitute “, and other administrative matters relating to, the Health Service Commissioner for England and the Health Service Commissioner for Scotland; and Schedule 1A has effect with respect to the appointment and remuneration of, and other administrative matters relating to, the Health Service Commissioner for Wales”.
- 3 (1) Section 2 (bodies subject to investigation by Health Service Commissioners) is amended as follows.
- (2) In subsection (2) (bodies subject to investigation by Health Service Commissioner for Wales), after paragraph (c) insert “and  
 (ca) the National Assembly for Wales (“the Assembly”).”
- (3) In subsection (5)(b) (Special Health Authorities which are subject to investigation by Health Service Commissioner), omit “by Order in Council”.
- (4) For subsection (6) (procedure for Order in Council) substitute—
- “(6) A designation for the purposes of subsection (5)(b) shall be made—
- (a) in the case of a Special Health Authority exercising functions only or mainly in Wales, by order made by the Assembly by statutory instrument, and
- (b) in any other case, by Order in Council;
- and a statutory instrument containing an Order in Council made by virtue of paragraph (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

#### Commencement Information

**I31** Sch. 10 para. 3 partly in force; Sch. 10 para. 3 not in force at Royal Assent see s. 158; Sch. 10 para. 3(3)(4) in force at 1.7.1999 by S.I. 1999/1290, art. 4

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- 4 In section 2B (independent providers subject to investigation), after subsection (2) insert—
- “(2A) Arrangements with the Assembly are not arrangements with a health service body for the purposes of this Act unless they are made in the exercise of a function of the Assembly relating to the National Health Service.”
- 5 In section 3 (remit of Commissioners), after subsection (1) insert—
- “(1YA) In the case of the Assembly the Health Service Commissioner for Wales may only conduct an investigation in respect of—
- (a) a failure in a service provided by the Assembly in the exercise of a function of the Assembly relating to the National Health Service (an “Assembly health service function”),
  - (b) a failure of the Assembly to provide a service the provision of which is an Assembly health service function, or
  - (c) maladministration connected with any other action taken by or on behalf of the Assembly in the exercise of an Assembly health service function.”
- 6 In section 7(1) (exception of action taken in respect of personnel matters), at the end insert “ or service as a member of the staff of the Assembly ”.
- 7 In section 8(2) (authorities not entitled to make a complaint)—
- (a) in paragraph (a), after “government” insert “ (including the Assembly) ”, and
  - (b) in paragraph (c), after “department” insert “ or by the Assembly ” and after “Parliament” insert “ or the Assembly ”.
- 8 In section 10 (referral of complaints by health service bodies), after subsection (2) insert—
- “(2A) The Assembly may only refer a complaint under this section if it is in respect of a matter which the Health Service Commissioner for Wales can investigate by virtue of section 3(1YA).”
- 9 In section 11(4) (payment of expenses etc. by Commissioner)—
- (a) after “Payments” insert “ made by the Health Service Commissioner for England or the Health Service Commissioner for Scotland ”, and
  - (b) at the end insert “ ; and payments made by the Health Service Commissioner for Wales under this subsection shall be in accordance with such scales and subject to such conditions as may be determined by him. ”
- 10 (1) Section 14 (reports by Commissioners) is amended as follows.
- (2) For “a Commissioner” (in each place) substitute “ the Health Service Commissioner for England or the Health Service Commissioner for Scotland ”.
- (3) In subsection (4) (annual reports)—

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- (a) for “Each of the Commissioners” substitute “ The Health Service Commissioner for England and the Health Service Commissioner for Scotland ”, and
  - (b) after “shall” and “may” insert “ each ”.
- (4) In the sidenote, after “by” insert “ English and Scottish ”.

11 After that section insert—

**“14A Reports by Welsh Commissioner.**

- (1) In any case where the Health Service Commissioner for Wales has conducted an investigation pursuant to a complaint under section 3(1), (1A) or (1C) he shall prepare a report of the results of the investigation and send copies of it—
  - (a) to the person who made the complaint,
  - (b) to any Assembly member who to the Commissioner’s knowledge assisted in the making of the complaint (or, if he is no longer an Assembly member, to such Assembly member as the Commissioner thinks appropriate), and
  - (c) to the Assembly First Secretary.
- (2) He shall also send a copy of the report—
  - (a) in the case of a complaint under section 3(1)—
    - (i) to the health service body who at the time of the report provides the service, or has the function, in relation to which the complaint was made, and
    - (ii) to any person who is alleged in the complaint to have taken or authorised the action complained of,
  - (b) in the case of a complaint under section 3(1A)—
    - (i) to any person by reference to whose action the complaint is made,
    - (ii) to the family health service provider (if he does not fall within sub-paragraph (i)), and
    - (iii) to any health service body with whom the family health service provider is subject to an undertaking to provide family health services, and
  - (c) in the case of a complaint under section 3(1C)—
    - (i) to any person who is alleged in the complaint to have taken or authorised the action complained of,
    - (ii) to the independent provider, and
    - (iii) to the health service body or family health service provider with whom the independent provider made the arrangement to provide the service concerned.
- (3) In any case where the Health Service Commissioner for Wales decides not to conduct an investigation pursuant to a complaint under section 3(1), (1A) or (1C) he shall prepare a statement of his reasons for not conducting an investigation and shall send copies of it—
  - (a) to the person who made the complaint, and



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- (b) to any Assembly member who to the Commissioner's knowledge assisted in the making of the complaint (or, if he is no longer an Assembly member, to such Assembly member as the Commissioner thinks appropriate).

#### **14B Action in response to reports by Welsh Commissioner.**

- (1) Where the Assembly First Secretary receives a copy of a report under section 14A(1), he shall send a copy of it to any Assembly Secretary who is accountable to the Assembly (in accordance with section 56 of the Government of Wales Act 1998) for the exercise of any functions of the Assembly relating to the National Health Service.
- (2) Where in a report under section 14A(1) the Health Service Commissioner for Wales states that the person aggrieved has sustained such injustice or hardship as is mentioned in section 3(1), (1A) or (1C), any body or provider subject to the investigation shall consider the report and within—
  - (a) the period of three months beginning with the date on which the body or provider received the report, or
  - (b) such longer period as the Commissioner may agree in writing,shall notify the Commissioner of the action taken or proposed to be taken.
- (3) The Health Service Commissioner for Wales shall prepare a further report if he—
  - (a) does not receive the notification required by subsection (2) within the period allowed by or under that subsection,
  - (b) is not satisfied with the action taken or proposed to be taken, or
  - (c) does not within the period of three months beginning with the end of the period allowed by or under subsection (2), or such longer period as the Commissioner may agree in writing, receive confirmation from the body or provider that action has been taken, as proposed, to his satisfaction.
- (4) The further report shall set out those facts and make such recommendations as the Health Service Commissioner for Wales thinks fit to make with respect to action which, in his opinion, should be taken—
  - (a) to remedy the injustice or hardship to the person aggrieved, and
  - (b) to prevent similar injustice or hardship being caused in the future;and a copy of the further report shall be sent to each of the persons to whom a copy of the report under section 14A(1) was sent.
- (5) Where the Assembly First Secretary receives a copy of a further report, he shall send a copy of it to any Assembly Secretary who is accountable to the Assembly (in accordance with section 56 of the Government of Wales Act 1998) for the exercise of any functions of the Assembly relating to the National Health Service.
- (6) Where the Assembly First Secretary receives a copy of a further report arising from an investigation relating to the Assembly, he shall also—
  - (a) lay a copy of it before the Assembly, and
  - (b) (unless action to the satisfaction of the Health Service Commissioner for Wales has been taken or proposed) give to the

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Assembly notice of his intention to move that the Assembly resolve to approve the recommendations specified in it.

- (7) The standing orders of the Assembly must make provision for any motion of which notice has been given pursuant to subsection (6)(b) to be moved as soon as is reasonably practicable (unless action to the satisfaction of the Health Service Commissioner for Wales has been taken or proposed).

#### **14C Reports: supplementary.**

- (1) Apart from identifying any body or provider investigated, a report under section 14A(1), a further report under section 14B(3) or a report under paragraph 7 of Schedule 1A shall not—

- (a) mention the name of any person, or
- (b) include any particulars which, in the opinion of the Health Service Commissioner for Wales, are likely to identify any person and can be omitted without impairing the effectiveness of the report or further report,

unless, after taking account of the public interest (as well as the interests of any person who made a complaint and other persons), the Commissioner considers it necessary for the report or further report to mention his name or include such particulars.

- (2) For the purposes of the law of defamation, the following are absolutely privileged—

- (a) the publication of any matter by the Health Service Commissioner for Wales in a report or statement under section 14A, a further report under section 14B(3) or a report under paragraph 7 of Schedule 1A,
- (b) the publication of any matter in communications between—
  - (i) an Assembly member or a member of the Assembly’s staff or a member or an officer or member of the staff of any other body or provider subject to investigation by the Commissioner, and
  - (ii) the Commissioner or a member of his staff,

in connection with a complaint to the Commissioner,

- (c) the publication of any matter in communications between any person and an Assembly member in connection with a complaint by the person to the Commissioner, and
- (d) the publication of any matter in communications between any person and the Commissioner or a member of his staff in connection with a complaint by the person to the Commissioner.”

12 In section 15(3) (interpretation of reference to a Commissioner’s advisers), insert at the end “ or paragraph 6(6) of Schedule 1A ”.

13 In section 17(1) (use of information by Commissioner in other capacity), after “Health Service Commissioner” insert “ , the office of Welsh Administration Ombudsman ”.

14 (1) Section 18 (consultation with other Commissioners) is amended as follows.

- (2) In subsection (1) (duty to consult), after paragraph (b) insert—

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- “(ba) by the Welsh Administration Ombudsman under the Government of Wales Act 1998,”, and after “Commissioner”, in both places where it appears in the words following paragraph (d), insert “ or the Ombudsman ”.
- (3) In subsection (2) (matters which may be covered by consultation), after “another Commissioner” insert “ or the Welsh Administration Ombudsman ”.
- (4) In subsection (3) (confidentiality), omit “by a Commissioner or his officers”.
- 15 (1) Section 19 (interpretation) is amended as follows.
- (2) After the definition of “allotted sum” insert—
- ““the Assembly” means the National Assembly for Wales;”.
- (3) After the definition of “family health service provider” insert—
- ““financial year” and “first financial year of the Assembly” have the same meanings as in the Government of Wales Act 1998;”.
- (4) In the definition of “officer”, insert at the end “ and, in the case of the Health Service Commissioner for Wales, any member of his staff; ”.

#### Commencement Information

**I32** Sch. 10 para. 15 partly in force; Sch. 10 para. 15 not in force at Royal Assent see s. 158; Sch. 10 para. 15(3) in force at 1.7.1999 by S.I. 1999/1290, art. 4

- 16 (1) Schedule 1 (the Commissioners) is amended as follows.
- (2) In the heading, before “COMMISSIONERS” insert “ ENGLISH AND SCOTTISH ”.
- (3) Before paragraph 1 insert—

#### Introductory

“A1 In this Schedule references to a Commissioner (or Health Service Commissioner) are to the Health Service Commissioner for England or the Health Service Commissioner for Scotland or to either of those Commissioners (as the context requires).”

- (4) In paragraph 2(1) (acting Commissioners), for “Where any” substitute “ Where either ”.
- (5) In paragraphs 3(2)(a) and 3A(2)(a) (ineligibility of certain persons for appointment), omit “or for Wales”.
- (6) In paragraph 6 (salary of person holding more than one office)—
- (a) in sub-paragraph (1)(b), for “one or more” substitute “ either or both ”, and
- (b) in sub-paragraph (2), for “two or more” substitute “ both ”.
- (7) Omit paragraph 11(2) (staff of Welsh Commissioner).

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- (8) In paragraph 12 (performance of functions of Commissioner by officers of another Commissioner), for “another Commissioner or the Parliamentary Commissioner” substitute “ the other Commissioner, the Health Service Commissioner for Wales, the Parliamentary Commissioner or the Welsh Administration Ombudsman ”.

17 After that Schedule insert—

“SCHEDULE  
1A

Section 1(3).

THE WELSH COMMISSIONER

*Appointment*

- 1 (1) The Health Service Commissioner for Wales shall be appointed by Her Majesty.
- (2) Subject to sub-paragraphs (3) and (4), the Health Service Commissioner for Wales shall hold office until the end of the year of service in which he attains the age of 65.
- (3) Her Majesty may relieve the Health Service Commissioner for Wales of office before the end of that year of service—
- (a) at his request, or
  - (b) on Her Majesty being satisfied that he is incapable for medical reasons of performing the duties of his office and of requesting to be relieved of it.
- (4) Her Majesty may remove the Health Service Commissioner for Wales from office before the end of the year of service in which he attains the age of 65 if, on the ground of misbehaviour, the Secretary of State recommends that Her Majesty should do so; but the Secretary of State shall not so recommend without consulting the Assembly.

*Status*

- 2 (1) The Health Service Commissioner for Wales shall be regarded as holding office under Her Majesty and as exercising his functions on behalf of the Crown.
- (2) Service as the Health Service Commissioner for Wales shall not be service in Her Majesty’s Home Civil Service but he shall be taken to be a Crown servant for the purposes of the <sup>M121</sup>Official Secrets Act 1989.

*Appointment of acting Commissioner*

- 3 (1) Where the office of Health Service Commissioner for Wales becomes vacant, Her Majesty may, at any time during the period of twelve months beginning with the date on which the vacancy arose, appoint a person to act as that Commissioner.

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- (2) Subject to sub-paragraphs (3) to (5), an acting Health Service Commissioner for Wales shall hold office in accordance with the terms of his appointment.
- (3) An acting Health Service Commissioner for Wales shall not hold office after—
  - (a) the appointment of a new Health Service Commissioner for Wales, or
  - (b) the end of the period of twelve months beginning with the date on which the vacancy arose,whichever occurs first.
- (4) Her Majesty may at any time relieve an acting Health Service Commissioner for Wales of office—
  - (a) at his request, or
  - (b) on Her Majesty being satisfied that he is incapable for medical reasons of performing the duties of his office and of requesting to be relieved of it.
- (5) Her Majesty may remove an acting Health Service Commissioner for Wales from office at any time if, on the ground of misbehaviour, the Secretary of State recommends that Her Majesty should do so; but the Secretary of State shall not so recommend without consulting the Assembly.
- (6) A person appointed under this paragraph shall, while he holds office, be regarded for all purposes (except those of paragraph 1 and this paragraph) as the Health Service Commissioner for Wales.

#### *Ineligibility of certain persons for appointment*

- 4 (1) A person who is a member of a body mentioned in section 2(1) or (2) shall not be appointed as Health Service Commissioner for Wales or acting Health Service Commissioner for Wales; and a person so appointed shall not, during his appointment, become a member of such a body.
- (2) A person mentioned in section 2A(1) or (2) shall not be appointed as Health Service Commissioner for Wales or acting Health Service Commissioner for Wales; and a person so appointed shall not, during his appointment, become a person so mentioned.

#### *Remuneration*

- 5 (1) The Assembly shall—
  - (a) pay the Health Service Commissioner for Wales such salary and any such allowances, and
  - (b) make any such payments towards the provision of superannuation benefits for or in respect of him,as may be provided for by or under the terms of his appointment.
- (2) But where the Health Service Commissioner for Wales is also—
  - (a) Parliamentary Commissioner, or
  - (b) Welsh Administration Ombudsman,

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he shall not be entitled to any salary as Health Service Commissioner for Wales.

- (3) Where the Health Service Commissioner for Wales also holds either or both of the other offices of Health Service Commissioner, he shall be entitled only to the salary pertaining to such one of the offices of Health Service Commissioner as he selects.
- (4) The Assembly shall pay to or in respect of a person who has ceased to hold office as Health Service Commissioner for Wales such amounts (if any) by way of—
  - (a) pension or gratuities, or
  - (b) provision for those benefits,
 as may have been provided for by or under the terms of his appointment.
- (5) In Schedule 1 to the <sup>M122</sup>Superannuation Act 1972 (offices etc. to which section 1 of that Act applies), in the list of “Offices” insert—
 

“Health Service Commissioner for Wales.”
- (6) The Assembly shall pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of any increase attributable to sub-paragraph (5) in the sums payable out of money provided by Parliament under the <sup>M123</sup>Superannuation Act 1972.

#### *Staff and advisers*

- 6 (1) The Health Service Commissioner for Wales may appoint such staff as he considers necessary for assisting him in the exercise of his functions.
- (2) The Health Service Commissioner for Wales shall include among his staff such persons having a command of the Welsh language as he considers are needed to enable him to investigate complaints in Welsh.
- (3) Service as a member of the staff of the Health Service Commissioner for Wales shall be service in Her Majesty’s Home Civil Service.
- (4) The Assembly shall pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of any increase attributable to sub-paragraph (3) in the sums payable out of money provided by Parliament under the <sup>M124</sup>Superannuation Act 1972.
- (5) Any function of the Health Service Commissioner for Wales may be exercised by—
  - (a) a member of his staff,
  - (b) a member of the staff of the Welsh Administration Ombudsman, or
  - (c) an officer of the Parliamentary Commissioner or of another Health Service Commissioner,
 if authorised by the Health Service Commissioner for Wales for that purpose; and references in any enactment to a member of the staff of the Health Service Commissioner for Wales include any person exercising any function of his by virtue of paragraph (b) or (c).

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- (6) To assist him in the exercise of his functions the Health Service Commissioner for Wales may obtain advice from any person who, in his opinion, is qualified to give it.
- (7) The Health Service Commissioner for Wales may pay to any person from whom he obtains advice under sub-paragraph (6) any such fees or allowances as he may determine.
- (8) No arrangements shall be made—
  - (a) for any of the functions of the Health Service Commissioner for Wales or of the Assembly to be exercised by the other or by a member of the other’s staff, or
  - (b) for the provision of any administrative, professional or technical services by the Health Service Commissioner for Wales or the Assembly for the other.

#### *Reports*

- 7 (1) The Health Service Commissioner for Wales—
  - (a) shall annually prepare and lay before the Assembly a general report on the performance of his functions, and
  - (b) may from time to time prepare and lay before the Assembly such other reports with respect to his functions as he thinks fit.
- (2) The Assembly shall, and the Health Service Commissioner for Wales may, publish reports laid before the Assembly under this paragraph.

#### *Expenses*

- 8 (1) The expenses of the Health Service Commissioner for Wales shall, so far as they cannot be met out of income received by him, be met by the Assembly.
- (2) Those expenses include any sums payable by the Health Service Commissioner for Wales in consequence of a breach, in the course of the performance of any of his functions, of any contractual or other duty (whether that breach occurs by reason of his act or omission or that of a member of his staff or any other person assisting him in the exercise of his functions).

#### *Estimates*

- 9 (1) For each financial year after the first financial year of the Assembly the Health Service Commissioner for Wales shall prepare, and submit to the executive committee, an estimate of the income and expenses of his office.
- (2) Each such estimate shall be submitted to the executive committee at least five months before the beginning of the financial year to which it relates.
- (3) The executive committee shall examine each such estimate submitted to it and, after having done so, shall lay the estimate before the Assembly with any such modifications as the committee thinks fit.

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- (4) Where the executive committee proposes to lay such an estimate before the Assembly with modifications, the committee shall first consult the Secretary of State and have regard to any advice which he may give.
- (5) In this paragraph “the executive committee” means the committee of the Assembly referred to as the executive committee in the Government of Wales Act 1998.

#### *Accounts*

- 10 (1) The Health Service Commissioner for Wales shall keep proper accounting records.
- (2) The Health Service Commissioner for Wales shall, for each financial year, prepare accounts in accordance with directions given to him by the Treasury.
- (3) The directions which the Treasury may give under sub-paragraph (2) include, in particular, directions as to—
  - (a) the information to be contained in the accounts and the manner in which it is to be presented,
  - (b) the methods and principles in accordance with which the accounts are to be prepared, and
  - (c) the additional information (if any) that is to accompany the accounts.

#### *Audit*

- 11 (1) The accounts prepared by the Health Service Commissioner for Wales for any financial year shall be submitted by him to the Auditor General for Wales no later than five months after the end of that financial year.
- (2) The Auditor General for Wales shall—
  - (a) examine and certify any accounts submitted to him under this paragraph, and
  - (b) no later than four months after the accounts are submitted to him, lay before the Assembly a copy of them as certified by him together with his report on them.
- (3) In examining any accounts submitted to him under this paragraph, the Auditor General for Wales shall, in particular, satisfy himself that the expenditure to which the accounts relate has been incurred lawfully and in accordance with the authority which governs it.

#### *Accounting officer*

- 12 (1) The accounting officer for the Office of the Health Service Commissioner for Wales shall be the Health Service Commissioner for Wales.
- (2) But where—
  - (a) the Health Service Commissioner for Wales is incapable of discharging his responsibilities as accounting officer, or
  - (b) the office of Health Service Commissioner for Wales is vacant (and there is no acting Health Service Commissioner for Wales),



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the Treasury may designate a member of the staff of the Health Service Commissioner for Wales to be the accounting officer for so long as paragraph (a) or (b) applies.

- (3) The accounting officer for the Office of the Health Service Commissioner for Wales shall have, in relation to the accounts of the Health Service Commissioner for Wales and the finances of the Office of the Health Service Commissioner for Wales, the responsibilities which are from time to time specified by the Treasury.
- (4) In this paragraph references to responsibilities include in particular—
  - (a) responsibilities in relation to the signing of accounts,
  - (b) responsibilities for the propriety and regularity of the finances of the Office of the Health Service Commissioner for Wales, and
  - (c) responsibilities for the economy, efficiency and effectiveness with which the resources of the Office of the Health Service Commissioner for Wales are used.
- (5) The responsibilities which may be specified under this paragraph include responsibilities owed to—
  - (a) the Assembly, the executive committee or the Audit Committee of the Assembly, or
  - (b) the House of Commons or its Committee of Public Accounts.
- (6) If requested to do so by the House of Commons Committee of Public Accounts, the Audit Committee of the Assembly may—
  - (a) on behalf of the Committee of Public Accounts take evidence from the accounting officer for the Office of the Health Service Commissioner for Wales, and
  - (b) report to the Committee of Public Accounts and transmit to that Committee any evidence so taken.
- (7) In this paragraph and paragraphs 13 and 14 “the Office of the Health Service Commissioner for Wales” means the Health Service Commissioner for Wales and the members of his staff; and in this paragraph “the executive committee” has the same meaning as in paragraph 9.

#### *Examinations into use of resources*

- 13 (1) The Auditor General for Wales may carry out examinations into the economy, efficiency and effectiveness with which the Health Service Commissioner for Wales has used the resources of the Office of the Health Service Commissioner for Wales in discharging his functions.
- (2) Sub-paragraph (1) shall not be construed as entitling the Auditor General for Wales to question the merits of the policy objectives of the Health Service Commissioner for Wales.
- (3) In determining how to exercise his functions under this paragraph, the Auditor General for Wales shall take into account the views of the Audit Committee of the Assembly as to the examinations which he should carry out under this paragraph.

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- (4) The Auditor General for Wales may lay before the Assembly a report of the results of any examination carried out by him under this paragraph.
- (5) The Auditor General for Wales and the Comptroller and Auditor General may co-operate with, and give assistance to, each other in connection with the carrying out of examinations in respect of the Health Service Commissioner for Wales under this paragraph or section 7 of the<sup>M125</sup>National Audit Act 1983 (economy etc. examinations).

*Examinations by the Comptroller and Auditor General*

- 14 (1) For the purpose of enabling him to carry out examinations into, and report to Parliament on, the finances of the Office of the Health Service Commissioner for Wales, the Comptroller and Auditor General—
- (a) shall have a right of access at all reasonable times to all such documents in the custody or under the control of the Health Service Commissioner for Wales, or of the Auditor General for Wales, as he may reasonably require for that purpose, and
  - (b) shall be entitled to require from any person holding or accountable for any of those documents any assistance, information or explanation which he reasonably thinks necessary for that purpose.
- (2) The Comptroller and Auditor General shall—
- (a) consult the Auditor General for Wales, and
  - (b) take into account any relevant work done or being done by the Auditor General for Wales,
- before he acts in reliance on sub-paragraph (1) or carries out an examination in respect of the Health Service Commissioner for Wales under section 7 of the<sup>M126</sup>National Audit Act 1983 (economy etc. examinations).”

**Marginal Citations**

**M121** 1989 c. 6.

**M122** 1972 c. 11.

**M123** 1972 c. 11.

**M124** 1972 c. 11.

**M125** 1983 c. 44.

**M126** 1983 c. 44.

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## SCHEDULE 11

Section 113.

### RELATIONS WITH LOCAL GOVERNMENT: SUPPLEMENTARY

#### PART I

##### THE PARTNERSHIP COUNCIL

###### *Membership of Partnership Council*

- 1 (1) The members of the Partnership Council shall be appointed by the Assembly.
- (2) Appointments to membership of the Partnership Council shall be made as soon as is reasonably practicable after each ordinary election but in any event so that a meeting of the Partnership Council can be held as required by paragraph 5(2).
- (3) The Assembly may at any time make an appointment to fill a casual vacancy in the membership of the Partnership Council.
- (4) The Assembly may not delegate the function of appointing members of the Partnership Council.
  
- 2 (1) The Assembly shall appoint as members of the Partnership Council—
  - (a) such number of Assembly members, and
  - (b) such number of members of local authorities in Wales,as the Assembly considers appropriate.
- (2) The number of members of the Partnership Council who have been appointed under paragraph (a) of sub-paragraph (1) shall at no time exceed the number who have been appointed under paragraph (b) of that sub-paragraph (unless the excess is due to casual vacancies which are temporarily unfilled).
- (3) A member of an authority within paragraph (b), (c), (d) or (e) of subsection (7) of section 113 may only be appointed under sub-paragraph (1)(b) if he is also a member of an authority within paragraph (a) of that subsection.
- (4) A person may not be appointed under sub-paragraph (1)(b) if he is also an Assembly member.

###### *Consultation about membership of Partnership Council*

- 3 (1) After each ordinary election the Assembly shall consult—
  - (a) local authorities in Wales, and
  - (b) associations of local authorities in Wales,about the membership of the Partnership Council.
- (2) The consultation required by sub-paragraph (1) shall include consultation about—
  - (a) the number of persons to be appointed under paragraph (a) of sub-paragraph (1) of paragraph 2,

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- (b) the number of persons to be appointed under paragraph (b) of that sub-paragraph, and
  - (c) in relation to each of the descriptions of authorities within paragraphs (b), (c), (d) and (e) of section 113(7), the number of members of an authority of that description to be appointed.
- (3) When consulting authorities and associations under sub-paragraph (1), the Assembly shall invite them to make, within a period specified by the Assembly, nominations of persons for appointment to membership of the Partnership Council under paragraph 2(1)(b).
- (4) The appointments shall be made from among those nominated in accordance with the invitation except to the extent that the number of persons so nominated is insufficient to produce the number of members required.
- (5) Where a casual vacancy arises among the members of the Partnership Council appointed under paragraph 2(1)(b), the Assembly shall invite—
- (a) such local authorities in Wales, and
  - (b) such associations of local authorities in Wales,
- as the Assembly considers appropriate to make, within a period specified by the Assembly, nominations of persons for appointment under paragraph 2(1)(b) to fill the vacancy.
- (6) The appointment to fill the vacancy shall be made from among those nominated in accordance with the invitation unless no-one is so nominated.
- (7) Where, pursuant to sub-paragraph (4) or (6), the Assembly appoints as a member of the Partnership Council under paragraph 2(1)(b) a person nominated by an authority or association, the Assembly shall notify the authority or association of the appointment.

#### *Cessation of membership of Partnership Council*

- 4 (1) Subject to the following provisions of this paragraph, a person appointed as a member of the Partnership Council shall remain a member until the end of the day before the ordinary election following his appointment.
- (2) A person appointed as a member of the Partnership Council may resign at any time.
- (3) A person appointed as a member of the Partnership Council under paragraph (a) of sub-paragraph (1) of paragraph 2 shall cease to be a member if—
- (a) he ceases to be an Assembly member, or
  - (b) he is removed from membership of the Partnership Council by the Assembly.
- (4) A person appointed as a member of the Partnership Council under paragraph (b) of that sub-paragraph shall cease to be a member if he ceases to be eligible for appointment under that paragraph.
- (5) Where the appointment of a person as a member of the Partnership Council under that paragraph was notified under paragraph 3(7) to an authority or association—
- (a) the authority or association may require the Assembly to remove him from membership, and

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- (b) he shall cease to be a member on being removed from membership by the Assembly in compliance with that requirement.
- (6) A person—
- (a) whose appointment as a member of the Partnership Council was notified under paragraph 3(7) to an authority within paragraph (b), (c), (d) or (e) of subsection (7) of section 113, and
  - (b) who was, on appointment, a member of the authority,
- shall cease to be a member of the Partnership Council if he ceases to be a member of the authority (even though he remains a member of an authority within paragraph (a) of that subsection).
- (7) The Assembly may not delegate the function of removing a person from membership of the Partnership Council under sub-paragraph (3)(b) or (5)(b).

#### *Procedure of Partnership Council*

- 5
- (1) The Partnership Council must meet at least once a year.
  - (2) The first meeting of the Partnership Council after each ordinary election must be held within the period of six months beginning with the day on which the poll at the ordinary election is held.
  - (3) Subject to sub-paragraphs (1) and (2), the procedure of the Partnership Council shall be regulated by standing orders made by the Assembly.
  - (4) The Assembly shall consult—
    - (a) local authorities in Wales, and
    - (b) associations of local authorities in Wales,before making, or remaking or revising, the standing orders of the Partnership Council.
  - (5) The standing orders of the Partnership Council may provide for the Partnership Council to establish committees.
  - (6) The members of any committee established by the Partnership Council shall be elected by the Partnership Council from among its members so as to secure that the number of its members who were appointed to the Partnership Council under paragraph (a) of sub-paragraph (1) of paragraph 2 does not exceed the number who were so appointed under paragraph (b) of that sub-paragraph.

## **PART II**

### THE LOCAL GOVERNMENT SCHEME

- 6
- The Assembly shall keep the local government scheme under review and in the year following each ordinary election (after the first) shall consider whether it should be remade or revised.

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- 7 The Assembly may not delegate the function of making, or remaking or revising, the local government scheme.
- 8 The Assembly shall publish the local government 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).
- 9 After each financial year the Assembly shall publish a report of how its proposals as set out in the local government scheme were implemented in that financial year.

## SCHEDULE 12

Section 125.

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### *The Exchequer and Audit Departments Act 1866 (c.39)*

- 1 At the end of section 3 of the Exchequer and Audit Departments Act 1866 (tenure of Comptroller and Auditor General) insert— “ But a person may at the same time hold both the office of Comptroller and Auditor General and the office of Auditor General for Wales. ”

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

- 2 In section 1 of the Statutory Instruments Act 1946 (document by which a power conferred on a Minister of the Crown and expressed to be exercisable by statutory instrument is exercised to be known as a statutory instrument), after subsection (1) insert—
- “(1A) The references in subsection (1) to a Minister of the Crown shall be construed as including references to the National Assembly for Wales.”

#### *The Public Records Act 1958 (c.51)*

- 3 (1) The First Schedule to the Public Records Act 1958 (definition of public records) is amended as follows.
- (2) In paragraph 2(2) (excluded departmental records), at the end insert “or
- (e) to Welsh public records (as defined in the Government of Wales Act 1998).”
- (3) In Part I of the Table at the end of paragraph 3 (boards and establishments under government departments)—
- (a) at the end of the entry relating to National Health Service Authorities insert “ and 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) ”,

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- (b) at the end of the entry relating to Family Practitioner Committees insert “ for localities in England ”, and
  - (c) in the entry relating to health service hospitals, after “1977” insert “ , in England ”.
- (4) In paragraph 5 (Chancery records), after “England” insert “ , other than any which are Welsh public records (as defined in the Government of Wales Act 1998), ”.
- (5) In paragraph 6 (records in Public Record Office), at the end (but not as part of paragraph (c)) insert— “ other than any which are Welsh public records (as defined in the Government of Wales Act 1998). ”
- (6) In paragraph 7(1) (power to add further categories of records), after “provisions of this Schedule” insert “ and not being Welsh public records (as defined in the Government of Wales Act 1998) ”.

*The Parliamentary Commissioner Act 1967 (c.13)*

- 4 The Parliamentary Commissioner Act 1967 has effect subject to the following amendments.
- 5 In section 3(2) (performance of functions of Parliamentary Commissioner by officers of his or of a Health Service Commissioner), for the words “or may be performed” onwards substitute “ , by any member of the staff so authorised of the Welsh Administration Ombudsman or of the Health Service Commissioner for Wales or by any officer so authorised of the Health Service Commissioner for England or of the Health Service Commissioner for Scotland. ”
- 6 In section 4 (departments etc. subject to investigation), after subsection (3) insert—  
“(3A) No entry shall be made if the result of making it would be that the Parliamentary Commissioner could investigate action which can be investigated by the Welsh Administration Ombudsman under Schedule 9 to the Government of Wales Act 1998.”
- 7 In section 11(2A) (disclosure of information between Parliamentary Commissioner and a Health Service Commissioner)—  
(a) after “office as” insert “ Welsh Administration Ombudsman or ”, and  
(b) for “such a Commissioner” substitute “ Welsh Administration Ombudsman or a Health Service Commissioner ”.
- 8 (1) Section 11A (consultations between Parliamentary Commissioner and Health Service Commissioners) is amended as follows.  
(2) In subsection (1) (duty of consultation)—  
(a) after “jurisdiction of” insert “ the Welsh Administration Ombudsman or of ”,  
(b) for “office as that Commissioner” substitute “ the office concerned ”, and  
(c) after “a complaint under” insert “ the Government of Wales Act 1998 or ”.  
(3) In subsection (2) (matters which may be covered by consultation), after “with the” insert “ Welsh Administration Ombudsman or a ”.  
(4) In the sidenote, after “and” insert “ Welsh Administration Ombudsman or ”.

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- 9 In Schedule 2 (departments etc. subject to investigation by Parliamentary Commissioner)—
- (a) in the entry relating to urban development corporations, after “corporations” insert “ established for urban development areas wholly in England ”,
  - (b) in note 1A, insert at the end “ ; and no investigation under this Act shall be conducted in respect of any action in connection with functions of the Environment Agency in relation to Wales (within the meaning of the Government of Wales Act 1998). ”, and
  - (c) after that note insert—
    - “1B In the case of the Forestry Commission no investigation under this Act shall be conducted in respect of any action in connection with functions of the Forestry Commissioners in relation to Wales (within the meaning of the Government of Wales Act 1998).”

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

- 10 In Part II of Schedule 2 to the Pensions (Increase) Act 1971 (official pensions), before paragraph 39 insert—

*“ National Assembly for Wales*

- 38B A pension payable under a scheme established under section 18(2)(b) of the Government of Wales Act 1998.”

*The Local Government Act 1974 (c.7)*

- 11 The Local Government Act 1974 has effect subject to the following amendments.
- 12 (1) Section 23 (the Commissions for Local Administration) is amended as follows.
- (2) After subsection (2) insert—
- “(2A) The Welsh Administration Ombudsman shall be a member of the Commission for Local Administration in Wales (so that, where the offices of Parliamentary Commissioner and Welsh Administration Ombudsman are held by different persons, the Commission for Local Administration in Wales shall consist of at least three commissioners).”
- (3) In subsection (3) (meaning of “Local Commissioner”), after “other than the Parliamentary Commissioner” insert “ , the Welsh Administration Ombudsman ”.
- (4) In subsection (12) (reports by the Commissions), after “government departments” insert “ or the National Assembly for Wales ”.

- 13 In section 26(6)(b) (no investigation where person aggrieved has right of appeal to Minister of the Crown), after “Minister of the Crown” insert “ or the National Assembly for Wales ”.

- 14 In section 27(1) (authorities not entitled to make a complaint)—



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- (a) in paragraph (a), after “government” insert “ (including the National Assembly for Wales) ”, and
- (b) in paragraph (b), after “department” insert “ or by the National Assembly for Wales ” and after “Parliament” insert “ or the National Assembly for Wales ”.

- 15 (1) Section 29 (provisions about investigations) is amended as follows.
- (2) In subsection (3) (disclosure to Local Commissioner of communications between local authorities and government departments), after “any Government department” insert “ or the National Assembly for Wales ”.
- (3) In subsection (5) (section does not affect restrictions on disclosure of information), before “or” at the end of paragraph (a) insert—
- “(aa) the restriction, imposed by paragraph 25(1) of Schedule 9 to the Government of Wales Act 1998, on the disclosure of information by the Welsh Administration Ombudsman or members of his staff.”.

#### Commencement Information

**I33** Sch. 12 para. 15 wholly in force at 1.7.1999; Sch. 12 para. 15 not in force at Royal Assent see s. 158; Sch. 12 para. 15(1)(2) in force at 1.4.1999 by S.I. 1999/782, art. 2; Sch. 12 para. 15(3) in force at 1.7.1999 by S.I. 1999/1290, art. 4

- 16 In section 32(5) (inclusion in Local Commissioner’s report of information derived from government communications disclosed under section 29(3))—
- (a) after “department”, in the first place, insert “ or the National Assembly for Wales ”,
  - (b) after “department”, in the second place, insert “ or a member of the Assembly’s staff ”, and
  - (c) after “department”, in the third place, insert “ or the Assembly ”.
- 17 (1) Section 33 (consultation with other Commissioners) is amended as follows.
- (2) In subsection (1) (duty to consult), before “or” at the end of paragraph (a) insert—
- “(aa) by the Welsh Administration Ombudsman, in accordance with the Government of Wales Act 1998,”, and, in the words following paragraph (b), after “Commissioner” insert “ or the Ombudsman ” and after “under the Act of 1967” insert “ , under the Government of Wales Act 1998 ”.
- (3) In subsection (2) (matters which may be covered by consultation)—
- (a) after “the Parliamentary Commissioner” insert “ , the Welsh Administration Ombudsman ”, and
  - (b) after “that Commissioner” insert “ or the Ombudsman ”.
- (4) In subsection (5) (confidentiality)—
- (a) after “Act of 1993,” insert “ in paragraph 25(1) of Schedule 9 to the Government of Wales Act 1998 ”, and

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- (b) omit “by any of the Commissioners mentioned in this section, or by any of their officers.”.

*The Juries Act 1974 (c.23)*

- 18 In Part III of Schedule 1 to the Juries Act 1974 (excusal from jury service as of right: England and Wales), before the heading “The Forces” insert—

“ *National Assembly for Wales*

Members of the National Assembly for Wales.

The Auditor General for Wales.”

*The House of Commons Disqualification Act 1975 (c.24)*

- 19 In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (certain disqualifying offices) insert at the appropriate places—

“Auditor General for Wales.”,

“Member of the staff of the Auditor General for Wales.”, and

“Welsh Administration Ombudsman.”

*The Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55)*

- 20 In Part III of Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (excusal from jury service as of right: Scotland), before Group C insert—

**“GROUP BA**

*National Assembly for Wales*

Members of the National Assembly for Wales.”

*The Mental Health Act 1983 (c.20)*

- 21 The Mental Health Act 1983 has effect subject to the following amendments.
- 22 In section 134(3)(c) (no power to withhold correspondence between patients and ombudsmen), after “Parliamentary Commissioner for Administration,” insert “ the Welsh Administration Ombudsman, ”.
- 23 In section 141 (members of House of Commons suffering from mental illness), at the end insert—
- “(9) This section also has effect in relation to members of the National Assembly for Wales but as if—
- (a) references to the House of Commons were to the Assembly and references to the Speaker were to the presiding officer, and

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- (b) in subsection (7), for “defrayed out of moneys provided by Parliament” there were substituted “paid by the National Assembly for Wales”.

*The Insolvency Act 1986 (c.45)*

24 In section 427 of the Insolvency Act 1986 (members of House of Commons adjudged bankrupt etc.), before subsection (7) insert—

“(6B) Subsections (4) to (6) have effect in relation to a member of the National Assembly for Wales but as if—

- (a) references to the House of Commons were to the Assembly and references to the Speaker were to the presiding officer, and
- (b) in subsection (4), for “under this section” there were substituted “under section 12(2) of the Government of Wales Act 1998 by virtue of this section”.

*The Finance Act 1987 (c.16)*

25 In section 55(1) of the Finance Act 1987 (Crown exemption from stamp duty), after “Her Majesty’s Treasury,” insert “ or to the National Assembly for Wales, ”.

*The Copyright, Designs and Patents Act 1988 (c.48)*

26 The Copyright, Designs and Patents Act 1988 has effect subject to the following amendments.

27 In section 49 (copying of public records not to constitute infringement of copyright), after “1923” insert “ , or in Welsh public records (as defined in the Government of Wales Act 1998), ”.

28 In section 163 (Crown copyright), after subsection (1) insert—

“(1A) For the purposes of this section, works made by Her Majesty include any sound recording, film, live broadcast or live cable programme of the proceedings of the National Assembly for Wales (including proceedings of a committee of the Assembly or of a sub-committee of such a committee) which is made by or under the direction or control of the Assembly; but a work shall not be regarded as made by or under the direction or control of the Assembly by reason only of its being commissioned by or on behalf of the Assembly.”

29 In paragraph 10(1) of Schedule 2 (copying of public records not to constitute infringement of rights in performances), after “1923” insert “ , or in Welsh public records (as defined in the Government of Wales Act 1998), ”.

*The Official Secrets Act 1989 (c.6)*

30 In section 12(2) of the Official Secrets Act 1989 (which defines a “government contractor” as including a person who provides goods or services for the purposes of a Minister), before “or” at the end of paragraph (a) insert—

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“(aa) for the purposes of the National Assembly for Wales;”.

*The Finance Act 1989 (c.26)*

- 31 (1) Section 182 of the Finance Act 1989 (restrictions on disclosure of information about taxpayers) is amended as follows.
- (2) In subsection (4)(a) (offence for Parliamentary Commissioner for Administration and others to disclose information about taxpayers), after sub-paragraph (ii) insert—
- “(iii) of the Auditor General for Wales and any member of his staff, or
- (iv) of the Welsh Administration Ombudsman and any member of his staff;”.
- (3) In subsection (6) (authorised disclosures), in the words after paragraph (e), for “or the Parliamentary Commissioner,” substitute “, the Parliamentary Commissioner, the Auditor General for Wales or the Welsh Administration Ombudsman, ”.

*The Social Security Administration Act 1992 (c.5)*

- 32 In section 123(8) of the Social Security Administration Act 1992 (auditors and investigators of complaints who may not disclose social security information)—
- (a) after paragraph (b) insert—
- “(ba) the Auditor General for Wales and any member of his staff;”, and
- (b) after paragraph (hc) insert—
- “(hd) the Welsh Administration Ombudsman and any member of his staff;”.

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

- 33 In section 16(1) of the Tribunals and Inquiries Act 1992 (interpretation), in the definition of “Minister”, after “includes” insert “ the National Assembly for Wales and ”.

*The European Communities (Amendment) Act 1993 (c.32)*

- 34 In section 6 of the European Communities (Amendment) Act 1993 (which provides that a person may be proposed for membership of the Committee of the Regions constituted under Article 198a of the Treaty establishing the European Community only if he is an elected member of a local authority), before “an elected member of a local authority” insert “ a member of the National Assembly for Wales or ”.

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

- 35 In section 41(6) of the Value Added Tax Act 1994 (meaning of government department), before “a Northern Ireland department,” insert “ , the National Assembly for Wales, ”.

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*The Deregulation and Contracting Out Act 1994 (c.40)*

- 36 In section 79(1) of the Deregulation and Contracting Out Act 1994 (interpretation of Part II), in the definition of “office-holder”—
- (a) after “officer of either House of Parliament,” insert “ the Auditor General for Wales, ” and
  - (b) after “the Parliamentary Commissioner for Administration” insert “ , the Welsh Administration Ombudsman ”.

SCHEDULE 13

Section 127.

WELSH DEVELOPMENT AGENCY: LAND PROVISIONS

**Commencement Information**

**I34** Sch. 13 in force at 1.10.1998 by S.I. 1998/2244, art. 4

- 1 The <sup>M127</sup>Welsh Development Agency Act 1975 has effect subject to the following amendments.

**Marginal Citations**

**M127** 1975 c. 70.

- 2 After section 21 insert—

**“21A Powers of land acquisition.**

- (1) The powers to acquire land mentioned in sections 1(7)(h) and 16(3)(b) above are powers—
  - (a) to acquire land by agreement; and
  - (b) to acquire land compulsorily if authorised to do so by the Secretary of State.
- (2) Where the Agency acquire or have acquired land under subsection (1) above, they have power to acquire by agreement or, if authorised to do so by the Secretary of State, to acquire compulsorily—
  - (a) any land which adjoins the land and is required for the purpose of executing works for facilitating its development or use; and
  - (b) where the land forms part of a common, an open space or a fuel or field garden allotment, any land required for the purpose of being given in exchange for it.
- (3) The Agency may under subsection (1) above acquire rights over land by the creation of new rights (as well as by acquiring rights already in existence).
- (4) Before the Agency acquire land under subsection (1) above for the purpose of their function under section 1(3)(da) above, they shall—
  - (a) consider whether the land would or would not in their opinion be made available for development if they did not act;

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- (b) consider the fact that planning permission has or has not been granted in respect of the land or is likely or unlikely to be granted;
  - (c) (in a case where no planning permission has been granted in respect of the land) consult every relevant local authority; and
  - (d) consider the needs of those engaged in building, agriculture and forestry and of the community in general.
- (5) For the purposes of subsection (4)(c) above, each of the following is a relevant local authority—
- (a) the council of any county, county borough or district in whose area the land, or any part of the land, is situated;
  - (b) any joint planning board in whose district the land, or any part of the land, is situated; and
  - (c) any National Park authority which is the local planning authority for a National Park in which the land, or any part of the land, is situated.
- (6) Where the Agency have acquired land under subsection (1) above for the purpose of any of their functions, they may appropriate it to the purpose of any of their other functions.
- (7) Where the Agency have—
- (a) acquired land under subsection (1) above for the purpose of their function under section 1(3)(da) above; or
  - (b) under subsection (6) above have appropriated land to that purpose, they shall, until they either dispose of the land or appropriate it under subsection (6) above to the purpose of any of their other functions, manage it and turn it to account.
- (8) Schedule 4 to this Act shall have effect.

### **21B Disposal of land.**

In exercising any power under this Act to dispose of land, the Agency shall not dispose of land for a consideration less than the best that can reasonably be obtained except—

- (a) as provided by section 16(7) above; or
- (b) with the consent of the Secretary of State.

### **21C Powers to advise on land matters.**

- (1) The Agency may, if requested to do so by a public authority—
- (a) advise the authority about disposing of any of the authority’s land in Wales to other persons; and
  - (b) assist the authority in disposing of the land.
- (2) In subsection (1) above “public authority” means—
- (a) a government department;
  - (b) the National Assembly for Wales;
  - (c) a county council, county borough council or community council;
  - (d) a National Park authority;
  - (e) a development corporation for a new town;

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- (f) a Health Authority, Special Health Authority or National Health Service trust;
- (g) a body corporate established by or under an enactment for the purpose of carrying on under national ownership any industry or part of an industry;
- (h) any statutory undertakers; or
- (i) any other public authority, body or undertakers specified in an order made by the Secretary of State.

(3) The Agency may assist—

- (a) the council of a county or county borough in Wales in making an assessment of land in its area which is, in its opinion, available and suitable for development;
- (b) a joint planning board in Wales in making an assessment of land in its district which is, in its opinion, available and suitable for development; or
- (c) a National Park authority for a National Park in Wales in making an assessment of land in the National Park which is, in its opinion, available and suitable for development.”

3 After Schedule 3 insert—

“SCHEDULE 4

Section 21A.

#### ACQUISITION OF LAND

#### PART I

#### COMPULSORY ACQUISITION

- 1 (1) The <sup>M128</sup>Acquisition of Land Act 1981 applies in relation to the compulsory acquisition of land under section 21A above.
- (2) The <sup>M129</sup>Acquisition of Land Act 1981 has effect in its application by virtue of sub-paragraph (1) above with the modifications made by the following provisions of this Part.
- 2 (1) This paragraph applies where a compulsory purchase order of the Agency authorising the acquisition of any land is submitted to the Secretary of State in accordance with section 2(2) of the <sup>M130</sup>Acquisition of Land Act 1981.
- (2) If the Secretary of State—
  - (a) is satisfied that the order ought to be confirmed so far as it relates to part of the land comprised in it; but
  - (b) has not for the time being determined whether it ought to be confirmed so far as it relates to any other such land,he may confirm the order so far as it relates to the land mentioned in paragraph (a) above and give directions postponing the consideration of the order so far as it relates to any other land specified in the directions until such time as may be so specified.

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- (3) Where the Secretary of State gives directions under sub-paragraph (2) above, the notices required by section 15 of the <sup>M131</sup>Acquisition of Land Act 1981 to be published and served shall include a statement of the effect of the directions.
- 3 (1) Where a compulsory purchase order is made by the Agency—
- (a) a notice under section 12 of the <sup>M132</sup>Acquisition of Land Act 1981 (notice specifying the time for making objections) shall be served on every relevant local authority;
  - (b) each relevant local authority shall have a right to object in accordance with the notice; and
  - (c) the references in section 13 of that Act to objections made by an owner, lessee or occupier shall include references to an objection made by any relevant local authority.
- (2) For the purposes of sub-paragraph (1) above, each of the following is a relevant local authority—
- (a) the council of any county, county borough or district in whose area the land, or any part of the land, is situated;
  - (b) any joint planning board in whose district the land, or any part of the land, is situated; and
  - (c) any National Park authority which is the local planning authority for a National Park in which the land, or any part of the land, is situated.

## PART II

### ACQUISITION BY AGREEMENT

- 4 The provisions of Part I of the <sup>M133</sup>Compulsory Purchase Act 1965 (so far as applicable), other than section 31, apply in relation to the acquisition of land by agreement under section 21A above; and in Part I of that Act as so applied “land” has the meaning given by Schedule 1 to the <sup>M134</sup>Interpretation Act 1978.

## PART III

### “CLEANSING” PROVISIONS

#### *Extinguishment of rights over land compulsorily acquired*

- 5 (1) On the completion by the Agency of a compulsory acquisition of land under section 21A above, all—
- (a) private rights of way; and
  - (b) rights of laying down, erecting, continuing or maintaining any apparatus on, under or over the land,
- shall be extinguished and any such apparatus shall vest in the Agency.
- (2) Sub-paragraph (1) above does not apply to any right vested in, or apparatus belonging to, statutory undertakers for the purpose of the carrying on of their undertaking.



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- (3) Sub-paragraph (1) above has effect in relation to any right or apparatus not falling within sub-paragraph (2) above subject—
  - (a) to any direction given by the Agency before the completion of the acquisition that sub-paragraph (1) above shall not apply to any right or apparatus specified in the direction; and
  - (b) to any agreement which may be made (whether before or after the completion of the acquisition) between the Agency and the person in or to whom the right or apparatus is vested or belongs.
- (4) Any person who suffers loss by the extinguishment of a right or the vesting of any apparatus under this paragraph shall be entitled to compensation from the Agency.
- (5) Any compensation payable under this paragraph shall be determined in accordance with the <sup>M135</sup>Land Compensation Act 1961.

*Power to override easements and other rights*

- 6 (1) The erection, construction or carrying out, or maintenance, of any building or work on land which has been acquired by the Agency under section 21A above, whether done by the Agency or by a person deriving title under the Agency, is authorised by virtue of this paragraph if it is done in accordance with planning permission even if it involves—
  - (a) interference with an interest or right to which this paragraph applies; or
  - (b) a breach of a restriction as to the user of land arising by virtue of a contract.
- (2) Nothing in this paragraph authorises interference with—
  - (a) any right of way; or
  - (b) any right of laying down, erecting, continuing or maintaining apparatus on, under or over land,which is vested in or belongs to statutory undertakers for the purpose of the carrying on of their undertaking.
- (3) This paragraph applies to any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.
- (4) Compensation in respect of any interference or breach in pursuance of sub-paragraph (1) above—
  - (a) shall be payable under section 7 or 10 of the <sup>M136</sup>Compulsory Purchase Act 1965; and
  - (b) shall be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections in respect of injurious affection where the compensation is to be estimated in connection with a purchase to which that Act applies or the injury arises from the execution of works on land acquired by such a purchase.
- (5) Where a person deriving title under the Agency—

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- (a) is liable to pay compensation by virtue of sub-paragraph (4) above; but
  - (b) fails to discharge that liability,
- the liability shall be enforceable against the Agency.
- (6) Nothing in sub-paragraph (5) above affects any agreement between the Agency and any other person for indemnifying the Agency against any liability under that sub-paragraph.
  - (7) Nothing in this paragraph authorises any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than an interference or breach such as is mentioned in sub-paragraph (1) above.
  - (8) In this paragraph—
    - (a) a reference to a person deriving title from another person includes a reference to any successor in title of that other person; and
    - (b) a reference to deriving title is a reference to deriving title either directly or indirectly.

*Use and development of consecrated land and burial grounds*

- 7 (1) Any consecrated land (whether or not including a building) which has been acquired by the Agency under section 21A above may be used by any person in any manner in accordance with planning permission in spite of any obligation or restriction imposed under ecclesiastical law or otherwise in respect of consecrated land.
- (2) Sub-paragraph (1) above does not apply to land which consists or forms part of a burial ground.
- (3) Any use of consecrated land authorised by sub-paragraph (1) above, and the use of any land (not being consecrated land) which was—
  - (a) acquired by the Agency under section 21A above; and
  - (b) at the time of acquisition included a church or other building used or formerly used for religious worship or the site of such a building,
 shall be subject to compliance with the requirements of regulations made by the Secretary of State for the purposes of this paragraph with respect to the removal and re-interment of any human remains and the disposal of monuments and fixtures and furnishings.
- (4) Any use of consecrated land authorised by sub-paragraph (1) above shall be subject to such provisions as may be prescribed by such regulations for prohibiting or restricting the use of the land, either absolutely or until the prescribed consent has been obtained, so long as any church or other building used or formerly used for religious worship, or any part of such a building, remains on the land.
- (5) Any regulations made for the purposes of this paragraph—
  - (a) shall contain such provisions as appear to the Secretary of State to be required for securing that any use of land which is subject to compliance with the regulations is, as nearly as may be, subject to the same control as is imposed by law in the case of a similar use authorised by an enactment not contained in this Act or by a

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- Measure or as it would be proper to impose on a disposal of the land in question otherwise than in pursuance of an enactment or Measure;
- (b) shall contain such requirements relating to the disposal of any such land as is mentioned in sub-paragraphs (3) and (4) above as appear to the Secretary of State necessary for securing that the provisions of those sub-paragraphs are complied with in relation to the use of the land; and
  - (c) may contain such incidental and consequential provisions (including provision as to the closing of registers) as appear to the Secretary of State to be appropriate for the purposes of the regulations.
- (6) Any land consisting of a burial ground, or part of a burial ground, which has been acquired as mentioned in sub-paragraph (1) above may be used by any person in any manner in accordance with planning permission in spite of—
- (a) anything in any enactment relating to burial grounds; or
  - (b) any obligation or restriction imposed under ecclesiastical law or otherwise in respect of burial grounds.
- (7) Sub-paragraph (6) above shall not have effect in relation to any land which has been used for the burial of the dead until the requirements prescribed by regulations made under this paragraph with respect to the removal and re-interment of human remains, and the disposal of monuments, in or on the land have been complied with.
- (8) Provision shall be made by any regulations made for the purposes of this paragraph—
- (a) for requiring the persons in whom the land is vested to publish notice of their intention to carry out the removal and re-interment of any human remains or the disposal of any monuments;
  - (b) for enabling the personal representatives or relatives of any deceased person themselves to undertake the removal and re-interment of the remains of the deceased, and the disposal of any monument commemorating the deceased, and for requiring the persons in whom the land is vested to defray the expenses of such removal, re-interment and disposal, not exceeding such amount as may be prescribed; and
  - (c) for requiring compliance with such reasonable conditions (if any) as may be imposed in the case of consecrated land, by the bishop of the diocese, with respect to the manner of removal, and the place and manner of re-interment, of any human remains and the disposal of any monuments and with any directions given in any case by the Secretary of State with respect to the removal and re-interment of any human remains.
- (9) Subject to the provisions of regulations made under this paragraph, no faculty shall be required for the removal and re-interment in accordance with the regulations of any human remains or for the removal or disposal of any monuments; and the provisions of section 25 of the <sup>M137</sup>Burial Act 1857 (prohibition of removal of human remains without the licence of the Secretary of State except in certain cases) shall not apply to a removal carried out in accordance with the regulations.

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(10) Nothing in this paragraph authorises any act or omission on the part of any person which is actionable at the suit of any person on any ground other than contravention of any such obligation, restriction or enactment as is mentioned in sub-paragraph (1) or (6) above.

(11) In this paragraph—

“burial ground” includes any churchyard, cemetery or other ground, whether consecrated or not, which has at any time been set apart for the purposes of interment; and

“monument” includes a tombstone or other memorial.

*Use and development of land for open spaces*

8 (1) Any land which—

(a) is, or forms part of, a common, an open space or a fuel or field garden allotment; and

(b) has been acquired by the Agency under section 21A above, may be used by any person in any manner in accordance with planning permission in spite of anything in any enactment relating to land of that kind or in any enactment by which the land is specially regulated.

(2) Sub-paragraph (1) does not authorise any act or omission on the part of any person which is actionable at the suit of any person on any ground other than contravention of any such enactment as is mentioned in that sub-paragraph.

*Paragraphs 6 to 8: supplementary*

9 In construing the <sup>M138</sup>Compulsory Purchase Act 1965 in relation to section 21A above—

(a) references to the execution of works shall be construed as including references to any erection, construction or carrying out of building or work authorised by paragraph 6 above; and

(b) in relation to any erection, construction or carrying out of building or work so authorised, references in section 10 of that Act to the acquiring authority shall be construed as references to the persons by whom the building or work in question is erected, constructed or carried out.

10 (1) Nothing in paragraph 7 or 8 above authorises any act or omission on the part of any authority or body corporate in contravention of any limitation imposed by law on their capacity by virtue of their constitution.

(2) Any power conferred by paragraph 7 or 8 above to use land in a manner mentioned in that paragraph shall be construed as a power to use the land, whether or not it involves the erection, construction or carrying out of any building or work or the maintenance of any building or work.

*Extinguishment of rights of way, and rights  
as to apparatus, of statutory undertakers*

11 (1) This paragraph applies where any land has been acquired by the Agency under section 21A above and—

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- (a) there subsists over that land a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, being a right of way or a right of laying down, erecting, continuing or maintaining apparatus on, under or over that land; or
  - (b) there is on, under or over the land apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking.
- (2) The Agency, if satisfied that the extinguishment of the right or the removal of the apparatus is necessary for the purpose of carrying out any development, may serve on the statutory undertakers a notice—
  - (a) stating that, at the end of the period of 28 days beginning with the day of service of the notice or such longer period as may be specified in it, the right will be extinguished; or
  - (b) requiring that the apparatus be removed before the end of that period.
- (3) The statutory undertakers on whom a notice is served under sub-paragraph (2) above may, before the end of the period of 28 days beginning with the day on which the notice was served, serve a counter-notice on the Agency—
  - (a) stating that they object to all or any provisions of the notice; and
  - (b) specifying the grounds of their objection.
- (4) Where no counter-notice is served under sub-paragraph (3) above—
  - (a) any right to which the notice relates shall be extinguished at the end of the period specified in the notice; and
  - (b) if, at the end of the period so specified in relation to any apparatus, any requirement of the notice as to the removal of the apparatus has not been complied with, the Agency may remove the apparatus and dispose of it in any way they think appropriate.
- (5) If a counter-notice is served under sub-paragraph (3) above, the Agency may either—
  - (a) withdraw the notice (but without prejudice to the service of a further notice); or
  - (b) apply to the Secretary of State and the appropriate Minister for an order under this sub-paragraph embodying the provisions of the notice with or without modification.
- (6) Where by virtue of this paragraph—
  - (a) any right vested in or belonging to statutory undertakers is extinguished; or
  - (b) any requirement is imposed on statutory undertakers, those undertakers shall be entitled to compensation from the Agency.
- (7) Sections 280 and 282 of the <sup>M139</sup>Town and Country Planning Act 1990 (measure of compensation for statutory undertakers) apply to compensation under sub-paragraph (6) above as they apply to compensation under section 279(2) of that Act.

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*Orders under paragraph 11*

- 12 (1) Before making an order under sub-paragraph (5) of paragraph 11 above, the Ministers proposing to make the order—
- (a) shall afford to the statutory undertakers on whom a notice was served under sub-paragraph (2) of that paragraph an opportunity of objecting to the application for the order; and
  - (b) if any objection is made, shall consider the objection and afford to those statutory undertakers and to the Agency an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State and the appropriate Minister for the purpose.
- (2) The Ministers may then, if they think fit, make the order in accordance with the application either with or without modification.
- (3) Where an order is made under paragraph 11(5) above—
- (a) any right to which the order relates shall be extinguished at the end of the period specified in that behalf in the order; and
  - (b) if, at the end of the period so specified in relation to any apparatus, any requirement of the order as to the removal of the apparatus has not been complied with, the Agency may remove the apparatus and dispose of it in any way they think appropriate.

*Notice for same purposes as paragraph 11  
but given by statutory undertakers to Agency*

- 13 (1) This paragraph applies where any land has been acquired by the Agency under section 21A above and—
- (a) there is on, under or over the land apparatus vested in or belonging to statutory undertakers; and
  - (b) the undertakers claim that development to be carried out on the land is such as to require, on technical or other grounds connected with the carrying on of their undertaking, the removal or re-siting of the apparatus affected by the development.
- (2) The undertakers may serve on the Agency a notice claiming the right to enter on the land and carry out such works for the removal or re-siting of the apparatus or any part of it as may be specified in the notice.
- (3) Where, after the land has been acquired as mentioned in sub-paragraph (1) above, development of the land begins to be carried out, no notice under sub-paragraph (2) above may be served after the end of the period of 21 days beginning with the day on which the development commenced.
- (4) Where a notice is served under sub-paragraph (2) above, the Agency may, before the end of the period of 28 days beginning with the day on which the notice was served, serve a counter-notice on the statutory undertakers—
- (a) stating that they object to all or any of the provisions of the notice; and
  - (b) specifying the grounds of their objection.

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- (5) Where no counter-notice is served under sub-paragraph (4) above, the statutory undertakers shall, after the end of that period of 28 days, have the rights claimed in their notice.
- (6) If a counter-notice is served under sub-paragraph (4) above, the statutory undertakers who served the notice under this paragraph may either—
  - (a) withdraw it; or
  - (b) apply to the Secretary of State and the appropriate Minister for an order under this sub-paragraph conferring on the undertakers the rights claimed in the notice or such modified rights as the Secretary of State and the appropriate Minister think it appropriate to confer on them.
- (7) Where, by virtue of this paragraph or an order of Ministers made under it, statutory undertakers have the right to execute works for the removal or re-siting of apparatus, they may arrange with the Agency for the works to be carried out by the Agency, under the superintendence of the undertakers, instead of by the undertakers themselves.
- (8) Where works are carried out for the removal or re-siting of statutory undertakers' apparatus, being works which the undertakers have the right to carry out by virtue of this paragraph or an order of Ministers made under it, the undertakers shall be entitled to compensation from the Agency.
- (9) Sections 280 and 282 of the <sup>M140</sup>Town and Country Planning Act 1990 (measure of compensation for statutory undertakers) apply to compensation under sub-paragraph (8) above as they apply to compensation under section 279(4) of that Act.

## PART IV

### OTHER PROVISIONS

#### *Rights of entry*

- 14 (1) Any person duly authorised in writing by the Agency may, at any reasonable time, enter any land—
  - (a) for the purposes of surveying it, or estimating its value, in connection with any proposal to acquire that land, or any other land, under section 21A above; or
  - (b) in connection with any claim for compensation in respect of any such acquisition.
- (2) Any person duly authorised in writing by the Agency may at any reasonable time enter any land for the purpose of surveying it in order to enable the Agency to determine whether to make an application for planning permission for the carrying out of development of that land.
- (3) Any power conferred by this paragraph to survey land includes power to search and bore for the purpose of ascertaining—
  - (a) the nature of the subsoil; or
  - (b) the presence of minerals or contaminants in it.

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- 15 (1) A person authorised under paragraph 14 above to enter any land—
- (a) shall, if so required by the occupier or anyone acting on his behalf, produce evidence of his authority; and
  - (b) shall not, if the land is occupied, demand admission as of right to it unless 24 hours' notice of the intended entry has been given to the occupier.
- (2) Any person who intentionally obstructs a person acting in the exercise of a power conferred by paragraph 14 above is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) Where any land is damaged in the exercise of a power of entry conferred by paragraph 14 above, compensation in respect of the damage may be recovered by any person interested in the land from the Agency or the Secretary of State.
- (4) Except in so far as may be otherwise provided by regulations made by the Secretary of State under this sub-paragraph, any question of disputed compensation under sub-paragraph (3) above shall be referred to and determined by the Lands Tribunal; and the provisions of sections 2 and 4 of the <sup>M141</sup>Land Compensation Act 1961 apply to the determination of any question under this sub-paragraph, subject to any necessary modifications and to the provisions of any regulations under this sub-paragraph.
- (5) Where under paragraph 14 above a person proposes to carry out any works authorised by sub-paragraph (3) of that paragraph—
- (a) he shall not carry out those works unless notice of his intention to do so was included in the notice required by sub-paragraph (1)(b) above; and
  - (b) if the land in question is held by statutory undertakers and those undertakers object to the proposed works on the grounds that the carrying out of the works would be seriously detrimental to the carrying on of their undertaking, the works shall not be carried out without the authority of the appropriate Minister.
- (6) A person who enters land in the exercise of a power of entry conferred by paragraph 14 above—
- (a) shall take reasonable care to avoid damage or injury to plant, machinery, equipment, livestock, crops or enclosures; and
  - (b) on leaving the land, shall secure it as effectively against unauthorised entry as he found it.
- (7) If any person who is admitted into a factory, workshop or workplace in the exercise of a power of entry conferred by paragraph 14 above discloses to any person any information obtained by him there as to any manufacturing process or trade secret, he shall, unless the disclosure is made in the course of performing his duty in connection with the purpose for which he was authorised to enter the premises, be guilty of an offence.
- (8) A person guilty of an offence under sub-paragraph (7) above is liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum; or



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- (b) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine, or to both.

*Displacement of legislation preventing possession*

- 16 If the Secretary of State certifies that possession of a house which—
- (a) has been acquired by the Agency under section 21A above; and
  - (b) is for the time being held by the Agency for the purposes for which it was acquired,
- is immediately required for those purposes, nothing in the <sup>M142</sup>Rent (Agriculture) Act 1976, the <sup>M143</sup>Rent Act 1977 or the <sup>M144</sup>Housing Act 1988 shall prevent the Agency from obtaining possession of the house.

*Register of land holdings*

- 17 (1) The Secretary of State may by regulations provide for the keeping by the Agency of a register recording their acquisitions, holdings and disposals of land.
- (2) Regulations under this paragraph may prescribe—
- (a) the kinds of land and the kinds of transactions to be registered;
  - (b) the form of the registers, and the particulars to be contained in them; and
  - (c) the circumstances in which, and conditions subject to which, the registers are to be open to public inspection.

*Information*

- 18 (1) Where, with a view to performing any function of the Agency relating to land, the Agency considers that they ought to have information connected with that or any other land, the Agency may serve on one or more of—
- (a) the occupier of the land;
  - (b) any person who has an interest in the land either as freeholder, mortgagee or lessee, or who directly or indirectly receives rent for the land; and
  - (c) any person who, in pursuance of an agreement between himself and a person interested in the land, is authorised to manage the land or to arrange for the letting of it,
- a notice specifying the land and the function and the provision which confers the function.
- (2) The notice shall require the recipient to furnish to the Agency, within a period specified in it (which shall not be less than 14 days beginning with the day on which the notice is served)—
- (a) the nature of his interest in the land; and
  - (b) the name and address of each person whom the recipient of the notice believes to be the occupier of the land and of each person whom he believes to be, as respects the land, a person mentioned in sub-paragraph (1)(b) or (c) above.
- (3) A person who—

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- (a) refuses, or fails without reasonable excuse, to comply with the requirements of a notice served on him under sub-paragraph (1) above; or
  - (b) in furnishing any information in compliance with such a notice makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- 19 (1) The council of every county and county borough in Wales, every joint planning board for a district in Wales and every National Park authority for a National Park in Wales shall supply the Agency—
- (a) with such information as the Secretary of State may by regulations prescribe for the purposes of this paragraph (being information which the Agency may need for the purpose of performing their functions); and
  - (b) with such certificates supporting the information as the Secretary of State may in the regulations specify.
- (2) If a local planning authority in Wales receives an application for planning permission, the authority shall as soon as practicable after receipt send a copy of the application to the Agency.
- (3) On any grant of planning permission relating to land in Wales, the local planning authority, or the Secretary of State (if it was granted by him), shall, as soon as is practicable, send a copy of the notification of the planning permission to the Agency.
- (4) Sub-paragraphs (2) and (3) above shall not apply if and so far as the Agency directs.

*Regulations as to form of documents*

- 20 The Secretary of State may make regulations for prescribing the form of any document required or authorised by or under this Schedule.

*Local inquiries*

- 21 Section 250 of the <sup>M145</sup>Local Government Act 1972 (costs of inquiries and expenses of witnesses) shall extend to any public local inquiry held under the <sup>M146</sup>Acquisition of Land Act 1981, by virtue of paragraph 1 above, as if the Agency were a local authority.

*Crown land*

- 22 (1) A private interest in land may be acquired compulsorily under section 21A above even though the land is Crown land if consent is given in writing by the appropriate authority.
- (2) In this paragraph—
- (a) “private interest” means an interest which is not a Crown interest or a Duchy interest;

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- (b) “Crown land” means land in which there is a Crown interest or a Duchy interest;
- (c) “Crown interest” means an interest belonging to Her Majesty in right of the Crown or belonging to a government department or held in trust for Her Majesty for the purposes of a government department;
- (d) “Duchy interest” means an interest belonging to Her Majesty in right of the Duchy of Lancaster or belonging to the Duchy of Cornwall; and
- (e) “appropriate authority” in relation to Crown land shall be determined in accordance with section 293(2) of the <sup>M147</sup>Town and Country Planning Act 1990.

#### *Offences by corporations*

- 23 (1) Where an offence under this Schedule which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) a director, manager, secretary or other similar officer of the body corporate; or
  - (b) any person who was purporting to act in any such capacity,
- he, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against accordingly.
- (2) Where the affairs of a body corporate are managed by its members, this paragraph shall apply in relation to acts and defaults of a member in connection with his functions of management as if he were a director of a body corporate.”

#### **Marginal Citations**

M128 1981 c. 67.  
M129 1981 c. 67.  
M130 1981 c. 67.  
M131 1981 c. 67.  
M132 1981 c. 67.  
M133 1965 c. 56.  
M134 1978 c. 30.  
M135 1961 c. 33.  
M136 1965 c. 56.  
M137 1857 c. 81.  
M138 1965 c. 56.  
M139 1990 c. 8.  
M140 1990 c. 8.  
M141 1961 c. 33.  
M142 1976 c. 80.  
M143 1977 c. 42.  
M144 1988 c. 50.  
M145 1972 c. 70.  
M146 1981 c. 67.  
M147 1990 c. 8.

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## SCHEDULE 14

Section 128.

### WELSH DEVELOPMENT AGENCY: OTHER AMENDMENTS

#### Commencement Information

**I35** Sch. 14 in force at 1.10.1998 by S.I. 1998/2244, art. 4

### PART I

#### AMENDMENTS OF WELSH DEVELOPMENT AGENCY ACT 1975

##### *Introductory*

- 1 The <sup>M148</sup>Welsh Development Agency Act 1975 has effect subject to the following amendments.

#### Marginal Citations

**M148** 1975 c. 70.

##### *Schemes for performance of Agency's functions*

- 2 (1) Section 1 (functions of Agency and purposes for which they may be exercised) is amended as follows.
- (2) In subsection (14) (duty of Agency to submit to Secretary of State for his approval schemes for the performance of such functions as he may direct), for “schemes” substitute “programmes”.
- (3) In subsection (15) (approval of scheme), for “scheme” (in both places) substitute “programme”.

##### *Membership of Agency*

- 3 In section 2(1) (Agency to consist of chairman, deputy chairman and not fewer than seven nor more than nine other members), at the end insert “; but the Secretary of State may by order provide that the maximum number of other members shall be such number greater than nine as is specified in the order.”

##### *Use of agents*

- 4 In section 5(1) (carrying out of certain functions by Agency through a local authority etc.)—
- (a) after “section 1(3)(a)” insert “, (da)”, and
- (b) at the end insert “ or section 21C below.”

##### *Functions relating to industry*

- 5 (1) Section 9 (provision of sites and premises for industry) is amended as follows.

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- (2) In subsection (1) (exercise of powers for purpose of providing or managing industrial sites and premises and providing related facilities to be in accordance with arrangements approved by Secretary of State)—
- (a) for “industrial sites and premises” substitute “ sites and premises for businesses ”, and
  - (b) after “related facilities” insert “ , or making land available for development ,”.
- (3) In subsection (3) (power of Secretary of State to authorise Agency to provide premises for industrial undertaking free of rent), for “an industrial undertaking” substitute “ a business ”.
- 6 In section 10 (power of Secretary of State to authorise Agency to provide services etc. for development of industry), for “industry” substitute “ businesses ”.

*Schemes for performance of environmental functions*

- 7 (1) Section 15 (the environment) is amended as follows.
- (2) In subsection (1) (schemes relating to the environment), for “schemes” (in both places) substitute “ programmes ”.
- (3) In subsection (2) (payments for work contributing to purposes of such a scheme), for “scheme” substitute “ programme ”.

*Financial duties of Agency*

- 8 In section 17(1) (duty of Secretary of State to determine financial duties of Agency), for “shall” substitute “ may ”.

*Service of documents*

- 9 For section 25 (service of documents) substitute—

**“25 Service of documents.**

Sections 231 and 233 of the <sup>M149</sup>Local Government Act 1972 (service of documents on and by local authorities) shall apply as if the Agency were a local authority.”

**Marginal Citations**

M149 1972 c. 70.

*Interpretation of the 1975 Act*

- 10 (1) Section 27(1) (interpretation) is amended as follows.
- (2) After the definition of “the appropriate Minister” insert—
- ““business” includes any industrial, commercial or professional activities (whether or not with a view to profit) and the activities of any government department or any local or other public authority;

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“common” includes any land subject to be enclosed under the Inclosure Acts 1845 to 1882 and any town or village green;

“dispose” includes dispose by sale or exchange or dispose by lease (whether by grant or assignment) and related expressions shall be construed accordingly;

“fuel or field garden allotment” means any allotment set out as a fuel allotment, or a field garden allotment, under an Inclosure Act;”.

(3) For the definition of “land” substitute—

““land” has the meaning given by Schedule 1 to the <sup>M150</sup>Interpretation Act 1978;

“open space” means any land laid out as a public garden or used for the purposes of public recreation or any land which is a disused burial ground;”.

**Marginal Citations**

M150 1978 c. 30.

*Orders under the 1975 Act*

11 (1) Section 28 (orders) is amended as follows.

(2) In subsection (1)—

- (a) after “order” insert “ or regulations ”, and
- (b) for “other than section 22,” substitute “ , other than a compulsory purchase order or an order under paragraph 11(5) or 13(6) of Schedule 4, ”.

(3) After subsection (1) insert—

“(1A) A statutory instrument containing—

- (a) an order under section 2(1) or 21C(2)(i); or
- (b) regulations under paragraph 7 of Schedule 4,

shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

(4) After subsection (2) insert—

“(3) Any regulations or order under this Act—

- (a) may make different provision for different areas or other different cases; and
- (b) may include transitional and other supplementary and incidental provisions.”

(5) In the sidenote, after “Orders” insert “ and regulations ”.

*Agency staff and transactions*

12 (1) Schedule 1 (constitution, staff and proceedings of the Agency) is amended as follows.

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- (2) In paragraph 8 (Agency staff to be appointed by Agency, but subject to Ministerial consent as to numbers), omit “with the consent” onwards.
  - (3) In paragraph 9 (payment of remuneration and expenses by Agency to members and staff), omit “with the approval of the Minister for the Civil Service”.
  - (4) In paragraph 10 (payment of pensions by the Agency in respect of members and past members), omit “with the approval of the said Minister”.
  - (5) In paragraph 11 (payment of compensation by the Agency to past members) omit—
    - (a) “, with the approval of the said Minister,”, and
    - (b) “with the approval of the said Minister”.
  - (6) In paragraph 12(1) (payment of pensions, allowances and gratuities to or in respect of employees), omit—
    - (a) “with the consent of the Minister for the Civil Service”, and
    - (b) “with the approval of the said Minister”.
  - (7) After paragraph 19 (status of documents executed by the Agency) insert—
    - “19A(1) A certificate signed by the chief executive of the Agency that any document purporting to be made or issued by or on behalf of the Agency was so made or issued shall be conclusive evidence of that fact.
    - (2) A document purporting to be such a certificate shall be received in evidence and be deemed to be such a certificate unless the contrary is proved.
- 19B A person dealing with the Agency, or with a person claiming under the Agency, shall not be concerned to inquire—
- (a) whether any directions have been given to the Agency under this Act or whether any directions so given have been complied with; or
  - (b) whether any approval, authority or consent of the Secretary of State or the Treasury required for any of the purposes of this Act has been given, or whether any condition or limitation subject to which any such approval, authority or consent was given has been complied with,
- and, in favour of any such person, the validity of anything done by the Agency shall not be affected by anything contained in any such direction, approval, authority or consent or by reason that any such direction, approval, authority or consent has not been given.”

## PART II

### AMENDMENTS OF OTHER ENACTMENTS

#### *The Public Bodies (Admission to Meetings) Act 1960 (c.67)*

- 13 In paragraph 1 of the Schedule to the Public Bodies (Admission to Meetings) Act 1960 (bodies to which the Act applies), after paragraph (b) insert—
- “(ba) the Welsh Development Agency;”.

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*The Land Compensation Act 1961 (c.33)*

- 14 In section 23(3) of the Land Compensation Act 1961 (cases in which there is no compensation where a planning decision is made after compulsory acquisition etc.), before paragraph (a) insert—

“(za) under section 21A of the <sup>M151</sup>Welsh Development Agency Act 1975 (acquisitions by Welsh Development Agency);”.

**Marginal Citations**

**M151** 1975 c. 70.

*The Development of Rural Wales Act 1976 (c.75)*

- 15 In section 26(2) of the <sup>M152</sup>Development of Rural Wales Act 1976 (which provides that the power of the Secretary of State to give financial assistance to persons contributing to social development of Wales does not include power to give assistance to persons carrying on an industrial undertaking), for “an industrial undertaking” substitute “a business; and in this subsection “business” has the same meaning as in the <sup>M153</sup>Welsh Development Agency Act 1975”.

**Marginal Citations**

**M152** 1975 c. 70.

**M153** 1975 c. 70.

*The Acquisition of Land Act 1981 (c.67)*

- 16 The Acquisition of Land Act 1981 has effect subject to the following amendments.

- 17 In section 17(3) (opposed order for compulsory purchase of land of local authority or statutory undertaker not subject to special parliamentary procedure where acquisition is by certain bodies), after “urban development corporation” insert “, the Welsh Development Agency, ”.

- 18 In section 28 (provisions about the acquisition of rights by the creation of new rights to which Schedule 3 of the Act applies), before paragraph (b) insert—

“(aa) section 21A of the <sup>M154</sup>Welsh Development Agency Act 1975;”.

**Marginal Citations**

**M154** 1975 c. 70.

- 19 In section 31(1) (acquisition under certain provisions of statutory undertakers’ land without a certificate), after paragraph (c) insert “or

(d) section 21A of, and Schedule 4 to, the <sup>M155</sup>Welsh Development Agency Act 1975;”.



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#### Marginal Citations

[M155 1975 c. 70.](#)

- 20 In paragraph 4(3) of Schedule 3 (opposed order for compulsory purchase of rights over land of local authority or statutory undertaker not subject to special parliamentary procedure where acquisition is by certain bodies), after “urban development corporation” insert “, the Welsh Development Agency,”.

## SCHEDULE 15

Section 129.

### DEVELOPMENT BOARD FOR RURAL WALES

#### Commencement Information

**I36** [Sch. 15](#) in force at 1.10.1998 by [S.I. 1998/2244](#), [art. 4](#)

#### *The Landlord and Tenant Act 1954 (c.56)*

- 1 In section 59(1) of the Landlord and Tenant Act 1954 (compensation for exercise of powers under sections 57 and 58), for “or, subject to subsections (1A) or (1B) below, sections 60A or 60B below” substitute “ or, subject to subsection (1A) below, section 60A below ”.

#### *The Parliamentary Commissioner Act 1967 (c.13)*

- 2 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments subject to investigation), in note 7, for “, a development corporation for a new town or the Development Board for Rural Wales” substitute “ or a development corporation for a new town ”.

#### *The Local Government Act 1974 (c.7)*

- 3 In paragraph 6 of Schedule 5 to the Local Government Act 1974 (matters not subject to investigation by Commissions for Local Administration), for “, (bb) or (bc)” substitute “ or (bb) ”.

#### *The Welsh Development Agency Act 1975 (c.70)*

- 4 In section 11(2)(b) of the <sup>M156</sup>Welsh Development Agency Act 1975 (amendment of section 59 of the Landlord and Tenant Act 1954), for “that subsection” substitute “ subsection (1) ”.

#### Marginal Citations

[M156 1954 c. 56.](#)

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*The Local Government (Miscellaneous Provisions) Act 1982 (c.30)*

- 5 In paragraph 2(5)(c) of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 (relevant corporations for purposes of resolutions relating to street trading), at the end insert “ and ”.

*The Housing Act 1985 (c.68)*

- 6 The Housing Act 1985 has effect subject to the following amendments.
- 7 In section 4(a) (meaning of “housing authority”), for “, a new town corporation or the Development Board for Rural Wales” substitute “ or a new town corporation ”.
- 8 In section 50(2) (offences), after “authority” insert “ or ”.
- 9 In section 51(6) (meaning of “qualified accountant”), for “, a new town corporation or the Development Board for Rural Wales” substitute “ or a new town corporation ”.
- 10 In section 114(1) and (2) (meaning of “landlord authority”), after “trust” insert “ , or ”.

*The Landlord and Tenant Act 1985 (c.70)*

- 11 The Landlord and Tenant Act 1985 has effect subject to the following amendments.
- 12 In section 26(1) (sections 18 to 25 not to apply to tenants of certain local authorities), after “Park authority” insert “ , or ”.
- 13 In section 28(6) (meaning of “qualified accountant”), for “, a new town corporation or the Development Board for Rural Wales” substitute “ or a new town corporation ”.
- 14 In paragraph 9(1) of the Schedule (paragraphs 2 to 8 not to apply to tenants of certain public authorities), after “Park authority” insert “ , or ”.

*The Housing Act 1988 (c.50)*

- 15 In section 35(4)(a) of the Housing Act 1988 (cases where a tenancy or licence can be a secure tenancy), for “, a housing action trust established under Part III of this Act or the Development Board for Rural Wales” substitute “ or a housing action trust established under Part III of this Act ”.

*The Local Government and Housing Act 1989 (c.42)*

- 16 F45 .....

**Textual Amendments**

- F45 Sch. 15 para. 16 repealed (19.7.2002) by [The Regulatory Reform \(Housing Assistance\) \(England and Wales\) Order 2002 \(S.I. 2002/1860\)](#), arts. 1(2)(d)(ii), 15, [Sch. 6](#)

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*The Water Industry Act 1991 (c.56)*

- 17 In section 97(5) of the Water Industry Act 1991 (performance of sewerage undertaker’s functions by local authorities etc.)—
- (a) in the definition of “relevant area”, at the end of paragraph (c) insert “ and ”, and
  - (b) in the definition of “relevant authority”, in paragraph (b), for “, a development corporation for a new town or the Development Board for Rural Wales” substitute “ or a development corporation for a new town ”.

*The Social Security Administration Act 1992 (c.5)*

- 18 In section 191 of the Social Security Administration Act 1992 (interpretation), in the definition of “housing authority”, for “, Scottish Homes or the Development Board for Rural Wales” substitute “ or Scottish Homes ”.

SCHEDULE 16

Section 140.

HOUSING FOR WALES

**Commencement Information**

**I37** Sch. 16 in force at 1.11.1998 by S.I. 1998/2244, art. 5

*The Friendly and Industrial and Provident Societies Act 1968 (c.55)*

- 1 In section 4A(3)(b) of the Friendly and Industrial and Provident Societies Act 1968 (societies to which power to disapply section 4 does not apply), for “Housing for Wales” substitute “ the Secretary of State ”.

*The Protection from Eviction Act 1977 (c.43)*

- 2 In section 3A(8) of the Protection from Eviction Act 1977 (excluded licences)—
- (a) in paragraph (g), omit “or Housing for Wales”, and
  - (b) after that paragraph insert—
    - “(ga) the Secretary of State under section 89 of the <sup>M157</sup>Housing Associations Act 1985;”.

**Marginal Citations**

**M157** 1985 c. 69.

*The Criminal Law Act 1977 (c.45)*

- 3 (1) Section 12A of the Criminal Law Act 1977 (protected intending occupiers) is amended as follows.
- (2) In subsection (7), omit “(c) Housing for Wales;”.

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(3) After that subsection insert—

“(7A) Subsection (6) also applies to the Secretary of State if the tenancy or licence is granted by him under Part III of the <sup>M158</sup>Housing Associations Act 1985.”

**Marginal Citations**

M158 1985 c. 69.

*The Housing Act 1985 (c.68)*

4 The Housing Act 1985 has effect subject to the following amendments.

5 Subject to the following provisions, in each place (except in the phrases “Housing Corporation”, “the Income and Corporation Taxes Act 1988” and “British Coal Corporation”), for “Corporation” substitute “ Relevant Authority ”.

6 In section 5(4)(b) (meaning of “registered social landlord”), for “Housing for Wales” substitute “ the Secretary of State ”.

7 In section 6A(1) and (2) (interpretation), for “Housing for Wales” substitute “ the Secretary of State ”.

8 (1) Section 45 (definition of “public sector authority”) is amended as follows.

(2) In subsection (2), for “Corporation” substitute “ Housing Corporation or Scottish Homes ”.

(3) After that subsection insert—

“(2A) In subsection (1)(a) “public sector authority” also includes the Secretary of State if the freehold has been conveyed by him (or Housing for Wales) under section 90 of the <sup>M159</sup>Housing Associations Act 1985.”

**Marginal Citations**

M159 1985 c. 69.

9 In section 57 (index of defined expressions), omit the entry relating to “the Corporation”.

10 In section 92(2A)(a) (assignments by way of exchange), omit “Housing for Wales,”.

11 In section 117 (index of defined expressions)—

(a) omit the entry relating to “the Corporation”, and

(b) after the entry relating to “registered social landlord” insert—

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“the Relevant Authority section 6A”.

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12 In section 157(4) (restriction on disposal of dwelling-houses in National Parks etc.), after “association” insert “ within section 6A(3) or (4) ”.

13 In section 171(2) (power to extend right to buy etc.), for “Corporation” substitute “ Housing Corporation or Scottish Homes ”.

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- 14 In section 188 (index of defined expressions)—
- (a) omit the entry relating to “the Corporation”, and
  - (b) after the entry relating to “regular armed forces of the Crown” insert—
- 
- “the Relevant Authority section 6A”.

- 15 (1) Section 429A (housing management: financial assistance) is amended as follows.

- (2) In subsection (2A), omit paragraph (b).

- (3) After that subsection insert—

“(2B) The reference in subsection (2)(a) to a body within subsection (2A) includes the Secretary of State if he has the interest as the result of the exercise by him (or Housing for Wales) of functions under Part III of the <sup>M160</sup>Housing Associations Act 1985.”

**Marginal Citations**

**M160** 1985 c. 69.

- 16 In section 450A (loans for service charges in right to buy cases), after subsection (1) insert—

“(1A) But, except for cases where he is the landlord as the result of the exercise by him (or Housing for Wales) of functions under Part III of the <sup>M161</sup>Housing Associations Act 1985, the regulations may not contain provision for cases where the Secretary of State is the landlord.”

**Marginal Citations**

**M161** 1985 c. 69.

- 17 (1) Section 450B (loans for service charges) shall be amended as follows.

- (2) After subsection (1) insert—

“(1A) But, except for cases where he is the landlord as the result of the exercise by him (or Housing for Wales) of functions under Part III of the <sup>M162</sup>Housing Associations Act 1985, the regulations may not contain provision for cases where the Secretary of State is the landlord.”

- (3) After subsection (3) insert—

“(3A) For the purposes of this section a long lease granted or assigned by the Secretary of State shall only be taken to have been granted or assigned by a housing authority if the Secretary of State granted or assigned it in exercise of his powers under section 90 of the <sup>M163</sup>Housing Associations Act 1985.”

**Marginal Citations**

**M162** 1985 c. 69.

**M163** 1985 c. 69.

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- 18 (1) Section 458 (definitions) is amended as follows.
- (2) That section is renumbered as subsection (1) of that section and in that subsection, in the definition of “housing authority”, after “includes” insert “ (subject to subsection (2)) ”.
- (3) After that subsection insert—
- “(2) In section 444 “housing authority” does not include the Secretary of State unless the interest in the house is or was acquired on a disposal by him under section 90 of the <sup>M164</sup>Housing Associations Act 1985; and in section 452 “housing authority” does not include the Secretary of State unless the disposal was under that section 90.”

#### Marginal Citations

**M164** 1985 c. 69.

- 19 In section 459 (index of defined expressions)—
- (a) omit the entry relating to “the Corporation”, and
- (b) after the entry relating to “registered social landlord” insert—
- 
- “the Relevant Authority section 6A”.
- 20 In section 577 (index of defined expressions)—
- (a) omit the entry relating to “the Corporation”, and
- (b) after the entry relating to “reinstatement grant” insert—
- 
- “the Relevant Authority section 6A”.
- 21 (1) Schedule 2 (grounds for possession of dwelling-houses let under secure tenancies) is amended as follows.
- (2) In Ground 10A in Part II, for “Corporation” substitute “ Housing Corporation or Scottish Homes ”.
- (3) In paragraph 6 of Part V, for “registered social landlord, the Corporation, and not the Secretary of State,” substitute “ social landlord registered in the register maintained by the Housing Corporation under section 1 of the <sup>M165</sup>Housing Act 1996 or a housing association registered in the register maintained by Scottish Homes under section 3 of the <sup>M166</sup>Housing Associations Act 1985, the Housing Corporation, or Scottish Homes, (and not the Secretary of State) ”.

#### Marginal Citations

**M165** 1996 c. 52.

**M166** 1985 c. 69.

- 22 In paragraph 7(1) of Schedule 4 (landlords for the purposes of right to buy etc.), for “Corporation” substitute “ Housing Corporation or Housing for Wales ”.

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*The Housing Associations Act 1985 (c.69)*

- 23 The Housing Associations Act 1985 has effect subject to the following amendments.
- 24 (1) Section 9 (control of dispositions of grant-aided land by unregistered housing associations) is amended as follows.
- (2) In subsection (1A)(c), for “Housing for Wales” substitute “ the Secretary of State ”.
- (3) In subsection (6)—
- (a) omit “or Housing for Wales”, and
- (b) before “Scottish Homes” insert “ the Secretary of State or ”.
- 25 In section 10(1)(c) (requirement that Charity Commissioners consult before making certain orders), for “Housing for Wales” substitute “ the Secretary of State ”.
- 26 In section 33A (provision of services between the Housing Corporation, Housing for Wales and Scottish Homes), for “bodies, that is to say, the Housing Corporation, Housing for Wales” substitute “ , that is to say, the Housing Corporation, the Secretary of State ”.
- 27 (1) Section 69 (power to vary or terminate certain agreements with housing associations) is amended as follows.
- (2) In subsection (1)(a), after “Housing for Wales” insert “ and then to the Secretary of State ”.
- (3) In subsection (2)—
- (a) for “On the application of a party to an agreement to which this section applies, the Secretary of State” substitute “ If any person (other than the Secretary of State) who is a party to an agreement to which this section applies makes an application to the Secretary of State, he ”, and
- (b) at the end (but not as part of paragraph (b)) insert— “ and where the Secretary of State is a party to such an agreement, he may agree that it shall have effect with any variations or that it shall be terminated. ”
- (4) In subsection (2A)—
- (a) after “Housing for Wales”, in the first place, insert “ and then to the Secretary of State ”, and
- (b) for “Housing for Wales”, in the second place, substitute “ the Secretary of State ”.
- 28 Subject to the following provisions, in each place in Part III (including headings and sidenotes) except in Schedule 6 and the phrase “Housing Corporation”—
- (a) for “Corporation” substitute “ Relevant Authority ”, and
- (b) for “Corporation’s” substitute “ Relevant Authority’s ”.

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- 29 (1) Section 74 (interpretation) is amended as follows.
- (2) In subsection (1), for “, and Housing for Wales, each of which” substitute “and the Secretary of State.
- (1A) Each of them”.
- (3) In subsection (4)(a), for “Housing for Wales” substitute “ the Secretary of State ”.

F4630 .....

#### Textual Amendments

**F46** Sch. 16 para. 30 repealed (2.4.2001) by 2000 c. 34, s. 9(2), Sch. 3 (with s. 10(5)); S.I. 2001/566, art. 2(1) (subject to art. 2(2))

- 31 In section 76(1), (2) and (4) (directions by the Secretary of State), for “Corporation” substitute “ Housing Corporation ”.
- 32 (1) Section 76A (realisation of value of Corporation’s loans portfolio) is amended as follows.
- (2) In subsections (1), (2) and (4), for “Corporation” (in each place) substitute “ Housing Corporation ”.
- (3) In subsection (3) (and in the sidenote), for “Corporation’s” (in each place) substitute “ Housing Corporation’s ”.
- 33 In section 77(3) (joint provision of advisory service by Housing Corporation and Housing for Wales), for “Housing for Wales” substitute “ the Secretary of State ”.
- 34 In section 78(1) (annual report), for “Corporation” substitute “ Housing Corporation ”.
- 35 (1) Section 79 (lending powers) is amended as follows.
- (2) For subsections (1) and (2) substitute—
- “(1) The Relevant Authority may lend to a registered social landlord or an unregistered self-build society, and the Housing Corporation may lend to any of its subsidiaries or to any other body in which it holds an interest, for the purpose of enabling the body to meet the whole or part of expenditure incurred or to be incurred by it in carrying out its objects.
- (2) The Relevant Authority may lend to an individual for the purpose of enabling him to acquire from—
- (a) the Relevant Authority, or
- (b) any body to which the Relevant Authority may lend under subsection (1),



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a legal estate or interest in a dwelling which he intends to occupy.”

(3) In subsection (4), after “and” insert “ (in the case of a loan by the Housing Corporation) ”.

36 (1) Section 80 (security for loans to unregistered self-build societies) is amended as follows.

(2) In subsection (1), omit “, with the written consent of the Secretary of State,”.

(3) In subsection (3), omit “given with the like consent”.

(4) After that subsection insert—

“(3A) The written consent of the Secretary of State is required for the giving, varying or revoking of directions by the Housing Corporation.”

(5) In subsection (4), for the words from “consent” to “or to” substitute “ give directions under this section requiring a society to transfer its interest in land to him or any other person, and shall not consent to the Housing Corporation’s giving such directions requiring a society to transfer its interest in land to the Housing Corporation or ”.

37 (1) Section 83 (power to guarantee loans) is amended as follows.

(2) For subsection (1) substitute—

“(1) The Relevant Authority may guarantee the repayment of the principal of, and the payment of interest on, sums borrowed by registered social landlords or unregistered self-build societies; and the Housing Corporation may guarantee the repayment of the principal of, and the payment of interest on, sums borrowed by other bodies in which it holds an interest.”

(3) After that subsection insert—

“(1A) The consent of the Secretary of State given with the approval of the Treasury is required for the giving of a guarantee by the Housing Corporation and the approval of the Treasury is required for the giving of a guarantee by the Secretary of State.”

(4) In subsection (3A), for “Housing for Wales” (in each place) substitute “ the Secretary of State (or Housing for Wales) ”.

38 (1) Section 84 (agreements to indemnify certain lenders) is amended as follows.

(2) In subsection (1), omit “, with the approval of the Secretary of State,”.

(3) In subsection (4), for “Secretary of State” substitute “ Housing Corporation may not enter into an agreement without the approval of the Secretary of State who ”.

(4) In subsection (5), after “approval” insert “ and before himself entering into an agreement in a form about which he has not previously consulted under this subsection ”.

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- 39 In section 85(4) (meaning of “relevant advance”)—
- (a) for “Corporation” substitute “ Housing Corporation ”, and
  - (b) at the end (but not as part of the list) insert— “ or an advance made to such a person by the Secretary of State if the conveyance, assignment or grant was made under section 90. ”
- 40 In section 87(2) (ways in which financial assistance under the section may be given), after “giving any form of financial assistance” insert “ under this section ”.
- 41 In section 88(1) (acquisition of land), for “may be authorised by the Secretary of State to” substitute “ the Housing Corporation may be authorised by the Secretary of State to, and the Secretary of State may, ”.
- 42 (1) Section 90 (disposal of land) is amended as follows.
- (2) In subsection (1), for the words “(ancillary development)” onwards substitute “ (ancillary development) to a registered social landlord or an unregistered self-build society; and the Housing Corporation may dispose of such land to any of its subsidiaries or to any other body in which it holds an interest. ”
- (3) In subsection (2), for the words following “new town corporation” substitute “, or  
Scottish Homes;  
and the Housing Corporation may dispose of any such land to any of its subsidiaries. ”
- (4) In subsection (3), after “acquired” insert “ by the Housing Corporation ”.
- (5) In subsection (4), after “disposed of” insert “ by the Housing Corporation ”.
- (6) In subsection (5)—
- (a) in paragraph (a) (in both places) and in the words following paragraph (b), for “Corporation” substitute “ Housing Corporation ”, and
  - (b) in paragraph (b), after “disposed of” insert “ by the Housing Corporation ”.
- (7) In subsection (6), for “Corporation” substitute “ Housing Corporation ”.
- 43 In section 91 (protection of persons deriving title under transactions requiring consent), for “Corporation” (in each place) substitute “ Housing Corporation ”.
- 44 In section 92 (borrowing powers), for “Corporation” (in each place) substitute “ Housing Corporation ”.
- 45 (1) Section 93 (limit on borrowing) is amended as follows.
- (2) In subsections (1), (4) and (5), for “Corporation” (in each place) substitute “ Housing Corporation ”.
- (3) In subsection (2)—

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- (a) for “Corporation”, in each place other than the last, substitute “ Housing Corporation ”, and
  - (b) for “appropriate to the Corporation” substitute “ specified ”.
- (4) In subsection (2A), omit—
  - (a) “in the case of the Housing Corporation,”, and
  - (b) paragraph (b) and the word “and” preceding it.
- 46 In section 94(1) and (4) (Treasury guarantees of borrowing), for “Corporation” substitute “ Housing Corporation ”.
- 47 In section 95 (grants by Secretary of State), in subsection (1) (and in the side-note) for “Corporation” (in each place) substitute “ Housing Corporation ”.
- 48 (1) Section 96 (general financial provisions) is amended as follows.
  - (2) In subsections (1), (2), (3) and (4), for “Corporation” (in each place) substitute “ Housing Corporation ”.
  - (3) In subsections (3) and (4), for “Corporation’s” substitute “ Housing Corporation’s ”.
- 49 In section 97(1), (2), (3) and (4) (accounts), for “Corporation” (in each place) substitute “ Housing Corporation ”.
- 50 In section 98(1) (acquisition of securities and promotion of body corporate), for “Corporation” substitute “ Housing Corporation ”.
- 51 In section 99(1) and (2) (control of subsidiaries), for “Corporation” (in each place) substitute “ Housing Corporation ”.
- 52 In paragraph 6(2)(b) of Part I of Schedule 5 (payments by Secretary of State where dwellings become vested in certain bodies), omit “or Housing for Wales”.
- 53 (1) Schedule 7 (powers exercisable where loan outstanding under section 2 of the <sup>M167</sup>Housing Act 1964) is amended as follows.
  - (2) In paragraph 2—
    - (a) in sub-paragraph (1), omit “, with the consent in writing of the Secretary of State,”,
    - (b) in sub-paragraph (2), omit “given with the like consent”, and
    - (c) after that sub-paragraph insert—
      - “(3) The written consent of the Secretary of State is required for the giving, varying or revoking of directions by the Housing Corporation.”
  - (3) In paragraph 3—

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- (a) for “Corporation” (in both places) substitute “ Housing Corporation ”, and
  - (b) at the end insert “ ; and the Secretary of State shall not give a housing association directions under paragraph 2 unless he at the same time makes, or has previously made, such a scheme. ”
- (4) Paragraph 4 shall be renumbered as sub-paragraph (1) of that paragraph and—
- (a) in that sub-paragraph, for “Corporation” (in both places) substitute “ Housing Corporation ”, and
  - (b) after that sub-paragraph insert—
    - “(2) The Secretary of State shall not give to such an association directions under paragraph 2 requiring the association to transfer any land to the Secretary of State, or to any other person, unless he is so satisfied.”
- (5) In paragraph 5—
- (a) in sub-paragraph (1), for “Corporation” (in both places) substitute “ Housing Corporation ”,
  - (b) after that sub-paragraph insert—
    - “(1A) If it so appears to the Secretary of State, he may make a scheme.”,
  - (c) in sub-paragraphs (3), (4) and (5), for “Corporation” substitute “ Housing Corporation ”, and
  - (d) after sub-paragraph (5) insert—
    - “(6) Where the Secretary of State makes the scheme, he shall have power to acquire for the purposes of the scheme the association’s interest in the land and to carry through the provisions of the scheme.”

#### Marginal Citations

M167 1964 c. 56.

#### *The Income and Corporation Taxes Act 1988 (c.1)*

- 54 The Income and Corporation Taxes Act 1988 has effect subject to the following amendments.
- 55 In section 376(4) (qualifying lenders), for paragraph (ka) substitute—
- “(ka) the Secretary of State if the loan is made by him under section 79 of the <sup>M168</sup>Housing Associations Act 1985;”.

#### Marginal Citations

M168 1985 c. 69.

- 56 In section 488(7A) (co-operative housing associations), omit paragraph (b) and the word “and” preceding it.
- 57 In section 489(5A) (self-build societies), omit paragraph (b) and the word “and” preceding it.

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- 58 In section 560(2) (persons who are “contractors”)—
- (a) after paragraph (d) insert—
    - “(da) the Secretary of State if the contract is made by him under section 89 of the <sup>M169</sup>Housing Associations Act 1985;”,
    - and
  - (b) in paragraph (e), omit “Housing for Wales”.

**Marginal Citations**

**M169** 1985 c. 69.

*The Housing Act 1988 (c.50)*

- 59 The Housing Act 1988 has effect subject to the following amendments.
- 60 In section 35(5) (protected and statutory tenancies not prevented from being housing association tenancies or secure tenancies where landlord interest becomes held by certain bodies), for “, the Housing Corporation or Housing for Wales” substitute “ or the Housing Corporation ”.
- 61 (1) Subject to the following provisions, in each place in Part II (including headings) except in the phrases “Housing Corporation” and “the Income and Corporation Taxes Act 1988”, for “Corporation” substitute “ Relevant Authority ”.
- (2) Sub-paragraph (1) and paragraphs 64 to 66 extend only to England and Wales.
- 62 Omit section 46 (Housing for Wales).
- 63 Omit section 47 (transfer to Housing for Wales of regulation etc. of housing associations based in Wales).
- 64 (1) Section 50 (housing association grants applied for before the commencement of section 28(1) of the <sup>M170</sup>Housing Act 1996) is amended as follows.
- (2) For subsection (5) (approval required for appointment of local housing authority as agent) substitute—
- “(5) In subsection (4) above “the appropriate approval” means—
    - (a) if the appointment is made by the Housing Corporation, the approval of the Secretary of State given with the consent of the Treasury, and
    - (b) if the appointment is made by the Secretary of State, the consent of the Treasury.”
- (3) In subsection (8) (agreements between the Housing Corporation and Housing for Wales)—
- (a) for “Housing for Wales” substitute “ the Secretary of State ”, and
  - (b) for “two Corporations” substitute “ Housing Corporation and the Secretary of State ”.

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#### Marginal Citations

M170 1996 c. 52.

65 In section 53(2) (general determinations by the Corporation only to be made with approval of Secretary of State), for “Corporation” substitute “ Housing Corporation ”.

66 In section 57 (delegation of functions by Secretary of State)—  
 (a) for “Corporation” substitute “ Housing Corporation ”,  
 (b) after “functions” insert “ , so far as they relate to English registered social landlords, ”, and  
 (c) at the end insert—

“In this section “English registered social landlords” means social landlords registered in the register maintained by the Housing Corporation under section 1 of the <sup>M171</sup>Housing Act 1996.”

#### Marginal Citations

M171 1996 c. 52.

67 In section 59(2) (introduction of Schedule 6)—  
 (a) in paragraph (b), omit “the establishment by this Part of this Act of Housing for Wales and”, and  
 (b) in paragraph (c), for “other” substitute “ the ”.

68 In section 81 (consent of Secretary of State to certain subsequent disposals of houses disposed of by housing action trusts)—  
 (a) in subsection (6), for “Corporation” (in both places) substitute “ Housing Corporation ”, and  
 (b) in subsection (7), for “in accordance with subsection (6) above” substitute “ under this section ”.

69 (1) Section 82 (legal assistance to tenants) is amended as follows.  
 (2) In subsections (2), (3) and (4) (and in the side-note), for “Corporation” (in each place) substitute “ Relevant Authority ”.  
 (3) In subsection (5)—  
 (a) for “Corporation”, in the first and second places, substitute “ Relevant Authority ”, and  
 (b) for “which Corporation that is” substitute “ whether that is the Housing Corporation or the Secretary of State ”.

70 Omit section 92(2) (meaning of “the Corporation” in Part III).

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- 71 In section 133 (consent of Secretary of State to certain subsequent disposals of houses disposed of by local authorities)—
- (a) in subsection (6), omit “or Housing for Wales”, and
  - (b) in subsection (7), for “in accordance with subsection (6) above” substitute “under this section”.
- 72 In section 140(1) (amendments), omit the words “and in that Schedule” onwards.
- 73 Omit Schedule 5 (constitution etc. of Housing for Wales).

*The Local Government and Housing Act 1989 (c.42)*

- 74 The Local Government and Housing Act 1989 has effect subject to the following amendments.
- 75 In section 172(2)(b) (transfer of new town housing stock), omit “or Housing for Wales”.
- 76 (1) Section 173 (consent required for subsequent disposals) is amended as follows.
- (2) In subsection (6), omit “or Housing for Wales”.
  - (3) In subsection (7), for “in accordance with subsection (6) above” substitute “under this section”.

*The Taxation of Chargeable Gains Act 1992 (c.12)*

- 77 The Taxation of Chargeable Gains Act 1992 has effect subject to the following amendments.
- 78 In section 218(3) (disposals between Housing for Wales and certain housing associations), for ““Housing for Wales”” substitute ““the Secretary of State””.
- 79 In section 219(2) (disposals by Housing for Wales etc. and certain housing associations), for ““Housing for Wales”” substitute ““the Secretary of State””.
- 80 In the heading preceding section 218 and in the sidenotes of that section and section 219, for “Housing for Wales” substitute “the Secretary of State”.

*The Housing Act 1996 (c.52)*

- 81 Part I of the Housing Act 1996 has effect subject to the following amendments.
- 82 (1) Subject to the following provisions, in each place (including headings and sidenotes) except in the phrase “Housing Corporation”—
- (a) for “Corporation” substitute “Relevant Authority”, and
  - (b) for “Corporation’s” substitute “Relevant Authority’s”.
- (2) Sub-paragraph (1) does not apply to Schedule 3.
- 83 (1) Section 1 (register of social landlords) is amended as follows.
- (2) In subsection (1), omit “at the head office of the Corporation”.
  - (3) After that subsection insert—

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“(1A) In this Part “the Relevant Authority” means the Housing Corporation or the Secretary of State, as provided by section 56.

(1B) The register maintained by the Housing Corporation shall be maintained at its head office.”

(4) Omit subsection (2).

84 (1) Section 9 (Corporation’s consent required for disposal of land by registered social landlord) is amended as follows.

(2) In subsection (1), omit “, given by order under the seal of the Corporation,”.

(3) After that subsection insert—

“(1A) The consent—

- (a) if given by the Housing Corporation, shall be given by order under its seal, and
- (b) if given by the Secretary of State, shall be given by order in writing.”

85 (1) Section 18 (social housing grants) is amended as follows.

(2) For subsection (5) substitute—

“(5) The appointment—

- (a) if made by the Housing Corporation, shall be on such terms as the Housing Corporation may, with the approval of the Secretary of State given with the consent of the Treasury, specify, and
  - (b) if made by the Secretary of State, shall be on such terms as the Secretary of State may, with the consent of the Treasury, specify;
- and, in either case, the authority shall act in accordance with those terms.”

(3) In subsection (8)—

- (a) for “Housing for Wales” substitute “ the Secretary of State ”, and
- (b) for “two Corporations” substitute “ Housing Corporation and the Secretary of State ”.

86 For section 30(5) (notices requiring giving of information or production of documents) substitute—

“(5) A notice under this section—

- (a) if given by the Housing Corporation, shall be given under its seal, and
- (b) if given by the Secretary of State, shall be given in writing.”

87 For section 36(3) and (4) (issue of guidance about management of housing accommodation) substitute—

“(3) Before issuing any guidance under this section the Relevant Authority shall consult such bodies appearing to the Relevant Authority to be representative of registered social landlords as the Relevant Authority considers appropriate; and where the Relevant Authority issues guidance under this section it shall be issued in such manner as the Relevant Authority considers appropriate for bringing it to the notice of the landlords concerned.





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- 96 (1) Schedule 1 (regulation of registered social landlords) is amended as follows.
- (2) In paragraphs 9 and 11—
- (a) in sub-paragraph (3), omit “given by order under the seal of the Corporation”, and
  - (b) after that sub-paragraph insert—
 

“(3A) Consent under sub-paragraph (3)—

    - (a) if given by the Housing Corporation, shall be given by order under its seal, and
    - (b) if given by the Secretary of State, shall be given by order in writing.”
- (3) In paragraphs 12(6) and 13(7), for “are to consent given by order under the seal of the Corporation” substitute “are—
- (a) if it is given by the Housing Corporation, to consent given by order under its seal, and
  - (b) if it is given by the Secretary of State, to consent given by order in writing.”
- (4) For paragraph 15(5) substitute—
- “(5) In any other case—
- (a) the Relevant Authority may dispose of property transferred to it by virtue of this paragraph to a registered social landlord, and
  - (b) the Housing Corporation may dispose of property transferred to it by virtue of this paragraph to any of its subsidiaries.”
- (5) In paragraph 20(3)—
- (a) after “appointed”, in the first place, insert “ by the Housing Corporation to conduct an inquiry ”,
  - (b) for “Corporation” substitute “ Housing Corporation ”, and
  - (c) before “appointed”, in the second place, insert “ so ”.
- (6) In paragraph 27(1)—
- (a) omit “, with the consent of the Secretary of State,”, and
  - (b) at the end insert—
 

“The consent of the Secretary of State is required for the giving of directions by the Housing Corporation.”
- (7) In paragraph 27(4), for “The consent” substitute “ If the transfer is directed by the Housing Corporation, the consent ”.
- (8) In paragraph 28(2), in the entry relating to section 79 of the <sup>M172</sup>Housing Associations Act 1985, for “Housing Corporation” substitute “ Relevant Authority ”.

#### Marginal Citations

M172 1985 c. 69.

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- 97 (1) Schedule 2 (social rented sector: housing complaints) is amended as follows.
- (2) In paragraph 6(2), for “Corporation” (in both places) substitute “ Housing Corporation ”.
- (3) In paragraph 11(4), for “Corporation” (in both places) substitute “ Housing Corporation ”.

*The Audit Commission Act 1998 (c.18)*

- 98 The Audit Commission Act 1998 has effect subject to the following amendments.
- 99 (1) Section 40 (power of Secretary of State to direct carrying out of programme agreed between the Corporation and the Audit Commission) is amended as follows.
- (2) In subsection (1), for “Corporation” substitute “ Relevant Authority ”.
- (3) In subsection (2), for “Corporation” substitute “ Housing Corporation ”.
- (4) After that subsection insert—
- “(2A) Where the Secretary of State and the Commission fail to agree a programme proposed by the Secretary of State, the Secretary of State may direct that the programme be carried out either without modifications or with modifications specified in the direction.”
- (5) In subsections (4) and (6), for “Corporation” (in each place) substitute “ Relevant Authority ”.
- 100 In section 41(1) and (4) (provisions supplementary to section 40), for “Corporation” substitute “ Relevant Authority ”.
- 101 In section 42 (functions of Audit Commission in relation to accounts of registered social landlords), for “Corporation” (in each place) substitute “ Relevant Authority ”.
- 102 In section 43 (interpretation), for “Corporation” substitute “ Relevant Authority ”.

SCHEDULE 17

Section 144.

AUDIT ETC. OF WELSH PUBLIC BODIES

**Commencement Information**

**I38** Sch. 17 in force at 1.12.1998 by S.I. 1998/2789, art. 2

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## PART I

### BODIES SUBJECT GENERALLY TO AUDIT ETC. PROVISIONS

- 1 A body specified in Part I or III of Schedule 4 [<sup>F47</sup>other than the Care Council for Wales)].

#### Textual Amendments

**F47** Words in [Sch. 17 para. 1](#) inserted (1.4.2001) by [2000 c. 14, ss. 6, 54, 66, Sch. 1 para. 27\(d\)](#); [S.I. 2000/2992, art. 2\(2\)](#)

- 2 An Agricultural Land Tribunal established for an area wholly in, or consisting of, Wales.
- 3 A housing action trust established for an area wholly in Wales.
- 4 The Local Government Boundary Commission for Wales.
- 5 The Mental Health Review Tribunal for Wales.
- 6 The National Library of Wales.
- 7 The National Museum of Wales.
- 8 A panel, established under Schedule 10 to the <sup>M173</sup>Rent Act 1977, of persons to act as chairmen and other members of rent assessment committees for an area or areas every part of which is in Wales.

#### Marginal Citations

**M173** [1977 c. 42.](#)

- 9 The Royal Commission on Ancient and Historical Monuments of Wales.
- 10 An urban development corporation established for an urban development area wholly in Wales.
- 11 A valuation tribunal exercising functions in relation only to Wales or an area of Wales.

## PART II

### BODIES PARTIALLY SUBJECT TO AUDIT ETC. PROVISIONS

- 12 <sup>F48</sup> .....

#### Textual Amendments

**F48** [Sch. 17 para. 12](#) repealed (1.10.2002 for E.W.) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\), ss. 6\(2\), 37\(2\), Sch. 2 Pt. 2 para. 66\(3\), Sch. 9 Pt. 1](#); [S.I. 2002/2478, arts. 2\(1\), 3\(1\)\(d\)](#) (subject to [art. 3\(3\)](#) and with transitional provisions in [art. 4](#)) ([S.I. 2002/2532, arts. 1\(3\), 2,](#)

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Sch. purports to bring Sch. 2 Pt. 2 para. 66(3) of the repealing Act into force on 10.10.2002 in relation to Wales only)

[<sup>F49</sup>12A A Local Health Board.]

#### Textual Amendments

**F49** Sch. 17 para. 12A inserted (10.10.2002 for W. and in accordance with art. 1(1) of the commencing S.I. for E.) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), s. 6(2), Sch. 5 para. 42(3); S.I. 2002/2532 {art. 2}, Sch; S.I. 2006/1407, arts. 1, 2, Sch. 1 Pt. 2 para. 12 (with art. 4)

13 A National Health Service trust all or most of whose hospitals, establishments and facilities are situated in Wales or any trustees appointed in pursuance of section 11 of the <sup>M174</sup>National Health Service and Community Care Act 1990 for such a trust.

#### Marginal Citations

**M174** 1990 c. 19.

14 A Special Health Authority performing functions only or mainly in respect of Wales.

VALID FROM 01/04/2005

14A A body of trustees appointed in pursuance of section 29(1) of the National Health Service Reorganisation Act 1973 and section 95(1) of the National Health Service Act 1977 for a trust all or most of whose hospitals, establishments and facilities are situated in Wales.

### PART III

#### BODIES SUBJECT ONLY TO PROVISIONS ABOUT ACCOUNTING OFFICERS AND EXAMINATIONS OF USE OF RESOURCES

15 The Arts Council of Wales.

16 The Sports Council for Wales.

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## SCHEDULE 18

Section 152.

## REPEALS

## PART I

## WELSH ADMINISTRATION OMBUDSMAN AND HEALTH SERVICE COMMISSIONER FOR WALES

**Commencement Information**

**I39** Sch. 18 Pt. I wholly in force at 1.7.1999; Sch. 18 Pt. I in force for certain purposes at 1.2.1999 by S.I. 1999/118, art. 2 and in force for certain purposes at 1.4.1999 by S.I. 1999/782, art. 2 and for certain purposes at 1.7.1999 by S.I. 1999/1290, art. 4

Chapter	Short title	Extent of repeal
1967 c. 13.	The Parliamentary Commissioner Act 1967.	In Schedule 2, the entries relating to the Arts Council of Wales (Cyngor Celfyddydau Cymru), Bwrdd yr Iaith Gymraeg (Welsh Language Board), the Countryside Council for Wales, the Office of Her Majesty's Chief Inspector of Schools in Wales, the Sports Council for Wales and the Wales Tourist Board.
1974 c. 7.	The Local Government Act 1974.	In section 33(5), the words "by any of the Commissioners mentioned in this section, or by any of their officers,".
1989 c. 26.	The Finance Act 1989.	In section 182(4)(a)(i), the word "or".
1990 c. 43.	The Environmental Protection Act 1990.	In Schedule 6, paragraph 23(a).
1993 c. 38.	The Welsh Language Act 1993.	In Schedule 1, paragraph 5.
1993 c. 46.	The Health Service Commissioners Act 1993.	In section 2, in subsection (2)(b), the word "and" and, in subsection (5), the words "by Order in Council".  In section 18(3), the words "by a Commissioner or his officers".  In Schedule 1, in paragraphs 3(2)(a) and 3A(2)(a), the

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1995 c. 17.	The Health Authorities Act 1995.	words “or for Wales” and paragraph 11(2). In Schedule 1, in paragraph 126(2)(b), the words “in paragraph (b), after “Wales,” insert “ and ””.
S.I. 1995/1615.	The Parliamentary Commissioner Order 1995.	In article 2, the words “ “Arts Council of Wales (Cyngor Celfyddydau Cymru)” ”.
1996 c. 57.	The School Inspections Act 1996.	In Schedule 6, in paragraph 1, the entry relating to the Office of Her Majesty’s Chief Inspector of Schools in Wales.

## PART II

### WELSH PUBLIC RECORDS

#### Commencement Information

**I40** Sch. 18 Pt. II partly in force; Sch. 18 Pt. II in force for certain purposes at 1.4.1999 by S.I. 1999/782, art. 2

Chapter	Short title	Extent of repeal
6 & 7 Eliz.2 c. 51.	The Public Records Act 1958.	In the First Schedule, in the Table at the end of paragraph 3—  in Part I, the entry relating to the Welsh Board of Health, and  in Part II, the entries relating to the Countryside Council for Wales, the Curriculum and Assessment Authority for Wales, the Further Education Funding Council for Wales, the General Teaching Council for Wales, the Higher Education Funding Council for Wales and the Qualifications, Curriculum and Assessment Authority for Wales and, in the entry relating to any body established for the purpose of determining the boundaries of local authorities in England

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or Wales, the words “or Wales”.

### PART III

#### WELSH DEVELOPMENT AGENCY

Chapter	Short title	Extent of repeal
1975 c. 70.	The Welsh Development Agency Act 1975.	<p>In section 16(3)(b), the words “compulsorily or by agreement”.</p> <p>Sections 22 and 23.</p> <p>Section 24(1) to (5).</p> <p>Section 26.</p> <p>In section 27(1), the definitions of “industry” and “industrial”.</p> <p>In Schedule 1—</p> <p>in paragraph 8, the words “with the consent” onwards,</p> <p>in paragraph 9, the words “with the approval of the Minister for the Civil Service”,</p> <p>in paragraph 10, the words “with the approval of the said Minister”,</p> <p>in paragraph 11, the words “, with the approval of the said Minister,” and the words “with the approval of the said Minister”, and</p> <p>in paragraph 12(1), the words “with the consent of the Minister for the Civil Service” and the words “with the approval of the said Minister”.</p>
1981 c. 67.	The Acquisition of Land Act 1981.	In Schedule 4, in paragraph 1, in the Table, the entry relating to the Welsh Development Agency Act 1975.
1982 c. 42.	The Derelict Land Act 1982.	<p>Section 1(12).</p> <p>Section 2(3) and (4).</p>



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1990 c. 11.	The Planning (Consequential Provisions) Act 1990.	In Schedule 2, paragraph 34(2).
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#### PART IV

##### DEVELOPMENT BOARD FOR RURAL WALES

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Chapter	Short title	Extent of repeal
2 & 3 Eliz.2 c. 56.	The Landlord and Tenant Act 1954.	Section 59(1B).  Section 60B.
1964 c. 26.	The Licensing Act 1964.	Section 115(3).  In Schedule 10, paragraph 1(1A).
1967 c. 13.	The Parliamentary Commissioner Act 1967.	In Schedule 2, the entry relating to the Development Board for Rural Wales.
1967 c. 88.	The Leasehold Reform Act 1967.	Section 28(5)(bb).  In section 29, subsection (6A) and, in subsection (7), the words “the Development Board for Rural Wales”.  In section 30(7), the words “to the Development Board for Rural Wales”.  In Schedule 4, in Part II, paragraph 6.  In Schedule 4A, paragraph 2(2)(e).
1968 c. 34.	The Agriculture (Miscellaneous Provisions) Act 1968.	In section 13(2), the words “or section 4(1) of the Development of Rural Wales Act 1976”.
1969 c. 32.	The Finance Act 1969.	In section 58(4), in the Table, the entry relating to the Development Board for Rural Wales.
1973 c. 26.	The Land Compensation Act 1973.	Section 39(4)(f) and (8)(d).
1973 c. 50.	The Employment and Training Act 1973.	In section 4, in subsection (3)(e)(ii), the words “the Development Board for Rural Wales” and subsection (5)(f).

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1974 c. 7.	The Local Government Act 1974.	Section 25(1)(bc).  In section 26, subsection (7) (b) and, in subsection (13), “(bc)”.
1975 c. 24.	The House of Commons Disqualification Act 1975.	In Schedule 1, in Part II, the entry relating to the Development Board for Rural Wales.
1975 c. 70.	The Welsh Development Agency Act 1975.	In section 2, subsection (1A) and, in subsection (2), the words “(other than the chairman of the Development Board for Rural Wales)”.  Section 5(1A).  Section 11(2)(a).
1976 c. 75.	The Development of Rural Wales Act 1976.	Sections 1 to 22.  Section 23(3) and (4).  Sections 24 and 25.  In section 26(1), the words “(other than the Board)”.  Sections 27 to 34.  In section 35, subsection (2) and, in subsection (3), the words “With the exception of paragraph 8 of Schedule 1,”. Schedules 1 to 7.
1977 c. 42.	The Rent Act 1977.	Section 14(f).
1977 c. 43.	The Protection from Eviction Act 1977.	Section 3A(8)(f).
1977 c. 49.	The National Health Service Act 1977.	Section 28A(2)(e)(vi) and the word “and” preceding it.  Section 28B(1)(b)(vi) and the word “and” preceding it.
1980 c. 48.	The Finance Act 1980.	Section 97(3)(e).
1980 c. 63.	The Overseas Development and Co-operation Act 1980.	In Schedule 1, in Part III, the entry relating to the Development Board for Rural Wales.
1980 c. 65.	The Local Government, Planning and Land Act 1980.	Section 131(5).

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		In Schedule 19, paragraph 1(f).
1980 c. 66.	The Highways Act 1980.	In Schedule 24, paragraph 28.
1981 c. 6.	The Industry Act 1981.	In section 2(4), the words “Section 12(3) of the Development of Rural Wales Act 1976 and”.
		In section 7(5), the words “or the Development Board for Rural Wales”.
1981 c. 35.	The Finance Act 1981.	Section 107(3)(i).
1981 c. 64.	The New Towns Act 1981.	Section 1(2).
		Section 2(5).
		In section 3(1), the words “, subject to section 3(2) of the Development of Rural Wales Act 1976”.
		In Schedule 12, paragraphs 20 to 22.
1981 c. 67.	The Acquisition of Land Act 1981.	Section 28(c).
		In Schedule 4, in paragraph 1, in the Table, the entry relating to the Development of Rural Wales Act 1976, in paragraph 16(3), the words “, and for the paragraph 6(2) inserted by the Development of Rural Wales Act 1976,” and paragraph 27.
1982 c. 30.	The Local Government (Miscellaneous Provisions) Act 1982.	In Schedule 4, paragraph 2(5)(e) and the word “and” preceding it.
1983 c. 28.	The Finance Act 1983.	In section 45(3), paragraph (b) and the word “or” preceding it.
1983 c. 29.	The Miscellaneous Financial Provisions Act 1983.	In Schedule 2, the entry relating to the Development of Rural Wales Act 1976.
1984 c. 12.	The Telecommunications Act 1984.	In Schedule 4, paragraphs 3(1)(e) and 67.
1985 c. 5.	The New Towns and Urban Development Corporations Act 1985.	Section 11.

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1985 c. 68.	The Housing Act 1985.	<p>In Schedule 2, paragraph 1.</p> <p>In section 27B(3), the words “or the Development Board for Rural Wales”.</p> <p>In section 45(2), the words “the Development Board for Rural Wales,”.</p> <p>In section 50(2), the words “or the Development Board for Rural Wales”.</p> <p>In section 80(1), the words “the Development Board for Rural Wales,”.</p> <p>In section 114(1) and (2), the words “or the Development Board for Rural Wales,”.</p> <p>In section 157(1), the words “, the Development Board for Rural Wales”.</p> <p>In section 171(2), the words “the Development Board for Rural Wales,”.</p> <p>In section 421(1), the words “and the Development Board for Rural Wales”.</p> <p>Section 426.</p> <p>In section 427(1), the words “or the Development Board for Rural Wales”.</p> <p>In section 427A, the words “or the Development Board for Rural Wales”.</p> <p>In section 447(1), the words “the Development Board for Rural Wales,”.</p> <p>In section 548(1), in the Table, paragraph 3.</p> <p>In section 573(1), the words “the Development Board for Rural Wales,”.</p> <p>In Schedule 1, in paragraph 2(1), the words “the Development Board for Rural Wales,”.</p>
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		In Schedule 2, in Part I, in Ground 7, and in Part III, in Ground 12, the words “the Development Board for Rural Wales,”.
		In Schedule 3, in Ground 5, the words “the Development Board for Rural Wales,”.
		In Schedule 5, in paragraph 5(1)(b), the words “the Development Board for Rural Wales,”.
1985 c. 69.	The Housing Associations Act 1985.	In section 85(4), the words “the Development Board for Rural Wales,”.
1985 c. 70.	The Landlord and Tenant Act 1985.	In section 26(1), the words “or the Development Board for Rural Wales,”.
		In the Schedule, in paragraph 9(1), the words “or the Development Board for Rural Wales,”.
1986 c. 31.	The Airports Act 1986.	In Schedule 2, in paragraph 1(1), the entry relating to the Development of Rural Wales Act 1976.
1987 c. 26.	The Housing (Scotland) Act 1987.	Section 61(11)(h).
1987 c. 31.	The Landlord and Tenant Act 1987.	Section 58(1)(d).
1987 c. xxviii.	The British Waterways Act 1987.	In section 44(6)(b), the words “, section 34 of the Development of Rural Wales Act 1976”.
1988 c. 1.	The Income and Corporation Taxes Act 1988.	Section 376(4)(n).
1988 c. 50.	The Housing Act 1988.	Section 38(5)(c). In Schedule 1, in Part I, paragraph 12(1)(c). In Schedule 17, in Part II, paragraph 97.
1989 c. 15.	The Water Act 1989.	In Schedule 25, paragraphs 1(2)(xxii) and (10)(vi) and 54.

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1989 c. 29.	The Electricity Act 1989.	In Schedule 16, paragraphs 1(1)(i) and 3(1)(f).
1989 c. 38.	The Employment Act 1989.	In Schedule 6, paragraph 17.
1989 c. 42.	The Local Government and Housing Act 1989.	Section 90(2)(e) and the word “or” preceding it.  In section 172(8),  in the definition of “new town corporation”, the words “, the Development Board for Rural Wales”.  In Schedule 11, paragraph 82.
1990 c. 11.	The Planning (Consequential Provisions) Act 1990.	In Schedule 2, paragraph 37.
1991 c. 1.	The Development Board for Rural Wales Act 1991.	The whole Act.
1991 c. 22.	The New Roads and Street Works Act 1991.	In Schedule 8,  in Part IV, paragraph 107.
1991 c. 56.	The Water Industry Act 1991.	In section 41(2)(d)(ii), the words “the Development Board for Rural Wales or” and the words from “, according to” to “being responsible”.  In section 97(5),  in the definition of “relevant area”, paragraph (d).  In section 98(2)(d)(ii), the words “the Development Board for Rural Wales or” and the words from “, according to” to “being responsible”.
1992 c. 5.	The Social Security Administration Act 1992.	In section 140D(1)(c), the words “or the Development Board for Rural Wales”.
1994 c. 19.	The Local Government (Wales) Act 1994.	In Schedule 16, paragraph 53.
1994 c. 21.	The Coal Industry Act 1994.	In Schedule 9, paragraph 19.
1995 c. 25.	The Environment Act 1995.	In Schedule 10, paragraph 16.
1995 c. 45.	The Gas Act 1995.	In Schedule 4, paragraph 2(1)(xxv) and (10)(f).

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1996 c. 18.	The Employment Rights Act 1996.	In Schedule 1, paragraph 11.
1996 c. 53.	The Housing Grants, Construction and Regeneration Act 1996.	Section 3(2)(e). Section 64(7)(c).
S.I. 1996/2325.	The Housing Act 1996 (Consequential Provisions) Order 1996.	In Schedule 2, paragraph 4.

## PART V

### LAND AUTHORITY FOR WALES

Chapter	Short title	Extent of repeal
8 & 9 Eliz.2 c. 67.	The Public Bodies (Admission to Meetings) Act 1960.	In the Schedule, paragraph 1(bb).
9 & 10 Eliz.2 c. 33.	The Land Compensation Act 1961.	Section 23(3)(aa).
1974 c. 7.	The Local Government Act 1974.	Section 25(1)(aa). Section 30(2A).
1975 c. 24.	The House of Commons Disqualification Act 1975.	In Schedule 1, in Part II, the entry relating to the Land Authority for Wales.
1980 c. 65.	The Local Government, Planning and Land Act 1980.	Sections 102 to 104. Sections 106 to 111. In Schedule 17, in Part III, paragraph 4 and, in Part IV, paragraph 9. Schedules 18 to 22.
1981 c. 67.	The Acquisition of Land Act 1981.	In section 17(3), the words “the Land Authority for Wales,”. Section 31(1)(b). In Schedule 3, in paragraph 4(3), the words “the Land Authority for Wales,”.

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		In Schedule 4, paragraph 30(2), (3), (10) and (11).
1983 c. 29.	The Miscellaneous Financial Provisions Act 1983.	In Schedule 2, the entry relating to Schedule 21 to the Local Government, Planning and Land Act 1980.
1989 c. 15.	The Water Act 1989.	In Schedule 25, paragraph 61(3) and (7).
1990 c. 11.	The Planning (Consequential Provisions) Act 1990.	In Schedule 2, paragraph 44(3), (4), (9) and (10).
1993 c. 28.	The Leasehold Reform, Housing and Urban Development Act 1993.	Section 181(2) and (4).
1994 c. 19.	The Local Government (Wales) Act 1994.	In Schedule 16, paragraphs 58 and 59(6) to (8).
1994 c. 21.	The Coal Industry Act 1994.	In Schedule 9, in paragraph 25(1), “108(1),”.
1995 c. 25.	The Environment Act 1995.	In Schedule 10, paragraph 20.

## PART VI

### HOUSING FOR WALES

Chapter	Short title	Extent of repeal
1967 c. 13.	The Parliamentary Commissioner Act 1967.	In Schedule 2, the entry relating to Housing for Wales.
1973 c. 26.	The Land Compensation Act 1973.	In section 32(7B)(b), the words “or Housing for Wales”.
1974 c. 39.	The Consumer Credit Act 1974.	In section 16(6B)(a), the words “, Housing for Wales”.
1975 c. 24.	The House of Commons Disqualification Act 1975.	In Schedule 1, in Part II, the entry relating to Housing for Wales.
1975 c. 55.	The Statutory Corporations (Financial Provisions) Act 1975.	In Schedule 2, the entry relating to Housing for Wales.
1976 c. 80.	The Rent (Agriculture) Act 1976.	Section 5(3)(da).
1977 c. 42.	The Rent Act 1977.	In section 15(2), the words “(aa) Housing for Wales”.



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		In section 86(2), the words “or Housing for Wales”.
		In section 93(1), the words “or Housing for Wales”.
1977 c. 43.	The Protection from Eviction Act 1977.	In section 3A(8)(g), the words “or Housing for Wales”.
1977 c. 45.	The Criminal Law Act 1977.	In section 12A(7), the words “(c) Housing for Wales;”.
1977 c. 49.	The National Health Service Act 1977.	Section 28A(2)(e)(vii) and the word “and” preceding it.  In section 28B(1)(b), the words “(v) Housing for Wales;”.
1980 c. 65.	The Local Government, Planning and Land Act 1980.	In Schedule 16, paragraph 9A.
1981 c. 35.	The Finance Act 1981.	Section 107(3)(ca).
1985 c. 68.	The Housing Act 1985.	In section 57, the entry relating to “the Corporation”.  In section 92(2A)(a), the words “Housing for Wales;”.  In section 117, the entry relating to “the Corporation”.  In section 188, the entry relating to “the Corporation”.  Section 429A(2A)(b).  In section 459, the entry relating to “the Corporation”.  In section 577, the entry relating to “the Corporation”.
1985 c. 69.	The Housing Associations Act 1985.	In section 9(6), the words “or Housing for Wales”.  In section 35(2)(b), the words “of Corporation”.  In section 80,  in subsection (1), the words “, with the written consent of the Secretary of State,” and,  in subsection (3), the words “given with the like consent”.

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		In section 84(1), the words “, with the approval of the Secretary of State,”.
		In section 93(2A), the words “in the case of the Housing Corporation,” and paragraph (b) and the word “and” preceding it.
		In Schedule 1, in paragraph 1, the words “by Corporation”.
		In Schedule 5, in Part I, in paragraph 6(2)(b), the words “or Housing for Wales”.
		In Schedule 7, in paragraph 2, in sub-paragraph (1), the words “, with the consent in writing of the Secretary of State,” and, in sub-paragraph (2), the words “given with the like consent”.
1987 c. 31.	The Landlord and Tenant Act 1987.	Section 58(1)(ea).
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 488(7A), paragraph (b) and the word “and” preceding it.  In section 489(5A), paragraph (b) and the word “and” preceding it.  In section 560(2)(e), the words “Housing for Wales”.
1988 c. 50.	The Housing Act 1988.	Section 46. Section 47.  In section 59(2)(b), the words “the establishment by this Part of this Act of Housing for Wales and”.  Section 92(2).

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		In section 133(6), the words “or Housing for Wales”.
		In section 140(1), the words “and in that Schedule” onwards. Schedule 5.
		In Schedule 6, in Part I, paragraph 2 and, in Part II, paragraph 30(1)(b) and the word “and” preceding it and paragraph 31(1).
		In Schedule 17, in Part II, paragraphs 92, 94 to 106 and 108 to 116.
1989 c. 42.	The Local Government and Housing Act 1989.	In section 172(2)(b), the words “or Housing for Wales”.
		In section 173(6), the words “or Housing for Wales”.
		In Schedule 11, paragraph 110.
1996 c. 18.	The Employment Rights Act 1996.	In Schedule 1, paragraph 41.
1996 c. 52.	The Housing Act 1996.	In section 1, in subsection (1), the words “at the head office of the Corporation” and subsection (2). In section 9(1), the words “, given by order under the seal of the Corporation,”. In section 46(1) and (6), the words “under its seal”. In section 64, the entry relating to “the Corporation”. In Schedule 1, in paragraphs 9(3) and 11(3), the words “given by order under the seal of the Corporation” and, in paragraph 27(1), the words “, with the consent of the Secretary of State,”.

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## PART VII

### RESIDUARY BODY FOR WALES

Chapter	Short title	Extent of repeal
1994 c. 19.	The Local Government (Wales) Act 1994.	In Schedule 13,  in paragraph 18,  in sub-paragraph (3), the words “Subject to sub-paragraph (4),” and sub-paragraph (4).

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**Status:**

Point in time view as at 01/10/2002. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:**

Government of Wales Act 1998 is up to date with all changes known to be in force on or before 31 March 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.