



# Government of Wales Act 1998

## 1998 CHAPTER 38

### 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.

##### *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.

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- (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)**

- C1** 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**
- C2** S. 22 extended (7.11.2002) by Adoption and Children Act 2002 (c. 38), **s. 145(4)** (with Sch. 4 paras. 6-8)
- C3** 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, 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—

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- (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)**

- C4** 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**
- C5** S. 23(1) excluded (15.11.2001) by S.I. 2001/3679, **arts. 1, 3**; S.I. 2001/3686, **reg. 1**
- C6** 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**
- C7** 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**
- C8** 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
  - (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>M1</sup>Employment Rights Act 1996).

**Marginal Citations**

- M1** 1996 c. 18.

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## **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.
- (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.

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- (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.
- (7) Where this subsection applies—
- (a) the duty imposed by [<sup>F1</sup>section 8(1)(b) and [<sup>F2</sup>(7)(b)]] of the <sup>M2</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, <sup>F3</sup> . . .
  - (b) <sup>F4</sup> . . . . .
- (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.

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- (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>M3</sup>National Health Service Act 1977.

#### Textual Amendments

- F1** 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)
- F2** Words in s. 27(7) substituted (20.11.2003) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\), ss. 192, 199\(1\)\(4\)](#)
- F3** S. 27(7)(b) and the word "but" preceding it repealed (20.10.2003 for W. and 1.12.2003 for E.) by [Health \(Wales\) Act 2003 \(c. 4\), ss. 7, 10\(2\), Sch. 3 para. 9, Sch. 4](#); S.I. 2003/2660, [art. 2](#); S.I. 2003/3064, [art. 2](#)
- F4** S. 27(7)(b) and the word "but" preceding it repealed (20.10.2003 for W. and otherwise prosp.) by [Health \(Wales\) Act 2003 \(c. 4\), ss. 7, 10\(2\), Sch. 3 para. 9, Sch. 4](#); S.I. 2003/2660, [art. 2](#)

#### Marginal Citations

- M2** 1977 c. 49.
- M3** 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—
- to a body specified in Part I or III of that Schedule,
  - 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,
  - to a county council, county borough council or community council in Wales (or to more than one such council), or
  - 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—
- would not be able to exercise the function because the function requires or permits something to be done in relation to that body, or
  - 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—

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- (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).

## **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>M4</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>M5</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>M6</sup>European Communities Act 1972 (Parliamentary procedure) shall not apply to a statutory instrument containing

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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>M7</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>M8</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)

**C9** S. 29(3) applied (18.11.2004) by [Civil Partnership Act 2004 \(c. 33\), ss. 260\(5\), 263](#)

#### Marginal Citations

**M4** 1972 c. 68.  
**M5** 1972 c. 68.  
**M6** 1972 c. 68.  
**M7** 1973 c. 51.  
**M8** 1973 c. 51.

### 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—



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- (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.
- (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

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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.
- (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>M9</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>M10</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—

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- (a) the provision of pensions, allowances or gratuities by virtue of section 1 of the <sup>M11</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)**

**C10** 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**

**M9** 1992 c. 61.

**M10** 1972 c. 11.

**M11** 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.
- (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))

*Status: Point in time view as at 20/11/2003. This version of this part contains provisions that are not valid for this point in time.*

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### 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>M12</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)

**C11** 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

**M12** 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.
- (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.

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

- C12** 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)
- C13** 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>M13</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

**M13** 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>M14</sup>Local Government (Contracts) Act 1997 shall apply in relation to contracts entered into by the Assembly but subject to any appropriate modifications.

#### Marginal Citations

**M14** 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.

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#### 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.

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#### [<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—
  - (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).

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- (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)**

C14 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).
- (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.

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- (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>M15</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.

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

**C15** S. 44 modified (7.11.2002) by [Adoption and Children Act 2002 \(c. 38\)](#), s. **145(4)** (with Sch. 4 paras. 6-8)

**C16** 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

**M15** 1945 c.18 (9 & 10 Geo.6).



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## **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.

**Status:**

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**Changes to legislation:**

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