

# GOVERNMENT OF WALES ACT 2006

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## EXPLANATORY NOTES

### DETAILED COMMENTARY ON SECTIONS IN PART 4

#### *Referendum*

#### *Section 108: Legislative competence*

399. The purpose of this section and Schedule 7 is to set out the extent of the Assembly's power to pass Acts. The section calls this the Assembly's "legislative competence". Its legislative competence may be altered by Her Majesty making an Order in Council under section 109.
400. Subsection (1) makes it clear that within the limitations imposed by the Act an Act of the Assembly can have the same effect as an Act of the UK Parliament.
401. The Assembly's power to pass Acts will be limited to the legislative competence given to it by this Act, which may be modified by Order in Council.
402. Subsection (2) means that if an Act contains a provision which is outside the Assembly's legislative competence, that provision has no legal effect.
403. Subsections (3) to (6) identify when a provision of an Act will be within the Assembly's legislative competence.
404. It will only be within competence if it satisfies the criteria in *either* section 108(4) *or* 108(5), *and* it complies with section 108(6).
405. In order to satisfy the criteria in section 108(4):
- a) the provision in question must relate to one or more of the subjects listed under any of the headings in Part 1 of Schedule 7. (Section 109 allows Her Majesty to make Orders in Council listing further headings and subjects in Part 1 of Schedule 7, or changing or removing those which are already there); and
  - b) the provision in question must not fall within any of the exceptions listed in Part 1 of Schedule 7. For example, a provision in an Act which related to the subject of the Welsh Language (heading 20 in Part 1 of Schedule 7), but which sought to legislate on broadcasting would not meet the criteria in section 108(4)(a), because it would fall within the exception of "broadcasting" under heading 3 in Part 1 of Schedule 7; and
  - c) the provision in question must apply only in relation to Wales, and it must not confer, impose, change or remove (or give anyone else the power to confer, impose, change or remove) functions to be carried out in relation to countries other than Wales (e.g. England).
406. In order to satisfy the criteria in section 108(5):
- a) the provision in question must be one which allows a provision contained in any Act of the Assembly (i.e. one which did meet the criteria in section 108(4)) or in

*These notes refer to the Government of Wales Act 2006  
(c.32) which received Royal Assent on 25 July 2006*

an Assembly Measure, to be enforced, or be one which is otherwise appropriate for making such a provision effective; or

- b) the provision in question must be one which is incidental to or consequential on a provision contained in any Act of the Assembly or Assembly Measure which *does* meet the criteria in section 108(4).

407. In order to comply with section 108(6):

- a) the provision in question must comply with restrictions on the Assembly's legislative competence which are set out in Part 2 of Schedule 7 to the Act. There are exceptions from these restrictions, which are set out in Part 3 of Schedule 7; and
- b) the provision in question must form part of the law of England and Wales only (for example, the provision cannot form part of the law of Scotland); and
- c) the provision in question must not be incompatible with the European Convention on Human Rights or European Community law.

408. Subsection (7) lays down the test to be used to decide whether a particular provision in an Act of the Assembly relates to a subject listed under any of the headings in Part 1 of Schedule 7, and does not fall within any of the exceptions.

409. The correct approach will be to consider the purpose of the provision having regard to its effect in all the circumstances.