

# GOVERNMENT OF WALES ACT 2006

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## EXPLANATORY NOTES

### DETAILED COMMENTARY ON SECTIONS IN PART 6

#### *Crown status*

#### *Paragraph 12*

665. The Assembly Commission is not a Crown body as it is exercising functions on behalf of the Assembly, rather than on behalf of the Welsh Assembly Government (whose Ministers exercise functions on behalf of the Crown).
666. [Paragraph 12\(1\)](#) provides that Her Majesty can make Orders in Council that provide for the Assembly Commission to be treated as a Crown body for the purpose of any enactment. In particular the Order in Council may (sub-paragraph (2)) provide for employment by the Assembly Commission to be treated as Crown employment; or for land held, used or managed by the Assembly Commission, or operations carried out by them, to be treated as Crown land or operations. This mirrors provision made in relation to the Parliamentary corporate bodies of the House of Commons and the House of Lords, and that made in relation to the Scottish Parliamentary Corporate Body.
667. The [Scottish Parliamentary Corporate Body \(Crown Status\) Order 1999 \(SI 1999/677\)](#) is an example of what such an Order in Council may cover. It provides for that Body to be treated as a Crown body for the purposes of various enactments relating to planning, building legislation, fire precautions, VAT and data protection.
668. [Paragraph 12\(3\)](#) provides that “Crown body” means a servant or agent of the Crown and includes a government department.
669. [Paragraph 12\(4\)](#) provides that an Order in Council which requires the Assembly Commission to be treated as a Crown body under any enactment can be annulled by a resolution of either House of Parliament, or by resolution of the Assembly.

#### *Schedule 3: Transfer Etc. of Functions: Further Provisions*

##### **Part 1: Functions transferable etc.**

670. [Paragraph 1](#) provides that an Order in Council under section 58 may make provision about any Ministerial function, including one created after the passing of the Act. However, this does not apply to functions of the Secretary of State under the Act itself, other than the power to vary the date of an Assembly general election under section 4.
671. [Paragraph 2](#) provides that a function of a Minister of the Crown which is exercisable in relation to the Welsh language or to any other aspect of Welsh culture is to be regarded as exercisable in relation to Wales.
672. [Paragraph 3](#) extends the power to make provision by Order in Council under section 58 to include provision about Ministerial functions in relation to cross-border bodies (i.e. bodies exercising functions or carrying on activities in or with respect to Wales or part of Wales but also with respect to other areas) and in relation to English border areas (i.e.

parts of England adjoining Wales). In the case of English border areas the power will however only be able to be exercised in relation to functions relating to certain water matters, and only if the Order in Council (or an earlier one) has made corresponding provision about that function so far as exercisable in relation to Wales or part of Wales adjoining England.

673. [Paragraph 4](#) enables an Order in Council under section 58 to impose on Ministers of the Crown a duty to consult the Welsh Ministers before exercising certain functions in relation to that part of the sea adjacent to Wales but beyond the 12-mile limit.

## **Part 2: Exercise of transferred functions**

674. Where a power to make subordinate legislation has been transferred to the Welsh Ministers, paragraph 5 provides that it may still be exercised by the Minister of the Crown from whom it was transferred, for the purpose of implementing, or enabling the implementation of, any European Community obligations of the United Kingdom, enabling UK rights under Community law to be exercised and for ancillary purposes.
675. An Order in Council transferring a function to the Welsh Ministers, the First Minister or the Counsel General in relation to a cross-border body or to an English border area, or providing for such a function to be exercisable concurrently by the Welsh Ministers etc and a Minister of the Crown may, under paragraph 6, provide that the function may only be exercised by the Welsh Ministers etc with the agreement of, or after consulting, a Minister of the Crown.
676. Where a function is transferred to the Welsh Ministers, First Minister or Counsel General, and the Minister of the Crown from whom it is to be transferred was required, before exercising it, to obtain the agreement of, or consult with, another Minister of the Crown or to obtain the authorisation of Parliament, paragraph 7 provides that the requirement in question is not to apply to the Welsh Ministers etc unless the Order in Council transferring the function provides that it should. Where an Order in Council directs that a function is to be exercisable by the Welsh Ministers etc concurrently with a Minister of the Crown, and such a requirement applies to the exercise of that function by the Minister of the Crown, then paragraph 7 provides that the Order in Council may provide that it is to be exercisable by the Welsh Ministers etc free from that requirement.
677. [Paragraph 8](#) provides that an Order in Council under section 58 making a function exercisable by the Welsh Ministers, the First Minister or the Counsel General, may make the exercise of the function subject to consultation with, or authorisation from, the Assembly or the Assembly Commission. It also confirms that an Order in Council under section 58 making a function exercisable by the Welsh Ministers, First Minister or Counsel General, can require the Welsh Ministers etc to lay a report before the Assembly or send documents to the Clerk to the Assembly, in connection with the exercise of that function.
678. [Paragraph 9](#) makes provision for Assembly procedures (and in some cases Parliamentary procedures) to apply to subordinate legislation made (or approved or confirmed) by the Welsh Ministers, First Minister or Counsel General under powers transferred to them or otherwise made exercisable by them under an Order in Council under section 58, in those cases where a Minister of the Crown would have been subject to Parliamentary procedures when making, approving or confirming legislation under those powers.
679. Where an instrument contains provision to be made (etc.) by the Welsh Ministers, First Minister or Counsel General together with a Minister of the Crown, or which relates to an English border area or a cross-border body (other than one which only relates to the functions of that body in relation to Wales), any Parliamentary procedure (i.e. any requirement to lay a draft of the legislation before Parliament and any requirement to obtain the approval of either or each House of Parliament before making it or any power

of either or each House to annul it by resolution) is to continue to apply (in addition to any Assembly procedure).

680. Provisions which require instruments made by Ministers of the Crown to be confirmed by Act of Parliament (“provisional orders”) or which apply special parliamentary procedure to an order are not to apply when they are made by the Welsh Ministers, First Minister or Counsel General instead, unless either one of the situations referred to in the previous paragraph above applies or, in the case of a “special parliamentary procedure” order, the Order in Council empowering the Welsh Ministers etc to make the order in question specifically requires it. Equivalent Assembly procedures laid down by Assembly standing orders are to apply instead.
681. Subject to the above, subordinate legislation made by the Welsh Ministers, First Minister or Counsel General under powers conferred on them by an Order in Council under section 58 is to be subject to Assembly procedures equivalent to the Parliamentary procedures which would have applied if it had been made by a Minister of the Crown, i.e. “affirmative” or “negative” procedure as the case may be, substituting a requirement for approval or liability to annulment by resolution of the Assembly for approval or annulment by resolution of either or each House of Parliament. The standing orders of the Assembly are to make detailed provision for the relevant procedures.
682. [Paragraph 10](#) provides that where a function of making or receiving a report or statement was subject to a requirement to lay the report before Parliament, and an Order in Council under section 58 makes that function exercisable by the Welsh Ministers, First Minister or Counsel General, the requirement to lay the report before Parliament applies as if it was a requirement to lay the report before the Assembly
683. [Paragraph 11](#) makes provision about certain powers to lend money which may be transferred to the Welsh Ministers by Order in Council under section 58. Where, prior to transfer, the sums required to make such loans were required to be charged on the National Loans Fund, this paragraph provides that they are instead to be charged on the Welsh Consolidated Fund. Similarly, where the repayments of such loans were formerly paid into the National Loans Fund, they are instead to be paid into the Welsh Consolidated Fund.
684. [Paragraph 11](#) also makes provision in relation to existing loans, made by Ministers of the Crown out of the National Loans Fund prior to transfer. Upon transfer of the power to the Welsh Ministers, repayments of, and payments of interest on, the outstanding loans are to be paid into the Welsh Consolidated Fund, via the Welsh Ministers. The outstanding principal amounts on such loans at the date of transfer are to be treated as loans made by the Secretary of State to the Welsh Ministers, who are obliged to repay these amounts to the Secretary of State for payment into the National Loans Fund. It is at the Treasury’s discretion to set the dates and methods of repayment to the Secretary of State, and to set the rates and times at which interest must be paid to the Secretary of State.

### **Part 3: Supplementary**

685. [Paragraph 12](#) makes it clear that where the provisions of section 58 and Schedule 3 refer to Ministers of the Crown the reference includes Ministers of the Crown acting jointly, officers of a Minister of the Crown or of a government department and that functions of such an officer may be transferred to officers of the Welsh Assembly Government.
686. [Paragraph 13](#) makes it clear that a transfer of a function to the Welsh Ministers, First Minister or Counsel General, or the imposition on a Minister or the Crown of a requirement to obtain the agreement of, or to consult, the Welsh Ministers etc before exercising a function does not affect the validity of anything done by or in relation to that Minister of the Crown before the transfer or imposition of that requirement.

#### ***Schedule 4: Transfers of Ministerial Property, Rights and Liabilities***

##### **Transfers of Ministerial Property, Rights and Liabilities**

687. This schedule provides that where an Order in Council under section 58 transfers functions from Ministers of the Crown to the First Minister, the Welsh Ministers or the Counsel General, any connected property, rights and liabilities (except employment rights and liabilities relating to Crown employment) are transferred along with those functions, unless the Order in Council provides otherwise.
688. Anything relating to a transferred function, or to property, rights or liabilities transferred along with the function, and which was in the process of being done by or in relation to the Minister of the Crown when the function transferred, may be continued by or in relation to the transferee of the function. Anything done by Ministers of the Crown in relation to such functions, property, rights and liabilities pre-transfer continues to have effect as if it had been done by the transferee.
689. Instruments, contracts and legal proceedings relating to transferred functions, property, rights and liabilities continue to have effect post-transfer with the transferee of the function substituted for the Minister of the Crown.
690. The Secretary of State can also, by order, make specific transfers of property, rights and liabilities, or make transfers of property, rights and liabilities of a specific description, from Ministers of the Crown to the First Minister, the Welsh Ministers or the Counsel General. Such an order can include provisions creating interests in, or rights over, each other's property, and provisions creating new rights and liabilities between the First Minister, the Welsh Ministers or the Counsel General on the one hand and Ministers of the Crown on the other.
691. The Secretary of State can also make orders to provide for the continuation by, or in relation to, the Welsh Minister, First Minister or Counsel General of things commenced by or in relation to a Minister of the Crown. He may also by order provide that any specific thing done by a Minister of the Crown has effect as if done by the First Minister, the Welsh Ministers or the Counsel General; and can make orders substituting the First Minister, the Welsh Ministers or the Counsel General for Ministers of the Crown in any specific contracts, legal proceedings, or instruments.
692. [Paragraph 4](#) provides that the Secretary of State can issue certificates as conclusive proof that property has been transferred under this Schedule, and provides that transfers of property, rights or liabilities by or under Schedule 4 override any provision which would restrict such transfers.

#### ***Schedule 5: Assembly Measures***

##### **Part 1: Matters**

693. This Part of the Schedule lists the matters, and the fields within which they fall, to which a provision in an Assembly Measure must relate if it is to satisfy the criteria in section 94 (4) (a). Section 95 allows this Schedule to be amended by Order in Council so as to add, remove or change fields and matters. A field cannot be added if
- the Welsh Ministers, the First Minister or the Counsel General have no functions in that field.
694. The only matters listed at the passing of this Act are ones which fall within the field "the National Assembly for Wales". The matters are concerned with Assembly Members (for example, remuneration and complaints), conferring certain functions on the Assembly Commission, the interpretation of the Welsh texts of Assembly Measures etc and procedures for the consideration of proposed private Assembly Measures.

## **Parts 2 and 3: General Restrictions and Exceptions**

695. **Part 2** of the Schedule lists restrictions which a provision in an Assembly Measure must not breach. If it does breach any of them, then the provision is outside the Assembly's legislative competence and is not law (section 94 (6) (a)). The restrictions are subject to exceptions from the restrictions, and these are set out in Part 3 of this Schedule.
696. In particular, the restrictions, read with the exceptions :
- a) prevent functions of a Minister of the Crown (including functions of the Treasury) being added to, removed or changed by or under a Measure without the Secretary of State's consent;
  - b) limit the penalties which can be imposed for criminal offences created by or under a Measure;
  - c) protect specified legislation (including certain provisions in this Act), and certain classes of legislative provision from being modified by or under a Measure;
  - d) protect any functions of the Comptroller and Auditor General from modification by or under an Assembly Measure without the Secretary of State's consent.

## ***Schedule 6: Referendums on Commencement of Assembly Act Provisions***

697. **Section 103** allows a referendum to be held in Wales on whether certain sections in this Act, which give the Assembly power to pass Acts, (referred to in this Act as "the Assembly Act provisions") should come into force.
698. The referendum is initiated by Her Majesty making an Order in Council.
699. This schedule makes detailed provisions in relation to the referendum.

### ***Paragraph 1: Entitlement to vote***

700. The persons entitled to vote in a referendum are those who would be entitled to vote in an Assembly General Election which, in turn, are those who would be entitled in local government elections in Wales.

### ***Paragraph 2: Conduct etc of referendums***

701. The Order in Council that Her Majesty may make under section 103 initiating the referendum may also contain other provisions relating to the referendum.
702. The Order in Council may, among other things, apply to the referendum other legislation which relates to elections, referendums or donations (gifts to, payments of expenses of registered political parties etc) as defined in Part 4 of the Political Parties, Elections and Referendums Act 2000.

### ***Paragraph 3: Referendum Question and Statement***

703. **Paragraph 3** requires the Order in Council to set out the question which voters in the referendum are to be asked.
704. In addition, if the question on the ballot paper is going to be preceded by a statement (e.g. an explanation of the effect of bringing the Assembly Act provisions into force), the statement must be set out in the Order in Council.
705. The effect of section 104(4) of the Political Parties, Elections and Referendums Act 2000 is that the Secretary of State must, at the time when the draft Order in Council is laid before both Houses of Parliament for approval, also lay a report which contains any views expressed by the Electoral Commission on how easily the referendum question or preceding statement can be understood.

706. **Paragraph 3 (3)** requires the Secretary of State to send a copy of the same report to the First Minister before, or at the same time, as the Secretary of State lays it before Parliament. Paragraph 3 (4) requires the First Minister to lay that report before the Assembly as soon as reasonably practicable after he has received it from the Secretary of State.

#### ***Paragraph 4: Date of Referendum***

707. **Paragraph 4(1)** requires the Order in Council to specify the date of the referendum.
708. **Paragraph 4(2)** gives the Secretary of State the power to change the date of the referendum, provided that the Welsh Ministers consent to the change.
709. **Paragraph 4(4)** says that an order made by the Secretary of State changing the date of a referendum is subject to negative Parliamentary procedure.

#### ***Paragraph 5: Referendum Period***

710. Section 102 of the Political Parties, Elections and Referendums Act 2000 provides for a “referendum period ” to be laid down for referendums covered by the 2000 Act. The referendum period is relevant for various provisions under the 2000 Act, such as applying restrictions on incurring referendum expenses.
711. This paragraph says that the Order in Council must set out the referendum period relating to the referendum on bringing into force the Assembly Act provisions.

#### ***Paragraph 6: Combination of Polls***

712. **Paragraph 6** allows a referendum to be combined with any election (e.g., a local government election) or other referendum due to be held. The Order in Council can include provisions relating to the holding of such combined polls.

#### ***Paragraph 7: Encouraging voting***

713. The Order in Council can authorise or require the Electoral Commission to do things to encourage voting in the referendum.

#### ***Paragraph 8: Provision of information to voters***

714. The effect of section 108 of the Political Parties, Elections and Referendums Act 2000 is that, in a referendum on the coming into force of the Assembly Act provisions, the Electoral Commission can designate two persons or organisations, which meet certain criteria, as eligible to receive financial and other assistance to assist with their campaigns – one which will be campaigning *for* the Assembly Act provisions to come into force, and one which will be campaigning against them coming into force.
715. The purpose of this provision is to help to ensure that voters in a referendum have adequate information about the issue on which they are to vote and about the arguments *for* and *against* the possible outcomes.
716. **Paragraph 8 (2)** says that if the Electoral Commission has not, by the appropriate day (see note to paragraph 8 (4)), made a designation of a person or organisation campaigning *for* the Assembly Act provisions coming into force, and one campaigning *against* them coming in to force, then it can itself take steps to ensure that voters are adequately informed about both sides of the argument.
717. **Paragraph 8(4)** : Under section 109(6) of the Political Parties, Elections and Referendums Act 2000, the Secretary of State can make an order varying the deadline by which a person or organisation can apply to be designated to receive assistance, and the deadline by which the Electoral Commission has to decide their application.

718. **Paragraph 8 (4)** says that if the Secretary of State has made such an order, then the day that the order specifies is the appropriate day.
719. If the Secretary of State does not make an order, and the Electoral Commission has received, by the 29<sup>th</sup> day of the referendum period:
- a) at least one application from a person/organisation campaigning *for* the Assembly Act provisions coming into force; and
  - b) at least one application from a person/organisation campaigning *against* the Assembly Act provisions coming into force, then the appropriate day is the 43<sup>rd</sup> day of the referendum period.
720. Otherwise, the appropriate day *is* the 29<sup>th</sup> day of the referendum period.

### ***Paragraph 9: Referendum Material***

721. Section 126 of the Political Parties, Elections and Referendums Act 2000 lays down requirements about what must appear on referendum material.
722. This paragraph says that these requirements do not apply to any material which is required to be published by the Order in Council which initiates the referendum.

### ***Paragraphs 10 and 11: Funding and Accounts***

723. **Paragraphs 10 and 11** say that the Order in Council must say how the referendum is to be funded. It may say that it is to be charged on or payable out of the Welsh Consolidated Fund. It must also deal with arrangements for the preparation and audit of accounts relating to the funding of the referendum.

### ***Paragraph 12: No legal challenge to referendum result***

724. The effect of this paragraph is that proceedings questioning the number of ballot papers counted or votes cast in a referendum must be brought by judicial review. The claim must be filed before the end of the permitted period set out in paragraph 12(2).

### ***Schedule 7: Acts of the Assembly***

#### **Part 1: Subjects**

725. This Part of the Schedule lists the subjects to which a provision in an Act of the Assembly must relate if it is to satisfy the criteria in section 108(4)(a). It also lists the exceptions within which a provision in an Act of the Assembly must not fall, if it is to satisfy section 108(4)(a).

#### **Parts 2 and 3: General Restrictions and Exceptions**

726. **Part 2** of the Schedule lists restrictions which a provision in an Act of the Assembly must not breach (section 108(6)(a)). If it does breach any of them, then the provision is outside the Assembly's legislative competence and is not law. The restrictions are subject to exceptions from the restrictions, and these are set out in Part 3 of this Schedule.
727. In particular, the restrictions, read with the exceptions:
- a) prevent functions of a Minister of the Crown which pre-date the coming into force of the Assembly Act provisions, being removed or changed by or under an Act of the Assembly, unless the Secretary of State has given his consent, or the removal or change is incidental to, or consequential on another provision contained in an Act of the Assembly;

- b) prevent functions being conferred or imposed upon a Minister of the Crown by or under an Act of the Assembly without the Secretary of State's consent;
- c) protect specified legislation (including certain provisions in this Act), and certain classes of legislative provision from being modified by or under an Act;
- d) protect functions of the Comptroller and Auditor General from modification without the Secretary of State's consent.

### **Schedule 8: Auditor General for Wales**

728. [Schedule 8](#) makes revised provision for the office of Auditor General for Wales ("AGW"). The provisions of the schedule largely replicate the equivalent provisions in the [Government of Wales Act 1998 \(c.38\)](#), which are marked for repeal. However, a notable change is that the AGW is now to be appointed by Her Majesty on the nomination of the Assembly (under the Government of Wales Act 1998, there was no need for any such nomination, although the Assembly was, in practice, consulted informally).
729. Before nominating the prospective AGW, the Assembly must be satisfied that reasonable consultation has been carried out with bodies representing the interests of local government bodies in Wales (as defined in section 12(1) of the [Public Audit \(Wales\) Act 2004 \(c.23\)](#)). This is because of the AGW's functions in relation to those bodies. For instance, under the Public Audit (Wales) Act 2004, the AGW appoints the auditor of the accounts of those bodies, and has functions under the best value regime created by Part 1 of the [Local Government Act 1999 \(c.27\)](#).
730. [Paragraph 2](#) deals with the tenure of the AGW. The length of the appointment is not to a specified age or for a specified term, but is set by Her Majesty when she appoints the AGW. The AGW can resign, by requesting Her Majesty to be relieved from office. Her Majesty can also relieve an AGW from office if She is satisfied that the AGW is medically incapable of performing the functions of the office (and also incapable of asking to be relieved of it). In addition, Her Majesty may remove a person from office as AGW on the grounds of misbehaviour. This cannot be done, however, unless the Assembly has resolved that a recommendation to this effect should be made to Her Majesty. The resolution must be passed by at least two thirds of the total number of Assembly Members (not merely two-thirds of those voting on the motion).
731. [Paragraph 3](#) protects the independence of the AGW, providing that neither the Assembly nor the Welsh Assembly Government can direct or control the manner in which the AGW exercises the functions of the office.
732. [Paragraph 3](#) also provides that the AGW is not to be regarded as a Crown servant, other than for the purposes of the [Official Secrets Act 1989 \(c.6\)](#).
733. [Paragraph 4](#) provides that the AGW is a corporation sole.
734. [Paragraph 5](#) deals with the process for sealing documents by the AGW.
735. [Paragraph 6](#) provides for the AGW's salary, and the Assembly's contribution to the AGW's pension provision, as well as the pensions of former AGWs, to be charged on the Welsh Consolidated Fund (that is, these amounts will be governed by the terms of appointment of the AGW and will not be subject to annual approval by the Assembly in Budget resolutions tabled by the Welsh Ministers).
736. [Paragraph 7](#) makes provision regarding staff of the AGW. These provisions are closely based on the equivalent ones in the Government of Wales Act 1998, which are to be repealed.
737. [Paragraph 8](#) is also closely based on equivalent provisions in the Government of Wales Act 1998. It deals with the ability of the AGW to delegate the exercise of functions to



members of staff or persons providing services to the AGW. In both cases, the AGW's authorisation will be needed. Such a delegation does not affect the responsibility of the AGW for the manner in which that function is exercised. The AGW cannot, however, delegate the function of certifying or reporting on accounts which are required to be laid before the Assembly, unless the Presiding Officer has certified that AGW is unable to do this in person. Even if the Presiding Officer has so certified, the delegation ceases when the office of AGW falls vacant; the expectation would be that the new AGW would exercise the remaining aspect of the function in person, once appointed.

738. [Paragraph 9 \(1\)](#) provides that any compensation for breach of a function by the AGW is to be charged on the Welsh Consolidated Fund (i.e. is not to be subject to the approval of the Assembly in a Budget resolution).
739. Sub-paragraphs (3) and (4) provide that income which the AGW has earned through the exercise of functions related to local government in Wales is to be retained by the AGW and ploughed back into carrying out those functions (rather than paid into the Welsh Consolidated Fund or being available for the AGW to use for other purposes).
740. [Paragraph 10](#) continues provision made in the Government of Wales Act 1998 for the AGW to be able to borrow money in order to cover a short-term deficit in funds.
741. [Paragraph 11](#) deals with the AGW's powers to charge fees, which are equivalent to existing provisions in the Government of Wales Act 1998.
742. [Paragraph 12](#) sets out the process whereby the AGW seeks annual funding for his or her Office. This largely replicates provisions of the Government of Wales Act 1998 which are to be repealed; the only change of substance is that the Audit Committee of the Assembly is now able to make modifications to the AGW's estimate without reference to the Secretary of State for Wales. The Audit Committee must, however, consult the AGW before laying an estimate containing such modifications before the Assembly.
743. [Paragraph 13](#) imposes obligations on the AGW in relation to preparing accounts.
744. [Paragraph 14](#) deals with the auditor of the accounts of the AGW.
745. [Paragraph 15](#) sets out the time-scale within which the AGW's accounts must be audited, and also the auditor's rights of access to documents and information.
746. [Paragraph 16](#) provides that the Accounting Officer for the Wales Audit Office is the AGW ("the Wales Audit Office" means the AGW and members of staff). Provision is also made for the appointment of a temporary Accounting Officer.
747. [Paragraph 17](#) sets out the AGW's rights of access to documents, information, assistance and explanation for the purposes of the AGW's functions under the Act . These replace the equivalent provisions of the Government of Wales Act 1998.
748. [Paragraph 18](#) provides that, where the Welsh Ministers have the power to appoint the auditor of a person or body, they can appoint the AGW to be that auditor , even where the AGW would not meet the normal criteria for that position. (But the Welsh Ministers cannot appoint the AGW to audit his or her own accounts). There is also provision for the AGW to audit accounts or carry out value for money examinations under a tripartite agreement between the AGW, the person or body in question, and either the Welsh Ministers or a Minister of the Crown. Further, paragraph 18 provides that where a function of preparing accounts is transferred to the Welsh Ministers by Order in Council under section 58 of the Act , the Secretary of State may by order transfer to the AGW any function of the Comptroller and Auditor General in relation to those accounts.
749. [Paragraph 18 \(8\)](#) deals with the AGW's functions in relation to information provided to the Treasury for the preparation of Whole of Government accounts under section 10 of the [Government Resources and Accounts Act 2000 \(c. 20\)](#).

750. [Paragraph 19](#) replaces the equivalent provisions of the Government of Wales Act 1998 in respect of the AGW's power to report to the public on any matter coming to the AGW's notice while carrying out the AGW's functions. This power of report does not apply where the AGW is carrying out a function at the request of, or by agreement with, the person or body in question. Such reports must be laid before the Assembly.
751. [Paragraph 20](#) replaces the equivalent provisions of the Government of Wales Act 1998 in respect of the AGW's duty to certify certain claims, returns, accounts and calculations at the request of defined public sector bodies in Wales.
752. [Paragraph 21](#) sets out the ancillary powers of the AGW. Again, these replace the equivalent provisions of the Government of Wales Act 1998.

## ***Schedule 9: Devolution Issues***

### **Part 1**

#### **Preliminary**

753. [Paragraph 1](#) defines "devolution issues" to include questions of both the legislative competence of the Assembly in relations to Acts and Measures which it has passed and the executive competence of the Welsh Assembly Government. It also includes alleged failures by the Welsh Assembly Government to comply with its obligations under European Community law, or the European Convention on Human Rights.
754. [Paragraph 2](#) allows courts and tribunals a discretion not to treat a contention about any of the matters covered by paragraph 1 as a devolution issue, where it appears to the court or tribunal hearing the proceedings that the contention is frivolous or vexatious.

### **Part 2**

#### **Proceedings in England and Wales**

755. [Paragraph 4](#) provides that the Counsel General or the Attorney General can institute proceedings to decide a devolution issue. Where proceedings are brought by the Attorney General, then the Counsel General is entitled to defend them.
756. This does not prevent other people from bringing or defending such proceedings, but where they do so then the Attorney General and the Counsel General must be notified of the proceedings, and are entitled to take part in them ([paragraph 5](#)).
757. [Paragraph 29\(2\)\(a\)](#) gives both the Attorney General and the Counsel General a general power to require courts and tribunals to refer devolution issues in proceedings to which they are a party to the Supreme Court.
758. [Paragraphs 6-11](#) set out further procedures by which devolution issues can be referred upwards from courts of first instance to the higher courts for resolution.
759. There are different procedures depending on whether the issue arises in criminal proceedings or civil proceedings (by virtue of [paragraph 1\(2\)](#), this includes all non-criminal proceedings), and the court in which proceedings originate.