

GOVERNMENT OF WALES ACT 2006

EXPLANATORY NOTES

DETAILED COMMENTARY ON SECTIONS IN PART 6

Welsh public records

Section 146: Status of Welsh public records

522. This section carries through, with some amendments, the provision made by section 116 of the Government of Wales Act 1998. The effect of the section is that Welsh public records, as defined by section 148, are governed by the Public Records Act 1958 until such time as the Lord Chancellor makes an order under section 147 imposing or conferring functions in respect of them (for example, a duty to preserve them) on either the Welsh Ministers, or a member of staff of the Welsh Assembly Government. The Public Records Act 1958 provides for the preservation and safe-keeping of public records. Rights of access to such records are now governed by the Freedom of Information Act 2000.
523. However, under the definition in section 148, the records of the Assembly and the Assembly Commission are not Welsh public records. Therefore, the Lord Chancellor cannot make an order under section 147 imposing a duty on the Welsh Ministers or a member of staff of the Welsh Assembly Government to preserve those records. Furthermore, those records are not public records for the purposes of the Public Records Act 1958. Accordingly, in analogy with the position in respect of the records of the UK Parliament and the Scottish Parliament, the Assembly and the Assembly Commission will be responsible for their own records, and are not subject to a statutory regime in relation to the records' maintenance. However, under this Act, the Assembly and the Assembly Commission will both be subject to the access to information regime in the Freedom of Information Act 2000.
524. Records which are records of the Assembly constituted under the Government of Wales Act 1998, but which are to transfer to the Welsh Ministers, the First Minister or the Counsel General by virtue of paragraphs 38 and 39 of Schedule 11 of this Act (unless an Order in Council makes alternative provision, records connected with a function which is transferred under this Act to the Welsh Ministers, the First Minister or the Counsel General will transfer to the same transferee), are Welsh public records by virtue of section 148(1)(a). Accordingly, by virtue of section 146 they will be subject to the provisions of the Public Records Act 1958 until such time as the Lord Chancellor makes an order under section 147. Records of the Assembly constituted under GoWA which have not transferred to the Welsh Ministers will be the responsibility of the Assembly/Assembly Commission.

Section 147: Transfer of responsibility

525. This section replicates the Lord Chancellor's order-making power under section 117 of the Government of Wales Act 1998 except in so far as post-separation the duty to preserve Welsh public records can only be imposed on the Welsh Assembly Government rather than on the Assembly.

526. It allows the Lord Chancellor (who is otherwise responsible for Welsh public records by virtue of section 146 and the Public Records Act 1958) to confer or impose functions, including responsibility for the preservation and safe-keeping of such records on the Welsh Ministers, or on a member of staff of the Welsh Assembly Government.
527. The Lord Chancellor must consult the Welsh Ministers before making an order under this section.

Section 148: Meaning of “Welsh public records”

528. This section defines “Welsh public records”. The Lord Chancellor can make an order under this section designating other records as “Welsh public records”, but cannot do so in respect of certain records, including those of the Assembly or the Assembly Commission.

Miscellaneous

Section 149: Resolution of devolution issue

529. This section gives effect to Schedule 9, which makes detailed provision about the resolution of devolution issues.

Section 150: Power to make consequential provision

530. This section enables the UK Government to make subordinate legislation to deal with the consequences of provision made by or under ‘Welsh legislation’.
531. The section enables the Secretary of State by order, to make provision which he considers appropriate in consequence of any provision made by or under an Assembly Measure or Act, or any provision of subordinate legislation made, confirmed or approved (or purporting to be made, confirmed or approved) by the Welsh Ministers, the First Minister or the Counsel General, or any provision of subordinate legislation made, confirmed or approved (or purporting to be made, confirmed or approved) by a person other than a Minister of the Crown under an Act of Parliament where the statutory instrument is required to be laid before the Assembly.
532. An order under this section can make provision having retrospective effect and may modify any enactment, prerogative instrument or other instrument or document as is considered appropriate by the Secretary of State. Orders under this section are subject to negative procedure in Parliament (i.e. they can be annulled after being made by a resolution of either House of Parliament) unless they modify an Act, in which case they are subject to affirmative procedure (i.e. they cannot be made unless they have first been laid before and approved in draft by a resolution of both Houses of Parliament).

Section 151: Power to remedy ultra vires acts

533. This section enables Her Majesty by Order in Council to make provision in consequence of an Assembly Measure or Act or an exercise by any person of a function imposed or conferred by Assembly Measure or Act which is, or is suspected to be, outside the competence of the Assembly or person. Such provision could be given retrospective effect to enable third parties to be put in the position they thought they were in before a defect was discovered.
534. An Order in Council under this section can make any modifications as Her Majesty considers appropriate to remedy any enactment (including an Act of the Scottish Parliament or an instrument made under such an Act), prerogative instrument or other instrument or document. However, where the proposed modifications are amendments to or repeals of Acts, a draft statutory instrument has to be approved by a resolution of both Houses of Parliament before a recommendation can be made to Her Majesty to make the Order in Council.

535. In circumstances where the Secretary of State has used his power in section 150 to make modifications of enactments, instruments or documents (see the note to that section), in consequence of an Assembly Measure, an Act of the Assembly or subordinate legislation made under such Measure or Act, but it is subsequently considered that the Measure or Act in question (including the Act or Measure under which the subordinate legislation was made) was outside the Assembly's legislative competence, the power in section 151 may be used by Her Majesty to reverse or modify any consequential modifications made in exercise of the power under section 150. Such reversal or modification of the modifications may be considered appropriate in consequence of the Measure or Act which is considered to be beyond competence.

Section 152: Intervention in case of functions relating to water etc.

536. This section allows the Secretary of State to intervene where the exercise of (or failure to exercise) devolved functions by the First Minister, the Welsh Ministers or the Counsel General, or by anyone else upon whom such functions have been conferred by an Assembly Measure or Act, might have a serious adverse impact on water resources, supply or quality in England. The intervention is to take the form of a notice to the person(s) on whom such functions are conferred. The Environment Agency and any water or sewerage undertaker concerned in the case must also be notified that the Secretary of State is intervening. The effect of the notice is to allow that the Secretary of State to exercise the relevant function instead of the person(s) on whom it is conferred. The notice must explain why the Secretary of State is intervening. It can also make provision about the effect of actions previously taken by the person(s) on whom the function is conferred, and extend the time for the taking of steps in relation to that function by the Secretary of State, or any other person.

Section 153: Power to vary retrospective decisions

537. This section provides for a court or tribunal to remove, or limit any retrospective effect, or suspend any such effect, of a decision by it that an Assembly Measure or Act or a provision of it is outside the Assembly's competence, or that a provision of subordinate legislation made (or purported to be made) under an Assembly Measure or Act of the Assembly, or by the Welsh Ministers, the First Minister or the Counsel General is outside the power to make that subordinate legislation..
538. The section also provides that one of the criteria the court or tribunal must take into account when determining whether to use this power is the extent to which third parties would otherwise be adversely affected.
539. The section also provides that if a court or tribunal is considering using this power it must in certain circumstances give notice of that fact to the Attorney General and the Counsel General in relation to proceedings in England and Wales, to the Advocate General for Scotland in relation to proceedings in Scotland and to the Advocate General for Northern Ireland in relation to proceedings in Northern Ireland. The appropriate person may then become a party to the proceedings so far as they relate to the making of the order. The section enables the court or tribunal to take into account and award the whole or part of the additional expense incurred as a result of the participation of an appropriate person to the person who incurred them.
540. Provision for court procedures applying for the purposes of this section can be made under any power to make provision for regulating procedure before any court and tribunal. Such provision would include, for example, how to determine the time within which any notice is to be given.

Section 154: Interpretation of legislation

541. This section makes provision for the interpretation of a proposed Assembly Measure, an Assembly Measure, an Act or Bill of the Assembly, and of subordinate legislation made, confirmed or approved or purporting to be made, confirmed or approved under

an Assembly Measure or Act of the Assembly. The purpose of the section is to enable the courts to give effect to such legislation, wherever possible, rather than to invalidate it merely because it could be read in such a way as to be outside the competence or powers under which it was made.

542. It provides that, in such case, the legislation is to be read as narrowly as is required for it to be considered to be within competence or powers (if such a reading is possible) and is to have effect according to that narrow reading.

Section 155: Functions exercisable in relation to Wales

543. This section allows Her Majesty to make Orders in Council specifying functions which are, or are not, for such purposes as the Order may specify:
- a) exercisable by the First Minister, the Welsh Ministers or the Counsel General; or
 - b) exercisable in relation to Wales.
544. Orders under this section are subject to negative procedure in Parliament, (i.e. they can be annulled after being made by a resolution of either House of Parliament).

Section 156: English and Welsh texts of legislation

545. This section confers equal validity on the English and Welsh texts of legislation (including Assembly Acts and Measures, and subordinate legislation) made bilingually.
546. It also contains a provision allowing the Welsh Ministers to provide by order (subject to the prior approval of the Assembly by formal resolution) that particular Welsh words and phrases in Assembly Measures or Acts, or in subordinate legislation made under them or by the Welsh Ministers, are to have the same meaning as the English words and phrases specified in relation to them in the order. The purpose of this provision is to ensure that the legislation has the same effect in both languages.

Section 157: Orders and directions

547. This section contains provision applicable to any power in the Act to make orders. It provides that the Welsh Ministers' and a Minister of the Crown's powers under the Act to make orders are to be exercisable by statutory instrument. It also provides that any power under the Act to give a direction includes a power to vary or revoke the direction.

Section 158: Interpretation

548. This section defines terms used in the Act.

Section 159: Index of defined expressions

549. This section contains a list of expressions which are defined or explained in the Act and notes the provisions where such definitions or explanations are to be found.

Section 160: Minor and consequential amendments

550. This section introduces Schedule 10 which contains minor and consequential amendments to other legislation that follow from the provisions of this Act. It enables the Secretary of State by order to make further amendments, in consequence of this Act, to legislation which was made before, or was made in the same Parliamentary session as, this Act.
551. The section also provides for a mechanism that ensures that the Secretary of State cannot make an order making consequential amendments to another Act, unless the order has been approved by both Houses of Parliament. The mechanism is that the Secretary of State must lay a draft of the order before both Houses of Parliament, and cannot make the order until both Houses have made a resolution approving the draft order. If the

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(c.32) which received Royal Assent on 25 July 2006*

order does not contain amendments to Acts, a resolution of either House of Parliament can annul that order after it has been made.

Section 161: Commencement

552. This section provides that, subject to the following exceptions, the provisions of this Act come into force immediately after the Assembly ordinary election in 2007. The exceptions are as follows.
553. Provisions which come into force on the date of Royal Assent:

<i>Section</i>	<i>Effect</i>
Schedule 2, paras 5, 6 and 12	Para 5 allows the Assembly Commission to promote awareness of the Assembly election system, and of the current or any pending system of devolved government in Wales.
	Para 6 allows the Assembly Commission to provide financial assistance to the Electoral Commission to promote awareness of the Assembly election system and the system of devolved government in Wales.
	Para 12 allows Her Majesty to make an Order in Council providing for the Assembly Commission to be treated to any extent as a Crown body for the purposes of any enactment.
Sections 95 and 96, and Schedule 5	Section 95 allows Her Majesty to amend Schedule 5 by Order in Council. Schedule 5 contains the matters in relation to which the Assembly may pass Assembly Measures, together with general restrictions on such legislative competence and exceptions from those restrictions.
	Section 96 permits the Counsel General or the Attorney General to refer a proposed Order under section 95 to the Supreme Court to decide whether any matter that the proposed Order would add to Part 1 of Schedule 5 relates to a field listed in that Part.
Section 109 and Schedule 7	Section 109 allows Her Majesty to amend Schedule 7 by Order in Council. Schedule 7 contains the subjects (including exceptions from those subjects) in relation to which the Assembly would be able to pass Acts of the Assembly if the majority of voters in a referendum voted for the Assembly to have such powers. The Schedule also contains general restrictions on such legislative competence and exceptions from those restrictions.
Section 119, and repeal by Schedule 12 of section 81 of GoWA	Requirement for the Secretary of State to make a written estimate to the Assembly of payments to be made into the Welsh Consolidated Fund, and to the Welsh Ministers, First Minister and Counsel General, at least four months before the beginning of the financial year.
	The purpose of commencing this provision on the date of Royal Assent is to allow the Secretary of State to produce written estimates of payments in sufficient time to enable the “old” Assembly established under GoWA to set the budget for financial year 2007-08.
	Repeal of antecedent provision under s.81 GoWA.
Section 120 (3) and (7)	Provision allowing the Treasury to designate by order that, in respect of certain sums received by or on behalf of the Welsh Ministers and others (e.g. the Auditor General) the Welsh Ministers

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<i>Section</i>	<i>Effect</i>
	are required to pay an equivalent sum into the UK Consolidated Fund, via the Secretary of State.
Section 125 and repeal by Schedule 12 of section 86 of GoWA	Requirement for an annual Budget motion, and repeal of provision requiring Assembly constituted under GoWA to make an annual statement of proposed expenditure. The provisions in Section 125 are commenced from Royal Assent to enable the “old” Assembly constituted under GoWA to set an annual Budget for financial year 2007-'08.
Sections 157 to 159	General provisions about orders and directions; interpretation; and index of defined expressions.
Section 160 (2) to (4)	Power for the Secretary of State to make consequential amendments to other enactments.
The amendment made to section 13 of the Political Parties, Elections and Referendums Act 2000 (PPERA), by paragraph 61 of Schedule 10	Provision in relation to financial assistance which may be provided by the Assembly Commission to the Electoral Commission under paragraph 6 of Schedule 2 to this Act.
This section	Provides for when the provisions of this Act come into force.
Section 162 and Schedule 11	Transitional provisions, transitory provisions and savings, together with power for the Secretary of State to make other such provisions.
Repeal by Schedule 12 of s.12(1)(d) GoWA	Repeal of provision disqualifying from Assembly membership anyone who has been disqualified from being a local authority member under ss. 17(2)(b) or 18(7) of the Audit Commission Act 1998. Those sections are now spent.
Sections 164 to 166	Extent, Financial Provision and short title.

554. Provisions which come into force on 1st April 2007:

Sections 117 and 118, and repeal by Schedule 12 of s.80 GoWA	Establishing the Welsh Consolidated Fund, and requiring the Secretary of State to make payments into it from time to time. Repeal of antecedent provision under s.80 GoWA.
Section 120(1) and (2), (4) to (6) and (8) and the repeal by Schedule 12 of section 84 of GoWA	Provisions relating to payments into, and payments chargeable on, the Welsh Consolidated Fund.
Sections 121 and 122, and repeal by	Provisions allowing the Welsh Ministers to borrow money from the Secretary of State. Repeal of antecedent provision under s.82 GoWA.

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Schedule 12 of s.82 GoWA	
Section 124, and repeal by Schedule 12 of ss. 85(1) and 89 GoWA	Provisions specifying when payments can be made out of the Welsh Consolidated Fund. Repeal of antecedent provision under s.85(1) and 89 GoWA.
Section 126	Section 126 allows one or more supplementary Budget motions to be moved in any financial year.
Sections 128 and 129	Section 128 permits payments to be made out of the Welsh Consolidated Fund without a budget resolution in an emergency situation. Section 129 requires approval to draw from the Auditor General for Wales before any payment can be made out of the Welsh Consolidated Fund.
Schedule 10	The amendments made to the Local Government, Planning and Land Act 1980, the Local Government Finance Act 1988 and the Housing Act 1988, consequential upon the creation of the Welsh Consolidated Fund.

555. Provisions which come into force immediately after the day on which the first First Minister is appointed under section 46, unless they were brought into force on Royal Assent or on 1st April 2007 as set out above, and subject to section 161 (6), which makes provision as to when certain repeals of GoWA will come into force
- a) Any provision so far as it relates to functions of the First Minister, the Welsh Ministers, the Counsel General or the Assembly Commission,
 - b) Any provision so far as it relates to the Auditor General or the Comptroller and Auditor General,
 - c) Any other provision which is an amendment to GoWA 1998 made by Schedule 10 to this Act,
 - d) Repeals by Schedule 12 of provisions which fall to be repealed as a consequence of provisions which fall within sections 161 (4) (a), (b) or (c).
556. The repeal by Schedule 12 of sections 83, 88, 93(8), 97 and 101A of GoWA, and of other provisions of that Act so far as they relate to those sections, is dealt with by section 161 (6).
557. The repeals come into force when those sections (which make various provisions in relation to the preparation of accounts by the Assembly and by the Secretary of State) have been complied with for the financial year ending 31st March 2007 (and for earlier financial years), and sections 123, 131, 132 and 141 do not apply for that financial year.
558. The Assembly Act provisions and provisions relating to the holding of a referendum on those provisions, come into force as follows:
- a) The “Assembly Act provisions” are defined by section 103(8) as sections 107 and 108, and sections 110 to 115.
 - b) Sections 107 and 108 give the Assembly primary legislative powers, its legislative competence being set out in section 108 and Schedule 7. These powers are exercisable by the passing of Acts of the Assembly. Sections 110 to 115 set out related procedural provisions.
 - c) Sections 103 and 105 come into force immediately after the Welsh ordinary election in 2007. Section 103 provides for the holding of a referendum on whether the Assembly Act provisions should be brought into force. Section 105 provides

that if the majority of voters in such a referendum vote in favour of bringing the Assembly Act provisions into force, then the Welsh Ministers can bring them into force on such date as they may specify by making a commencement order. Section 104, which deals with proposals by the Assembly that a referendum should be held, comes into force on the first appointment of a First Minister under the Act .

Section 162: Transitional etc. provision

559. This section gives effect to Schedule 11, which contains transitional and transitory provisions and savings. It also confers a general power on the Secretary of State to make, by order, any other transitional, transitory or saving provision which appears appropriate, including savings from the effect of amendments, repeals or revocations of legislation made by this Act. This power is not limited by Schedule 11, and orders made under this section can modify that Schedule.
560. The provisions made in Schedule 11 and in any order under this section are subject to sections 16 and 17 of the Interpretation Act 1978 . Section 16 of that Act makes general provisions about the effect of repeals, e.g. saving the validity of anything done or any right incurred under a previous enactment prior to its repeal. Section 17 provides that where an Act repeals and re-enacts a previous enactment, unless the contrary intention appears, any reference in any other enactment to the repealed enactment shall be construed as one to the re-enacted provision. It also provides that subordinate legislation, or other things done under the repealed enactment, are to have effect as if made or done under the re-enacted provision.
561. Orders under this section are subject to negative parliamentary procedure, unless they amend or repeal any of paragraphs 30 to 35, 50 and 51 of Schedule 11 to this Act, in which case they are subject to affirmative parliamentary procedure.

Section 163: Repeals and revocations

562. This section introduces Schedule 12.

Section 165: Extent

563. The Act 's substantive provisions extend (with limited exceptions) to the whole of the United Kingdom although its practical application will be confined almost entirely to Wales. The provisions which do not extend to the whole of the United Kingdom are section 36(7) to (9), section 39 and section 40(2) and (3). These provisions create criminal offences and extend only to England and Wales. Where the Act makes consequential amendments, these have the same extent as that of the statutes amended.

Section 166: Short title

564. This section provides the title by which reference may be made to this Act in other legislation.

Schedule 1: Alteration of Assembly Electoral Regions

565. [Section 2](#) of the Act says, among other things, how the Assembly electoral regions are delineated and how many seats will be allocated to each.
566. Alterations may need to be made to those regions, and to the numbers of seats allocated to those regions, as a consequence of changes to parliamentary constituencies.
567. This Schedule deals with making alterations in such circumstances. However, until such time as the functions of the Boundary Commission for Wales are transferred to the Electoral Commission, and functions are conferred on the Boundary Committee for Wales, by the coming into force of section 16 (1) of the Political Parties, Elections and Referendums Act 2000 for those purposes, the Schedule is to have effect with the modifications set out in paragraph 1 of Schedule 11.

Paragraph 1 – Introduction

Paragraph 1(2)

568. Sub-sections 3(1) and 3(2) of the Parliamentary Constituencies Act 1986 require the Electoral Commission to keep under review the representation of England, Scotland, Wales and Northern Ireland in the House of Commons, and to make regular reports to the Secretary of State about the representation of the *whole* of each of those parts of the United Kingdom (for example, the whole of Wales).
569. Sub-section 3 (3) of the Parliamentary Constituencies Act 1986 also gives the Electoral Commission the power to report to the Secretary of State on a particular area (for example, a specific area of Wales), showing the constituencies into which it thinks the area should be divided, in order to ensure compliance with rules which are set out in Schedule 2 to the Parliamentary Constituencies Act 1986.
570. The effect of sub-section 3A (1) of the Parliamentary Constituencies Act 1986 is that where the Electoral Commission intends to consider making a report under sub-section 3(1) or sub-section 3(2) of that Act, the Boundary Committee for Wales must carry out a review.
571. The purpose of the review by the Boundary Committee for Wales is to enable it to make recommendations to the Electoral Commission about what it should put in its report to the Secretary of State.
572. Under sub-section 3A(2) of the Parliamentary Constituencies Act 1986, the Boundary Committee for Wales must put its recommendations in a report to the Electoral Commission.
573. [Paragraph 1\(2\)](#) of Schedule 1 to this Act says that Schedule 1 will apply where the Electoral Commission intends to consider making a report in respect of the whole of Wales, or a part of Wales under section 3 of the Parliamentary Constituencies Act 1986 and, therefore, the Boundary Committee for Wales is under a duty to make recommendations to the Electoral Commission about what the report should say.

Paragraph 2 - Assembly electoral region issue

Paragraphs 2(1) and 2(2)

574. [Paragraph 9](#) of this Schedule sets out rules which must be followed in relation to the delineation of Assembly electoral regions, and the allocation of regional seats to those regions.
575. If the Boundary Committee for Wales has provisionally decided upon some recommendations which it is minded to put in a report to the Electoral Commission, and which would involve altering any parliamentary constituency in Wales, it must *also* consider whether there needs to be any alteration to the Assembly electoral regions, or to the allocation of seats to those regions, in order to ensure that the rules in paragraph 9 of this Schedule would still be complied with, following those alterations to parliamentary constituencies (“the Assembly electoral region issue”).

Paragraph 3 - Notice of Committee’s proposed recommendations

576. This paragraph requires the Boundary Committee to publish notice of its recommendations in each electoral region affected.

Paragraph 3(1)

577. For the purposes of this paragraph, a recommendation which “affects” an Assembly electoral region need not be a recommendation that the region should be

altered. A recommendation that a region should *not* be altered also counts as a recommendation that affects a region.

Paragraph 3(2)

578. This says what must be in the notice. The notice must:
- a) say what the effect of the Boundary Committee for Wales' proposed recommendations will be;
 - b) if the Boundary Committee *is* recommending a *change* to an electoral region, say where the public can inspect a copy of the recommendations. There must be at least one place of inspection in each constituency which falls within the electoral region;
 - c) explain that if anyone wishes to express a view about the recommendations they may do so by writing to the Boundary Committee. Their letter must be received by the Committee within one month of the date of publication of the notice.

Paragraph 3(3)

579. The Boundary Committee for Wales must take into account any views which are received by it within the one month time limit.

Paragraph 3(4)

580. This says what must happen if, after the newspaper notice has been published, the Committee changes any of its recommendations in respect of an electoral region (including where it has made the change after taking into account views expressed to it following publication of the newspaper notice).
581. The Committee must publish another notice in a newspaper which is readily available in the electoral region to which the changed recommendations relate. The notice must:
- a) say what the effect of the changed recommendations would be;
 - b) if a changed recommendation would have the effect of altering an Assembly electoral region, say where the public can inspect a copy of the recommendation. There must be at least one place of inspection in each constituency which falls within the electoral region;
 - c) explain that if anyone wishes to express a view about the changed recommendations they may do so by writing to the Boundary Committee. Their letter must be received by the Committee within one month of the date of publication of the notice.

Paragraph 3(5)

582. However, where the effect of the Boundary Committee's recommendation (original or revised) is only to alter the number of regional seats for a region, and the resulting number of regional seats for all the regions would be exactly divisible by 5, the Committee does not have to publish a newspaper notice.

Paragraph 3(6)

583. However, if the Boundary Committee's proposed recommendations (original or revised) would result in the *total* number of seats for *all* the Assembly electoral regions not being exactly divisible by 5, then the recommendation will necessarily affect all the electoral regions.

584. Therefore, the Boundary Committee must publish newspaper notices which comply with paragraph 3(2) of this Schedule in all the electoral regions. The effect on each region must be stated in the notice. The Boundary Committee is under a duty to take into account any views expressed following publication of the notice.

Paragraph 4 - Local inquiries

585. This paragraph enables the Boundary Committee to hold a local inquiry in respect of the Assembly electoral region or regions.

Paragraph 4(6)

586. The person appointed to hold the local inquiry has the powers to summon witnesses that are set out in sub-section 250(2) of the Local Government Act 1972.
587. The person holding the inquiry may issue a summons requiring someone to attend the inquiry at a particular time and place, and to give evidence or produce documents of a specified nature. The documents must be ones which are in his custody or control, and which relate to any matter which is in issue at the inquiry.
588. The person holding the inquiry can take evidence on oath, and may administer the oath.
589. Witnesses who have been summoned to attend must have their expenses paid.
590. Sub-section 250(3) of the Local Government Act 1972 also applies to inquiries held under this paragraph, and this creates offences about deliberately disobeying summonses, and deliberately altering, suppressing, concealing, or destroying evidence.
591. The offences are summary only. The maximum fine for the offences is level 3 on the standard scale, or imprisonment for up to six months, or both.

Paragraph 5 – Committee’s Report

592. This paragraph requires the Committee’s report to contain the recommendations which they propose should be included in the Electoral Commission’s report under paragraph 8 of this Schedule.

Paragraph 6 – Consideration of the Committee’s Report by the Commission

General

593. Under section 3A(3) of the Parliamentary Constituencies Act 1986, when the Electoral Commission receives the recommendations of the Boundary Committee in relation to *parliamentary* constituencies, the Commission may :
- a) accept all the Committee’s recommendations and include them in its report to the Secretary of State;
 - b) agree changes to the recommendations with the Committee, and then include the changed recommendations in its report; or
 - c) reject the recommendations
594. If it rejects the recommendations, it must either:
- a) require the Boundary Committee to reconsider them, with a view to the Committee submitting different recommendations to the Commission; or
 - b) require the Committee to carry out a fresh review of the whole or part of the area it had originally reviewed; or

- c) only in a case where the purpose of the Boundary Committee's review was to enable the Electoral Commission to submit a report under section 3(3) of the Parliamentary Constituencies Act, take no further action.

595. A report under section 3 (3) of the Parliamentary Constituencies Act 1986 is the one which the Electoral Commission has power to submit to the Secretary of State in relation to a particular area of the United Kingdom, making recommendations about the division of that area into parliamentary constituencies, in order to ensure that rules set out in Schedule 2 to the Parliamentary Constituencies Act are complied with.

Paragraph 6(1)

596. **Paragraph 6(1)** says that the Electoral Commission has the same powers (with any necessary modifications) in relation to recommendations by the Boundary Committee about Assembly electoral regions, as it has in relation to recommendations about parliamentary constituencies (i.e., those set out in section 3A(3) of the Parliamentary Constituencies Act 1986 and explained above).

Paragraphs 6(2) to (4)

597. These paragraphs say that if the Electoral Commission is minded to use its powers in section 3A (3) (b) and (c) of the Parliamentary Constituencies Act 1986 (these are the powers of acceptance with agreed changes, or rejection), in relation to recommendations by the Boundary Committee about Assembly electoral regions, then it must have regard to any views expressed in response to the Committee's newspaper notice.

598. If the Commission is minded to use those powers in relation to only part of an electoral region, then the views to which it must have regard are those which relate to that part.

599. It must also have regard to the findings of any local inquiry which was held.

600. If the Commission is minded to use its powers in relation to only part of an electoral region, then the findings of any local inquiry to which it must have regard are those which relate to that part.

Paragraph 7 – Directions by Commission to the Committee

601. This applies section 3A (4) of the Parliamentary Constituencies Act 1986 with a modification.

602. When the Boundary Committee is carrying out its duties under the Parliamentary Constituencies Act 1986, it must comply with any directions which the Electoral Commission gives to it.

603. The effect of the modification is that the Boundary Committee must only follow them if it can do so and still ensure compliance with the rules in paragraph 9 of this Schedule (i.e., the rules which must be followed in relation to the delineation of Assembly electoral regions, and the allocation of regional seats to those regions).

Paragraph 8 – Commission's Report

604. This paragraph deals with what happens if the Electoral Commission submits to the Secretary of State a report under section 3(1) of the Parliamentary Constituencies Act 1986 which recommends alterations in parliamentary constituencies in Wales, or a report under section 3(3) of that Act which relates to any constituency in Wales.

Paragraph 8(1)

605. The report under section 3 (3) of the Parliamentary Constituencies Act 1986 is one which says what constituencies the Electoral Commission think an area should be

divided into, in order to comply with rules that are set out in paragraphs 1 to 6 of Schedule 2 to the Parliamentary Constituencies Act 1986.

Paragraph 9 - Rules

General

606. The rules in paragraph 9 apply to the Boundary Committee's consideration of the Assembly electoral region issue and the Electoral Commission's report under section 3 of the Parliamentary Constituencies Act 1986.

Paragraph 9(1)

The rules are as follows:

607. The whole of an Assembly constituency must be contained in the same electoral region. It must not straddle two or more regions.
608. The electoral regions must contain a similar number of electors, so far as is reasonably practicable. There may be special geographical factors which mean that this is not reasonably practicable, and these can be taken into account.
609. The number of regional seats must be half the number of Assembly constituencies. For example, if there are 40 constituencies, there must be 20 regional seats.
610. However, if the number of constituencies can't be divided exactly by 2 (e.g. 39), one is added to the number of constituency seats, and then that number is divided by 2.
611. For example, if there were 39 constituencies, "1" would be added to 39, to give 40, and 40 would then be divided by 2 - so the number of regional seats would be 20.
612. The number of seats in each electoral region will be the total number of regional seats in the Assembly, divided by 5. Therefore, if the total number of regional seats is 20, the number of regional seats in Assembly electoral region "A" will be 4.

Paragraph 9(2)

613. However, if the total number of regional seats cannot be divided exactly by 5 (for example, 19), the next highest number which can be divided exactly by 5 is identified (for example, if the total number of regional seats was 19, that next highest number would be 15.)
614. This is then subtracted from the total number of regional seats (in the above example, 15 would be subtracted from 19, leaving 4).

Paragraph 9(3)

615. The result (4, in the above example) is the number of residual seats.

Paragraph 9(4)

616. Only one residual seat can be allocated to each electoral region.

Paragraph 9(5)

617. The next highest number below the total number of regional seats which can be divided exactly by 5 is then taken again. In the above example of 19 regional seats, it was 15. This is then divided by 5. In this example, the result would be 3.
618. For each electoral region, that number is then added to the number of Assembly constituencies in the region. The result is then divided into the number of electors in that region.

Paragraph 9(6)

619. Taking the above example again, if the number of electors in electoral region A is 130,000, and the number of constituencies in the region is 10, 130,000 is divided by 13 ($10 + 3$), giving a result of 10,000.
620. The results which this calculation produces for each region are then compared. The residual seats are then allocated. It is desirable that the residual seats are allocated to the regions in respect of which this calculation produced the highest results, and this should be taken into account when the residual seats are allocated.
621. If an electoral region is not allocated a residual seat, the number of regional seats it has will just be one fifth of the next highest figure to the total number of regional seats which can be divided exactly by 5. In the example of 19 regional seats, the next highest number would 15, which when divided by 5 gives 3 regional seats.

Paragraph 10 – Orders in Council giving effect to Commission reports

Paragraph 10(1)

622. Recommendations of the Electoral Commission are put into effect by an Order in Council, made under the Parliamentary Constituencies Act 1986.
623. Where parts of the Order relate to parliamentary constituencies, and parts relate to Assembly regions, those parts can come into force on different dates.

Paragraph 10(2)

624. However, where an Order has come into force altering Assembly electoral regions, any constituency by-elections, or the filling of vacancies in regional seats will take place on the basis of the old electoral regions. Voters will only vote on the basis of the new electoral regions at the next general election.

Paragraph 11 – Interpretation: the regional electorate

Paragraph 11(1) to 11(3)

625. It is necessary for the Electoral Commission and the Boundary Committee to identify the regional electorate figure for each region, when they are considering whether there needs to be any alteration to the Assembly electoral regions to ensure the rules in paragraph 9 of this Schedule are still complied with.
626. This paragraph defines what the Commission and the Committee should take as the regional electorate figure.
627. For each Assembly electoral region, it is the total number of persons who are on a register of local government electors at addresses which fall within that Assembly electoral region, on a specific date.
628. The specific date (“the enumeration date” referred to in paragraph 11 (2)) is the date on which the notice appeared in the London Gazette, saying that the Electoral Commission intends to issue a report into parliamentary constituencies under the Parliamentary Constituencies Act 1986. The Electoral Commission has a duty to publish the notice under section 5 (1) of that Act.

Paragraph 12: Interpretation: general

Paragraph 12

629. When this Schedule refers to “the Assembly electoral region issue”, it means the question the Boundary Committee are obliged to consider as to whether any

recommendations they are making about alterations to parliamentary constituencies require any alterations to Assembly electoral regions, or to the allocation of Assembly regional seats.

630. There is a clarification of the meaning which should be given to the phrase “recommendation” in this Schedule. It can mean both a recommendation that an alteration is made, and a recommendation that no alteration is made, unless it is clear from the context in which it is used that it only means a recommendation that an alteration be made.
631. The effect of this clarification means that, for example, in paragraph 3 (2) (a) of this Schedule “recommendation” would include both a recommendation for a
change to an Assembly electoral region, *and* a recommendation for *no* change to an electoral region.
632. In contrast, when paragraph 3 (2) (b) refers to “a copy of the recommendations” being open to inspection, it is clear from the first part of that sub-paragraph that “recommendations” is only intended to refer to those recommendations which are for a *change* to an electoral region.

Schedule 2: Assembly Commission

633. **Schedule 2** makes further detailed provision about the National Assembly for Wales Commission (“the Assembly Commission”), which is established by Section 27. This Schedule covers the membership, property, staff, powers, duties, proceedings and status of the Assembly Commission.
634. The Schedule applies the principles of sustainable development, equality of opportunity and equal treatment of the English and Welsh languages to the exercise of the Assembly Commission’s functions. It also provides a power for the Assembly Commission to promote public awareness of the current or pending system of devolved government in Wales, and the system for the election of Assembly members.

Membership

Paragraph 1

635. **Paragraph 1(1)** provides that unless the Presiding Officer ceases to be an Assembly member (otherwise than by reason of a dissolution of the Assembly), the Presiding Officer continues to hold office as a member of the Assembly Commission until another person is elected to the office of Presiding Officer (under section 25).
636. **Paragraphs 1(2) and (3)** provide that the four other members of the Assembly Commission appointed under section 27(3) remain in office, including after a dissolution, until a replacement is appointed. They would only cease to be a member of the Assembly Commission if they died, became disqualified from being an Assembly member, resigned their seat as an Assembly member or their office as a member of the Assembly Commission, or were removed from the Assembly Commission by resolution of the Assembly.
637. Thus the effect of paragraph 1 is to allow the Assembly Commission to continue to function during a dissolution.

Property

Paragraph 2

638. This provides that the Assembly Commission has the power to acquire, hold and dispose of property.

639. By virtue of paragraph 28 of Schedule 10 to the Act, which inserts section 166C and 166D into the Copyright, Designs and Patents Act 1988, the Assembly Commission is the first owner of the copyright in proposed Measures and Bills introduced into the Assembly.

Staff

Paragraph 3

640. **Paragraph 3(1)** gives the Assembly Commission the power to appoint staff.
641. **Paragraph 3(2)** provides that staff employed by the Assembly Commission, including the Clerk of the Assembly, are referred to in the Act as the members of the staff of the Assembly.
642. **Paragraph 3(3)** provides that staff of the Assembly are not Crown servants, and therefore they are not civil servants. However, paragraph 12(2)(a) (see below) allows Her Majesty by Order in Council to provide for the purposes of any enactment that Assembly Commission employees be treated as Crown servants.
643. So, for example, an Order in Council could provide for employment by the Assembly Commission to be treated as “Crown employment” for the purposes of certain provisions of the Data Protection Act 1998, as is the case in relation to employees of the Scottish Parliamentary Corporate Body.
644. **Paragraph 3(4)** requires the procedures for recruiting and selecting staff of the Assembly, and the terms and conditions on which they are employed (including salaries), to be broadly in line with those for civil servants serving the Welsh Assembly Government.
645. In general this will require the Assembly Commission to adopt procedures broadly corresponding to the Civil Service Recruitment Code, and the Civil Service Code made under it, so as to ensure fair and open recruitment and selection of staff on merit, and upholding the political impartiality of staff.
646. However, as is the case with civil service recruitment, there can be exceptions to these principles e.g. in appointing special advisers, in relation to recruitment of disabled persons, or in relation to certain categories of staff with Welsh language qualifications. Thus the Assembly Commission will enjoy a similar degree of flexibility to the Welsh Assembly Government in these matters.
647. Staff seconded in or out of the Assembly post-separation will retain their pre-existing employment status, i.e. civil servants working for the Welsh Assembly Government who are seconded to work at the Assembly will retain their status as civil servants.
648. **Paragraph 3(5)-(8)** deals with salaries, expenses and pensions etc. The Commission is to pay the salaries and expenses of the staff of the Assembly. The Assembly Commission will be able to make arrangements for the payment of pensions, gratuities or allowances to former employees (sub-paragraph (6)), and in particular can make contributions towards such payments (sub-paragraph (7)).
649. The effect of sub-paragraph (8) is that staff of the Assembly can be covered by the Principal Civil Service Pension Scheme (as can staff of the Assembly Commission’s Scottish equivalent, the Scottish Parliamentary Corporate Body). Sub-paragraph (9) require payments to the Minister for the Civil Service in respect of Assembly staff members’ participation in that scheme to be made by the Assembly Commission.

Powers

Paragraph 4

650. Paragraph 4(1) and (2) provide that the Assembly Commission can do anything which it considers necessary or appropriate for the purposes of, or in connection with, its functions. The Assembly Commission's functions, as set out in Section 27(4) are the provision of property, staff and services to the Assembly, though the Assembly can confer further functions on the Assembly Commission by Assembly Measure. In particular under sub-paragraph (2) the Assembly Commission has power to enter into contracts; to charge for goods and services; to invest money not immediately required for the discharge of its functions; and to accept gifts. Paragraph 4(3) provides that gifts to the Assembly (e.g. by visiting heads of state) vest in the Assembly Commission.
651. Paragraph 4(4) allows the Assembly Commission to sell goods or provide services to the public, or to make arrangements for doing so.
652. Paragraph 4(5) and (6) allow the Assembly Commission to borrow money (but only in sterling) in order to meet a temporary shortfall in sums available to meet its expenditure. This includes a power to enter into an overdraft arrangement. The Assembly Commission can only borrow money in accordance with special or general directions given by the Assembly under section 27(6). Thus the borrowing power is conditional upon the Assembly's prior approval.

Promotion of awareness of election system and devolved government

Paragraphs 5 and 6

653. Paragraph 5(1) gives the Assembly Commission its own specific power to promote public awareness of Assembly elections and the system of devolved government in Wales. This includes (by sub-paragraph (2)) a power to promote awareness of any newly enacted systems not yet in force. Paragraph 5(3) gives the Assembly Commission a general discretion as to how it carries out this power, but specifically permits it to carry out public education or information programmes, or to make grants facilitating the production of such programmes by other persons or bodies. The Assembly Commission can impose conditions on such grants as it thinks fit (sub-paragraph (4)).
654. Paragraph 6 allows the Assembly Commission to provide financial assistance to the Electoral Commission so as to promote public awareness of Assembly elections and the system of devolved government in Wales.
655. The powers in paragraphs 5 and 6 would permit, among other things, the promotion of public awareness about Assembly elections and devolved government in Wales through cross-border media (e.g. radio and television transmissions, "mobile" advertisements on trains etc.).

Delegation

Paragraph 7

656. Paragraph 7 allows the Assembly Commission to delegate any of its functions to the Presiding Officer or to the Clerk of the Assembly. The Presiding Officer can authorise the Deputy Presiding Officer to exercise these functions (subject to section 25(11) and paragraph 11 of this Schedule). The Clerk can authorise other Assembly staff to exercise his/her functions (section 26(4)).

Principles in accordance with which functions are to be exercised

Paragraph 8

- 657. Paragraph 8(1) requires the Assembly Commission to make appropriate arrangements with a view to securing that its functions are exercised with due regard to the principle of equality of opportunity for all people.
- 658. Paragraph 8(2) obliges the Assembly Commission to have due regard to the principle of promoting sustainable development in exercising its functions.
- 659. Paragraph 8(3) requires it to give effect to the principle of equal treatment of the English and Welsh languages in the exercise of its functions, so far as is appropriate and reasonably practicable.
- 660. These duties are subject to the Assembly's power under section 27(6) to give general and specific directions to the Assembly Commission about the exercise of its functions.

Annual report

Paragraph 9

- 661. Paragraph 9 provides that the Assembly Commission must, after each financial year, publish and lay before the Assembly a report on the exercise of its functions during that financial year.
- 662. The Assembly can flesh out the detail of this duty through Assembly directions under section 27(6). For example, it can direct what the report is to cover, and give directions so that the timetable for the report's publication and laying before the Assembly ties in with the Assembly's own audit timetable.

Validity of acts

Paragraph 10

- 663. Paragraph 10 preserves the validity of any act of the Assembly Commission against any vacancy among its members, any defect in their appointment or any lack of qualification for their membership. It is intended to preclude legal challenge to the Assembly Commission on these grounds.

Proceedings

Paragraph 11

- 664. Paragraph 11 provides that the Assembly Commission is free to set its own rules of procedure (sub-paragraph (1)), save that its meetings must be presided over by the Presiding Officer, unless that office is vacant or the Presiding Officer is unable to act, in which case the Assembly Commission can appoint another of its members to preside over the meeting (sub-paragraph (2)).

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 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 29th 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 43rd day of the referendum period.
720. Otherwise, the appropriate day *is* the 29th 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.

Civil proceedings in the magistrates' courts

- 760. A magistrates' court can refer devolution issues which arise in civil proceedings before it to the High Court (paragraph 6) to decide. Appeals from the High Court's decision on such a reference lie direct to the Supreme Court (paragraph 11), subject to permission to appeal having been granted by either the High Court or the Supreme Court.

Civil proceedings begun in other courts

- 761. Where civil proceedings are begun in courts other than a magistrates' court (e.g. the County Court, the High Court), those courts can refer any devolution issues direct to the Court of Appeal (paragraph 7(1)). The Court of Appeal's decision can be appealed to the Supreme Court, subject to permission having been granted by either the Court of Appeal or the Supreme Court (paragraph 11).
- 762. [Paragraph 10](#) allows the Court of Appeal to refer a devolution issue to the Supreme Court of its own volition, where such an issue has arisen in proceedings before the Court of Appeal other than on a reference under this Part (for example, on an appeal from a first instance decision of the High Court in which the devolution issue was not raised).

Tribunal proceedings

- 763. Any tribunal (as defined by section 158(1)) can refer a devolution issue direct to the Court of Appeal. Tribunals from which there is no appeal must make such a reference (paragraph 8). In either case, the Court of Appeal's decision can be appealed to the Supreme Court, subject to permission having been granted by either the Court of Appeal or the Supreme Court (paragraph 11).

Criminal proceedings – summary

- 764. The magistrates' court can refer a devolution issue to the High Court (paragraph 9(a)). An appeal from the High Court's decision lies to the Supreme Court, subject to permission having been granted by either the High Court or the Supreme Court (paragraph 11).

Criminal proceedings – on indictment

765. The Crown court can refer a devolution issue direct to the Court of Appeal (paragraph 9(b)). The Court of Appeal's decision can be appealed to the Supreme Court, subject to permission having been granted by either the Court of Appeal or the Supreme Court (paragraph 11).

Part 3

Proceedings in Scotland

766. [Paragraph 13](#) provides that the Advocate General for Scotland can institute proceedings in Scotland to decide a devolution issue. Where proceedings are brought by the Advocate General, then the Counsel General is entitled to defend them.
767. This does not prevent other people from bringing or defending such proceedings, but where they do so then the Advocate General for Scotland and the Counsel General must be notified of the proceedings, and are entitled to take part in them (paragraph 14).
768. [Paragraph 29\(2\)\(b\)](#) gives the Advocate General for Scotland a general power to require courts and tribunals to refer devolution issues in proceedings to which the Advocate General is a party to the Supreme Court.
769. [Paragraphs 15-21](#) set out further procedures by which devolution issues can be referred upwards from Scottish courts of first instance to the higher courts for resolution.
770. 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.

Civil proceedings in a court consisting of three or more judges of the Court of Session

771. Such a court can refer a devolution issue, which arises in proceedings before it direct to the Supreme Court of its own volition (paragraph 18). If the court does not make such a reference but decides the issue itself, an appeal against its decision lies to the Supreme Court, subject to permission having been granted either by the court whose decision is being appealed or by the Supreme Court (paragraph 21(b))

Civil proceedings begun in other courts

772. Where civil proceedings are begun in other courts, those courts can refer any devolution issues direct to the Inner House of the Court of Session (paragraph 15). An appeal against the Court of Session's decision on such a reference lies to the Supreme Court (paragraph 20).

Tribunal proceedings

773. Any tribunal (as defined by section 158(1)) in Scotland can refer a devolution issue direct to the Inner House of the Court of Session. Tribunals from which there is no appeal must make such a reference (paragraph 16). In either case, the Court of Session's decision can be appealed to the Supreme Court (paragraph 20).

Criminal proceedings in a court consisting of two or more judges of the High Court of Justiciary

774. Such a court can refer a devolution issue direct to the Supreme Court (paragraph 18), where such an issue has arisen in criminal proceedings before the court other than on a reference under this Part. If the court does not make such a reference in such a case but decides the issue itself, an appeal against its decision lies to the Supreme Court, subject

to permission having been granted either by the court whose decision is being appealed or by the Supreme Court (paragraph 21(a)).

Criminal proceedings – other Scottish courts

775. Scottish courts which do not consist of two or more judges of the High Court of Justiciary can refer devolution issues to that Court. An appeal against the High Court of Justiciary's decision on such a reference lies to the Supreme Court, subject to permission having been granted either by the High Court of Justiciary or by the Supreme Court (paragraph 21(a)).

Part 4

Proceedings in Northern Ireland

776. [Paragraph 23](#) provides that the Advocate General for Northern Ireland can institute proceedings in Northern Ireland to decide a devolution issue. Where proceedings are brought by the Advocate General, then the Counsel General is entitled to defend them.
777. This does not prevent other people from bringing or defending such proceedings, but where they do so then the Advocate General for Northern Ireland and the Counsel General must be notified of the proceedings, and are entitled to take part in them (paragraph 24).
778. [Paragraph 29\(2\)\(c\)](#) gives the Advocate General for Northern Ireland a general power to require courts and tribunals to refer devolution issues in proceedings to which the Advocate General is a party to the Supreme Court.
779. [Paragraphs 25-28](#) set out further procedures by which devolution issues can be referred upwards from Northern Irish courts of first instance to the higher courts for resolution.

Court proceedings (civil and criminal)

780. Courts below the Court of Appeal in Northern Ireland can refer devolution issues to that Court (paragraph 25). Appeals against the Court of Appeal in Northern Ireland's decisions on such references lie to the Supreme Court, subject to permission to appeal having been granted either by that Court or by the Court of Appeal in Northern Ireland (paragraph 28).
781. [Paragraph 27](#) provides that where a devolution issue has arisen in proceedings before the Court of Appeal in Northern Ireland other than on a reference under this Part, that Court can refer the issue to the Supreme Court of its own volition.

Tribunal proceedings

782. Any tribunal (as defined by section 158(1)) in Northern Ireland can refer a devolution issue direct to the Court of Appeal in Northern Ireland. Tribunals from which there is no appeal must make such a reference (paragraph 26). In either case, the Court of Appeal in Northern Ireland's decision can be appealed to the Supreme Court, subject to permission to appeal having been granted either by that Court or by the Court of Appeal in Northern Ireland (paragraph 28).

Part 5

General

783. [Paragraph 30](#) enables the Attorney General or the Counsel General to refer any devolution issue, which is not being litigated to the Supreme Court.
784. The Attorney General must notify the Counsel General that such a reference has been made where it concerns the proposed exercise of a function by the Welsh Assembly

Government, who must then refrain from exercising the function as proposed until the reference has been decided or disposed of.

785. [Paragraph 31](#) provides that in awarding costs to litigants, courts and tribunals can take into account any additional expenses incurred as a result of joining into proceedings the Attorney General, the Counsel General, or the Advocates General for Scotland or Northern Ireland.
786. [Paragraph 32](#) allows general court procedure rules and practice directions to make further provision about the procedure on devolution issues.

Schedule 10: Minor and Consequential Amendments

787. This Schedule contains the minor and consequential amendments to other enactments necessitated by the provisions of this Act .

Schedule 11: Transitional Provisions

788. This Schedule contains detailed provisions dealing with the arrangements necessary to ensure an effective transition from the exercise of functions by the National Assembly for Wales constituted by the Government of Wales Act 1998 (for the purposes of this Schedule, “the old Assembly”) to the new National Assembly constituted by this Act and to the Welsh Ministers.

Paragraph 1: Alteration of Assembly electoral regions

789. [Schedule 1](#) deals with the making of alterations to the Assembly electoral regions and to the numbers of seats allocated to those regions, as a consequence of changes to the parliamentary constituencies in Wales. The Schedule places requirements on the Electoral Commission and the Boundary Committee for Wales (both of which are established under the Political Parties, Elections and Referendums Act 2000 (PPERA)) in relation to the consideration of the issue of whether any alteration would be required in the Assembly electoral regions, or in the allocation of seats to those regions, as a consequence of alterations to any parliamentary constituencies in Wales which may be made (referred to in Schedule 1 as “the Assembly electoral region issue”).
790. [Paragraph 1](#) of Schedule 11 provides that Schedule 1 is to have effect with certain modifications, until such time as the functions of the Boundary Commission for Wales are transferred to the Electoral Commission, and functions are conferred on the Boundary Committee for Wales, by the coming into force of section 16 (1) of PERA for those purposes. As applied with the modifications, Schedule 1 will not contain provisions which relate to functions of the Electoral Commission and Boundary Committee for Wales which are not in force, and will impose requirements in relation to the Assembly electoral region issue on the Boundary Commission for Wales.

Paragraph 2: 2007 election to be election to Assembly constituted under this Act

791. Most of the provisions of the Act are to come into force immediately after the Welsh general election to be held in May 2007. This paragraph, (together with those which follow it), enable that election, although generally held under the existing Government of Wales Act 1998, to be an election to the Assembly as newly constituted and to take account of the changes to electoral arrangements, and other associated reforms, for which this Act provides.

Paragraph 3: First meeting after 2007 ordinary election

792. This paragraph provides for the date of the first meeting of this Assembly to be set by order made by the ‘old Assembly’ but that date must be within seven days of the Welsh general election.

Paragraph 4: Date of 2011 election

793. This paragraph provides for the date of the first ordinary Welsh general held after 2007 to be calculated by reference to the 2007 election. That is, that general election will be held in 2011.

Paragraphs 5 and 6: No dual constituency and regional candidacy

794. These paragraphs amend GoWA to prevent dual candidacy (see section 7(5) and (6) of this Act), ensuring that candidates for election to the Assembly in the 2007 election cannot stand for election both as a member for a constituency and as a member for an electoral region. An individual will only be able to be a candidate to be elected to the Assembly to represent either a constituency or a region.

Paragraph 7: Electoral region vacancies before first general election

795. This paragraph provides that, for the period after the 2007 ordinary Welsh general election but before the ordinary Welsh general election to be held in 2011, section 11 (which deals with electoral region vacancies) is to be read as making reference to members elected at the ordinary election of 2007 and to that election.

Paragraph 8: Election orders

796. This paragraph provides for an order made under section 11 of GoWA, which is in force immediately before the repeal of that section, to continue to have effect until it is replaced by an order made under this Act .

Paragraph 9: Term of office of Assembly members

797. This paragraph provides that, for the period after the 2007 ordinary Welsh general election and until the ordinary Welsh general election to be held in 2011, section 14 (which deals with term of office of Assembly members) is to be read as making reference to members elected at the ordinary election of 2007 and to that election.

Paragraph 10: Disqualification orders

798. This paragraph provides that an Order in Council made under section 12(1)(b) GoWA (designating offices which disqualify persons from being Assembly members) which is in force immediately before the repeal of that section, will continue to have effect in relation to this Assembly until it is replaced by an order made under this Act .

Paragraph 11: Disqualification of Lords of Appeal in Ordinary

799. This paragraph disqualifies a Lord of Appeal in Ordinary from being an Assembly member, thereby applying to those disqualified from election in 2007 a minor adjustment made by the Act .

Paragraphs 12 and 13: Remuneration of Assembly members

800. **Paragraph 12** provides that determinations made under section 16 GoWA, which have effect as to salaries and allowances payable to the Assembly First Secretary, other Assembly Secretaries, the Presiding Officer and Deputy Presiding Officer, the leader of the largest political party not represented in the executive committee and other Assembly members, which are in force immediately before the repeal of that section, continue to have effect until replaced by a determination under this Act and apply, respectively, to the First Minister, the Welsh Ministers, to the Presiding Officer and Deputy Presiding Officer, to the leader of the largest political group not represented in the Welsh Assembly Government and to other Assembly members.
801. **Paragraph 13** provides that an order made under section 17 of GoWA providing for the reduction of salary payable to an Assembly member (to take into account any salary

that member may receive as a Member of the UK or European Parliaments) continues to have effect in relation to this Assembly until replaced by provision made under section 21 of this Act.

Paragraph 14: Publication of information about remuneration of Assembly members

802. This paragraph ensures that the Assembly (as constituted under the Act) is to have responsibility for publication of information about remuneration of Assembly members relation to the financial year 2006-07 (i.e. relating to the last year of the “old Assembly” and its members). The extent of the duty is limited to that to which the “old Assembly” was under as opposed to the wider duty of publication under this Act .

Paragraph 15: Assistance to groups of Assembly members

803. This paragraph ensures that a determination made under section 34A GoWA, which is in force immediately before the repeal of that section, will continue to have effect in relation to the Assembly until replaced by provision made under this Act.

Paragraph 16: First Presiding Officer

804. This paragraph ensures that the holding of the 2007 election triggers the duty of the Assembly to elect a Presiding Officer and Deputy Presiding Officer.

Paragraph 17: First Clerk

805. This paragraph provides that the person who is the Clerk to the old Assembly (a post defined by the old Assembly’s standing orders rather than GoWA itself) is to be the Clerk of the Assembly for the purpose of functions under this Act until the Assembly’s first Clerk is appointed by the Assembly Commission.

Paragraph 18: Promotion of awareness of election system and devolved government

806. This paragraph provides that paragraphs 5 and 6 of Schedule 2 (which authorise the Assembly Commission to promote awareness of the election system and devolved government either directly or by financial support for the Electoral Commission) have effect until the appointment of a First Minister under this Act) as if the reference to the Commission were a reference to the old Assembly.

Paragraph 19: Crown status of Assembly Commission

807. This effect of this paragraph is that if, before the first appointment of a First Minister under section 46, Her Majesty makes an Order in Council under paragraph 12 (1) of Schedule 2 providing for the Assembly Commission to be treated as a Crown body for the purposes of an enactment, the statutory instrument containing the Order may be annulled only by either House of Parliament. Where an Order is made after the first appointment under section 46, the statutory instrument in which it is contained may also be annulled by the Assembly.

Paragraph 20: Standing Orders

808. This paragraph places a duty on the Secretary of State to make and publish, in English and Welsh, standing orders which are to govern the proceedings of the Assembly constituted under this Act and to do so before the ordinary Welsh general election is held in 2007 (i.e. by 31st March 2007 at the latest).
809. These standing orders will be needed in order to ensure that the Assembly constituted under this Act will, from the very beginning, have a set of standing orders which will enable it to operate the new arrangements made by this Act and which comply with its various mandatory requirements.

810. The aim of the Secretary of State is, however, to ensure that the old Assembly has the greatest practicable role in the process of formulating the standing orders in question and the Act therefore provides that the Secretary of State must give effect to any proposals made by the old Assembly which have been approved by two thirds of the Assembly members voting on the proposal in question and which have reached the Secretary of State no later than 28 February 2007.
811. Once made, the standing orders will be capable of being revised or re-made by the Assembly in accordance with section 31, i.e. with the support of at least two-thirds of Assembly members.

Paragraph 21: Witnesses and documents: penalties

812. Sections 39(4) and 40(3)(b) fix the maximum terms of imprisonment which can be imposed for offences under sections 39(1) and 40(2), respectively. These are framed by reference to provisions relating to sentencing which are contained in section 281(5) of the Criminal Justice Act 2003. Since that section is not yet in force, provision has to be made for fixing these maximum terms by reference to the present law, with the effect that until section 281(5) of the 2003 Act comes into force, the maximum is to be 3 months rather than 51 weeks. (The provisions of the 2003 Act mean that the effect of a term of imprisonment of 51 weeks will not, once section 281(5) of that Act is in force, be directly comparable to a term of equal nominal length under the existing law.)

Paragraphs 22 to 25: Exercise of functions before appointment of first First Minister

813. These paragraphs ensure that governmental functions of the old Assembly can continue to be exercised during “the initial period”, that is, the period beginning at the start of polling day 2007 (when all members of the existing Assembly, including Assembly Ministers, would normally cease to be able to exercise those functions) and ending with the appointment of a First Minister.
814. This is done by ensuring that membership of the old Assembly does not, in relation to certain office-holders, cease until the end of the initial period. These office-holders are the Assembly First Secretary, the Assembly Secretaries (i.e. members of the “Assembly Government”) and also the Presiding Officer, provided these persons are candidates for election to the Assembly as constituted under this Act .
815. These persons will however cease to be treated as members of the Assembly if they are not re-elected or if they are disqualified from being members of the Assembly as re-constituted.
816. Paragraph 23 provides that during the initial period, functions of the Assembly constituted under GoWA (other than those which are the subject of paragraph 24) will be exercisable by the person who was First Secretary immediately before the beginning of the initial period, provided he or she is still an Assembly member. If that person is no longer a member of the Assembly, or the office of First Secretary was vacant immediately before the beginning of the initial period, the functions are exercisable by a person who was an Assembly Secretary at that time, is an Assembly member and who has been designated to exercise the functions by the other Secretaries. The First Secretary (or the other Secretary designated to act as such) will be able to delegate functions exercisable to one of the other Secretaries or to staff and functions delegated to Secretaries will be able to be further delegated by them to staff.
817. Where functions are delegated to staff, the head of the Assembly staff (the Permanent Secretary) makes the arrangements for the exercise of those functions. Any condition, restriction or limitation which applied to the exercise of a function before the beginning of election day 2007 applies equally to the exercise of that function during the initial period.

818. **Paragraph 24** maintains the distinction between the parliamentary and executive sides of the existing Assembly. It provides that functions of the Assembly constituted under GoWA which were delegated to its House Committee are to be exercisable during the initial period by the person who was the presiding officer immediately before election day or, if that person does not qualify to be treated as continuing in office, or ceases to be so qualified, by the person who was the Clerk of the old Assembly. The presiding officer (or the clerk) will be able to delegate functions to staff of the Assembly. Where functions are delegated to staff, the person who was the Clerk of the Assembly immediately before the beginning of the initial period is to make the arrangements for the exercise of the functions. Any condition, restriction or limitation which applied to the exercise of a function before the beginning of election day applies to the exercise of that function during the initial period.
819. **Paragraph 25** provides that subordinate legislation is to be made, confirmed or approved during the initial period by being signed by the person exercising the relevant function. Any such legislation is not subject to the normal Assembly procedures but the Clerk will be required to lay it before the Assembly as soon as reasonably practicable after the end of the initial period.

Paragraphs 26 to 28: Saving for existing instruments conferring or imposing functions

820. These paragraphs ensure that transfers of functions to the old Assembly under the provisions of GoWA, and various miscellaneous provisions in relation to those functions, continue in force so as to enable subordinate legislation made under them to be amended or revoked, and other kinds of action to be taken in relation to the exercise of those functions, even though the provisions of GoWA under which the functions in question were conferred on the old Assembly have been repealed by this Act.

Paragraph 29: First nomination of First Minister

821. This paragraph ensures that the Assembly's duty to nominate a person for appointment as First Minister under section 47(2)(a) is triggered by the holding of the Welsh general election in 2007.

Paragraphs 30 to 32: Transfer of Assembly functions

Paragraph 30

822. Sub-paragraph (1) provides that, subject to the important exceptions provided for under paragraph 31, all the functions of the old Assembly are to transfer to the Welsh Ministers at the end of the initial period (i.e. upon appointment of a First Minister).
823. Sub-paragraph (2) provides that the functions which will transfer are functions which were exercisable by the old Assembly by virtue of an Order in Council made under section 22 of GoWA, or as a result of a designation under section 2(2) of the European Communities Act 1972 (by virtue of section 29(1) GoWA), and which were so exercisable immediately before the first appointment of a First Minister. If there are further functions conferred or imposed on the old Assembly which were exercisable by it immediately before the first appointment of a First Minister, these will also be transferred to the Welsh Ministers. For the purposes of this paragraph, a function is "exercisable" even if the statutory provision which transferred the function to, or conferred or imposed it on, the old Assembly has not yet come into force.

Paragraph 31

824. Sub-paragraph (1) provides for functions of the old Assembly to be excepted from the general transfer made by paragraph 30. The mechanism for achieving this is for Her

Majesty to make the necessary provision by Order in Council. The kind of provision which can be made includes transfer any of the above functions specifically to the First Minister or the Counsel General instead of to “the Welsh Ministers”. Functions may also be transferred to the Assembly Commission or to the Assembly itself but these may not involve functions of making, confirming or approving subordinate legislation. Such an Order in Council can also provide for functions transferred to be exercisable concurrently with another of these persons or bodies or subject to agreement of or after consultation with the Assembly Commission.

825. Where a function is one of making, confirming or approving subordinate legislation then, although it cannot be left with the Assembly (since “delegated” legislation is the province of the Welsh Ministers), an Order in Council under paragraph 31(2) and (4) can, instead, amend Schedule 5 to the Act so as to enable the Assembly to legislate on the matter by Measure instead. This will enable the subject-matter of any framework powers conferred or imposed on the Assembly in other Acts passed in the same session as this Act to be “converted” into legislative competence so that the Assembly can legislate by way of Measure about the matter. In exercising the power in paragraph 31(2) and (4) to “convert” such powers into legislative competence, the scheme of Part 3 of this Act be an important factor to take into consideration when determining under paragraph 29(2) what modifications are to be made to the power in the “conversion” process.
826. The paragraph makes detailed provisions for the consents and approvals which must be obtained before an Order in Council under it can be made. For example, an Order “converting” a function of the Assembly constituted under GoWA to make secondary legislation, into a power of the Assembly to pass Measures on the matter, would require the approval of the Assembly constituted under GoWA, and would also have to be laid before Parliament and be subject to annulment in pursuance of a resolution of either House.

Paragraph 32

827. This paragraph provides that references in enactments, prerogative instruments and other documents to the Assembly constituted under GoWA, are to be construed as references to the Welsh Ministers, First Minister, the Counsel General, the Assembly Commission or the Assembly constituted under this Act, as appropriate, to the extent necessary for the purpose or in consequence of the exercise by those persons of a function which they have as a result of paragraph 30 or 31 of this Schedule.

Paragraph 33: Functions transferred by Order in Council under s.22 GoWA 1998: Parliamentary and Assembly procedures

828. Ministerial functions of making subordinate legislation conferred by Act of Parliament are, with some exceptions, subject to Parliamentary procedures. These
- may either be affirmative (requiring specific Parliamentary endorsement) or negative (subject to annulment if a Parliamentary motion requires this).
829. Subject to limited exceptions, the old Assembly, where such functions were transferred to it by Order in Council under section 22 of GoWA, is required to give specific approval to subordinate legislation made in its name. Under this Act, these functions of making subordinate legislation under Act of Parliament will transfer to the Welsh Ministers. The Act therefore needs to make provision for imposing on such functions equivalent Assembly procedures (affirmative or negative) or to make it clear that no such procedure at all is to apply (for example in relation to certain local or temporary orders). This is the function of this paragraph.
830. Generally, an equivalent procedure is to apply - the Assembly equivalent of the Parliamentary procedures which applied immediately before the function was transferred to the old Assembly - to the making of subordinate legislation by a Minister

of the Crown. So, if a Minister of the Crown is required by the Act of Parliament in question to obtain approval of Parliament before making subordinate legislation under a particular provision of that Act, the Welsh Ministers are to be required to obtain Assembly approval instead.

831. In some cases Parliamentary procedures will still apply, as is the case under GoWA, to certain legislation made by the Welsh Ministers, in addition to any relevant Assembly procedures. So, where an instrument contains legislation relating to an English border area or to a cross border body (if, in the latter case, the legislation relates to functions other than solely in relation to Wales) Parliamentary procedures apply. Additionally, if an Order in Council transferred a legislation making function to the old Assembly and expressly made it subject to special Parliamentary procedure or to a requirement that the order be confirmed by Act of Parliament, the exercise of that function by the Welsh Ministers etc. will continue to be subject to that procedure.

Paragraphs 34 and 35: Functions conferred or imposed by pre-commencement enactment: Parliamentary and Assembly procedures

832. These paragraphs deal with the different situation of functions of making subordinate legislation which were directly conferred (or imposed) on the ‘old Assembly’ by an enactment (usually an Act of Parliament) before the commencement of this Act, and which are now to be exercisable by the Welsh Ministers, the First Minister or the Counsel General. They cover two distinct kinds of situations: firstly those where a Minister of the Crown has a corresponding function in relation to England to that which will be exercisable by the Welsh Ministers in relation to Wales and secondly where this is not the case, i.e. the function is unique to Wales.
833. If there is a particular Parliamentary procedure which applies to subordinate legislation made by a Minister of the Crown in relation to England, and a corresponding function is exercisable in relation to Wales by the Welsh Ministers, then the equivalent Assembly procedure to that Parliamentary procedure (affirmative or negative as the case may be or, sometimes, the equivalent under Assembly procedures of “special Parliamentary procedure”) is to apply.
834. If Parliamentary procedures applied to a legislation making function of a Minister of the Crown and to the exercise of the corresponding function by the Welsh Ministers, the First Minister and the Counsel General, both the Parliamentary procedure and an equivalent Assembly procedure will apply when the Welsh Ministers, the First Minister or the Counsel General exercise the function.
835. [Paragraph 35](#) provides for the procedures applying to a function of making subordinate legislation which falls into the other category of those directly conferred (or imposed) on the ‘old Assembly’ namely those where no Minister of the Crown has a corresponding function in relation to England.
836. The paragraph specifies what Assembly procedures are to apply in such a case.
837. Unless a procedure is specified in relation to such function, none is to apply.
838. If subordinate legislation is to be made by virtue of a function listed in Table 1, it is subject to being laid before and approved by a resolution of the Assembly before it is made.
839. If subordinate legislation is made by virtue of a function listed in Table 2, it must be laid before the Assembly and can be annulled in pursuance of a resolution of the Assembly.
840. However, the provisions made in paragraphs 34 and 35 do not apply where functions of making subordinate legislation have been transferred to the Welsh Ministers, which were formerly functions of the Assembly constituted under GoWA as the result of a designation made under section 2 (2) of the European Communities Act 1972. In those

circumstances, section 59 of this Act determines Assembly procedure in relation to the making of subordinate legislation.

Paragraphs 36 and 37: Transfers of Assembly functions: laying of reports and statements

841. Paragraphs 36 and 37 apply in relation to former Assembly functions of making or receiving reports or statements which are now exercisable by the Welsh Ministers, the First Minister, the Counsel General or the Assembly Commission, because those functions have been transferred to one of the latter group by paragraph 30 of this Schedule, or by an Order in Council under paragraph 31. Where such functions are ones which were made exercisable by the old Assembly by an Order in Council under section 22 of GoWA and, prior to that, were subject to a statutory requirement to lay the report or statement before Parliament, then that requirement applies to the Welsh Ministers etc as if the reference to Parliament was a reference to the Assembly constituted under this Act.
842. Where such functions are ones which were conferred or imposed on the old Assembly by legislation which was passed or made prior to the first appointment of a First Minister under this Act, and that legislation required the old Assembly to publish the report or statement, then a copy of the report or statement must be laid before the Assembly.

Paragraph 38 to 42: Transfers of Assembly functions: property, rights and liabilities

843. These paragraphs make provision for the transfer of property, rights and liabilities of the old Assembly in connection with those functions which transfer to (or are conferred or imposed on) the Welsh Ministers, the First Minister, the Counsel General or the Assembly Commission.
844. Generally, property, rights and liabilities in connection with a function vest in the person or body in whom the relevant function is vested. This includes any instruments, contracts or legal proceedings (made or commenced before the transfer) in relation to a function or to property, rights and liabilities in connection with a function, except rights and liabilities under a contract of employment of a member of staff of the old Assembly.
845. Paragraph 40 makes provision for Her Majesty, by Order in Council, to provide for the general rule above not to apply in relation to some cases, or to apply only in some cases or to apply with modifications. No recommendation can be made to Her Majesty to make such an order unless a draft of the order has been laid before and approved by a resolution of each House of Parliament and the Assembly.
846. Paragraph 41 makes provision for the Secretary of State, by order, to provide for the transfer of specified property, rights or liabilities of the 'old Assembly' (but not property, rights or liabilities under a contract of employment of a member of staff of that Assembly) to the Welsh Ministers etc. or to the Assembly Commission. Either House of Parliament can, by resolution, annul an order made under this paragraph.
847. Paragraph 42 provides that a certificate of the Secretary of State that any property has been transferred by paragraph 39 or 41 is conclusive evidence of the transfer.
848. The paragraph further provides that transfers under paragraphs 39 and 41 have effect in relation to property, rights or liabilities to which they apply despite any provision which would otherwise prevent, penalise or restrict the transfer of the property or liabilities and that a right of pre-emption, right of return or other similar right is not to operate or become exercisable as a result of any such transfer of property or rights. Further, any such right has effect in the case of any such transfer as if the transferee were the same person in law as the transferor and as if no transfer of property had taken place.
849. Additionally, paragraph 42 provides for just compensation to be paid to any person in respect of a right which would have operated in favour of (or be exercisable by) that

person but which in consequence of paragraph 40(3) cannot subsequently operate in the person's favour (or be exercisable by the person). Any compensation payable is to be paid by the transferor, transferee or both.

850. The Secretary of State can, by order, provide for the determination of any disputes as to whether, to whom or by whom such compensation is to be paid, and how much that compensation should be. Any such order can be annulled by a resolution of either House of Parliament.

Paragraph 43: Staff of the Assembly

851. This paragraph provides that from the beginning of the day after the appointment of a First Minister, staff of the old Assembly are to be deemed to have been appointed as members of staff of the Welsh Assembly Government. This is subject to a power of the Secretary of State, by order, to make a scheme for the transfer of staff to the Assembly, by transferring to the Assembly Commission the rights and liabilities of listed employees under their contracts of employment.
852. Any such transfer does not break the relevant employee's employment and the transfer scheme must provide for the terms and conditions of the employee's employment with the Commission to be no less favourable to the employee than they were immediately before the transfer.
853. If an employee listed in the scheme objects to becoming employed by the Assembly Commission, there will be no transfer of that employee but the employee's contract will be terminated at the beginning of the day after a First Minister is appointed. However, the employee will not be treated for any purpose as having been dismissed.
854. Before making an order under this paragraph, the Secretary of State must consult the old Assembly and such an order can be annulled by a resolution of either House of Parliament.

Paragraph 44: Powers to lend money

855. This paragraph deals with a power to lend money which was transferred to the old Assembly by an Order in Council under s. 22 GoWA and which is transferred to the Welsh Ministers under paragraph 30 of this Schedule.
856. The paragraph provides that any sums which would be required for the purpose of, or as a result of, the exercise of such a power to be issued by the Treasury out of, or to be paid into, the National Loans Fund are to be instead charged on the Welsh Consolidated Fund (WCF) or to be paid into that Fund.
857. Where a power was exercised by a Minister of the Crown before its transfer to the old Assembly, or was exercised by the old Assembly after transfer and the sums required were issued by the Treasury out of the National Loans Fund, the paragraph further provides that repayment of a loan is to be paid to the Welsh Ministers and by them into the WCF. However, amounts received by the Welsh Ministers in repayment of principal are treated (on the date of transfer of the power to them) as loans made to the Welsh Ministers by the Secretary of State and have to be repaid to the Secretary of State at such rates and times as the Treasury may determine. The amounts paid are to be charged on the WCF and corresponding receipts by the Secretary of State are to be paid into the National Loans Fund.
858. There is a power for Her Majesty, by Order in Council, to disapply this paragraph in relation to any power to lend money but no recommendation to Her Majesty to make an order can be made unless a copy of the statutory instrument has been laid and approved by a resolution of each House of Parliament.

Paragraph 45: Local Government scheme

859. This paragraph provides for the local government scheme made by the old Assembly under section 113(1) of GoWA to continue to have effect (with appropriate modifications) as if made under this Act .

Paragraph 46: Voluntary sector scheme

860. This paragraph provides for the voluntary sector scheme made by the old Assembly under section 114(1) of GoWA to continue to have effect (with appropriate modifications) as if made under this Act.

Paragraph 47: Equality of opportunity arrangements

861. This paragraph provides for equality of opportunity arrangements made by the old Assembly under section 120(1) of GoWA to continue to have effect (with appropriate modifications) as if made under this Act.

Paragraph 48: Welsh Language Strategy and Scheme

862. **Section 78(1)** requires the Welsh Ministers to adopt a Welsh Language strategy, which must set out how the Welsh Ministers propose to promote and facilitate the use of the Welsh language. Paragraph 48 provides that when section 78 comes into force (which will be immediately after the first appointment of a First Minister under section 46), then the National Action Plan for a Bilingual Wales (or Iaith Pawb), in whatever form it exists at that time, is to operate with appropriate modifications from then on as if it were a Welsh Language strategy adopted under section 78(1). In addition, any Welsh language scheme which the Assembly constituted under GoWA has adopted under section 21 of the Welsh Language Act 1993 and which is in force when section 78 comes into force, is to operate with appropriate modifications from then on as if it were a Welsh language scheme adopted under section 78(2).
863. The effect of paragraph 48(3) is that the Welsh Ministers are not required to re- publish the National Action Plan for a Bilingual Wales, nor any Welsh language scheme, which is operating as if made under section 78. The effect of paragraph 48(4) is that the Welsh Ministers are not required to publish a report under section 78(8) in relation to the financial year ending 31 March 2007.

Paragraph 49: Sustainable development scheme

864. This paragraph provides for the sustainable development scheme made by the old Assembly under section 121(1) of GoWA to continue to have effect (with appropriate modifications) as if made under this Act.

Paragraph 50 and 51: Orders in Council amending Schedule 5

865. These paragraphs provide for sections 95 and 96 to have effect with modifications until the beginning of the day after the day in which a First Minister is appointed. Sections 95 and 96 come into force on Royal Assent, in order to allow Schedule 5 (and therefore the Assembly's legislative competence to pass Assembly Measures) to be modified between Royal Assent and the Act coming fully into effect in May 2007. The modifications which this paragraph applies are necessary to allow sections 95 and 96 to operate in advance of May 2007.

Paragraph 52: Assembly Measures: criminal penalties

866. This paragraph provides that, until the coming into force of sections 281(5) and 154(1) of the Criminal Justice Act 2003, the maximum term of imprisonment which can be imposed on conviction of an offence (whether summary or triable either way) under an Assembly Measure is six months (again making provision for the different rules in

relation to sentencing which apply until those provisions of the 2003 Act come into force).

Paragraph 53: Welsh Consolidated Fund

867. This paragraph imposes a duty on the old Assembly to pay, on 2 April 2007, all monies standing to its credit immediately before that day into the Welsh Consolidated Fund.

Paragraph 54: Grants

868. This paragraph ensures that section 118(2), that is, the power of Ministers of the Crown to make payments to the Welsh Ministers, has effect as a power to make payments to the old Assembly (including that Assembly as it continues in existence by virtue of Schedule 11, paragraph 22) until the first First Minister is appointed under the Act.

Paragraph 55: Statement of estimated payments

869. This paragraph provides that in relation to the financial year beginning on 1 April 2007, section 119 has effect also in relation to the old Assembly, so that the Secretary of State is required to lay a written statement of estimated payments before that Assembly, and to include, in that statement, estimated payments destined for the old Assembly.

Paragraph 56: Destination of receipts

870. This paragraph provides that section 120 (which governs which sums need to be paid into the Welsh Consolidated Fund and which do not) has effect, until the first First Minister is appointed under the Act, as if references to the Welsh Ministers etc. and to the Assembly Commission were references to the old Assembly. It also allows the old Assembly to make the initial decision as to which receipts can be retained, rather than paid into the Welsh Consolidated Fund.

Paragraph 57: Borrowing

871. This paragraph provides that section 121 has effect, until the first First Minister is appointed under the Act, as if the references to the Welsh Ministers were references to the old Assembly. This allows the old Assembly to continue to borrow from the Secretary of State, if necessary, until it completely ceases to exist. It further makes provision for relevant amounts outstanding immediately before 1 April 2007 to be treated as outstanding (and therefore counting towards the maximum that can be borrowed from the Secretary of State) as if borrowed under the section.

Paragraphs 58 and 59: Payments out of the Welsh Consolidated Fund

872. **Paragraph 58** provides that section 124 has effect, until the first First Minister is appointed under the Act, as if the reference to the Welsh Ministers etc. or the Assembly Commission were references to the old Assembly. This gives a legal basis for sums to be paid out of the Welsh Consolidated Fund to meet expenditure of the old Assembly.
873. **Paragraph 59** makes transitional provision in respect of certain minor amendments made to other Acts, in Schedule 10 of the Act. Those amendments come into force on 1st April 2007. They provide that, where the Welsh Ministers are guaranteeing certain loans, the sums required for fulfilling the guarantee will be charged on the Welsh Consolidated Fund, rather than on the UK Consolidated Fund, and that sums required by the Welsh Ministers for the making of payments under Part 3 (Non-Domestic Rating: Distribution) of Schedule 8 to the Local Government Finance Act 1988 will be charged on the Welsh Consolidated Fund. Paragraph 59 operates so that, until the Welsh Ministers come into existence at the end of the initial period, sums required for fulfilling guarantees given by the old Assembly under the provisions in question, or for making payments which that Assembly is required to make under Part 3 of Schedule 8 to the

Local Government Finance Act 1988 will also be charged on the Welsh Consolidated Fund.

Paragraph 60: Annual Budget motions

874. This paragraph provides that the requirement that a Budget resolution of the Assembly be passed before sums can be paid out of the Welsh Consolidated Fund etc. can be satisfied by a resolution of the old Assembly so far as section 125 has effect in relation to the financial year beginning on 1 April 2007.

Paragraph 61: Supplementary Budget motions

875. This paragraph ensures that in so far as section 126 has effect in relation to the financial year beginning on 1 April 2007, supplementary Budget motions can be moved in the old Assembly (except as it continues in existence during the initial period). Where a supplementary Budget motion under the Act is moved in the old Assembly, references to the First Minister or a Welsh Minister are to members of the “executive committee” under GoWA.

Paragraph 62: Contingencies

876. This paragraph provides that the power to use resources or to have cash paid out of the Welsh Consolidated Fund for an emergency situation (any such amounts not having been approved under a Budget resolution), applies to the old Assembly until the first First Minister is appointed under the Act. Paragraph 62 limits to £50 million the total amount that can be used during that period. The overall ceiling for the financial year, set down in section 128, still applies.

Paragraph 63: Approvals to draw

877. This paragraph provides that the provisions in section 129, requiring the approval of the Auditor General before payments can be made out of the Welsh Consolidated Fund, apply to the old Assembly until the first First Minister is appointed under the Act.

Paragraph 64: Auditor General

878. This paragraph provides that the person who immediately before the repeal of section 90 GoWA is the Auditor General for Wales, is to be taken, after such repeal, to have been appointed under paragraph 1 of Schedule 8.

Paragraph 65: Advocate General for Northern Ireland

879. This paragraph makes provision necessary for the period before the coming into force of section 27 (1) the Justice (Northern Ireland) Act 2002.

Paragraphs 66 and 67: The Supreme Court

880. These paragraphs make provision necessary for the period before the coming into force of section 23(1) of the Constitutional Reform Act 2005.

Schedule 12: Repeals and Revocations

881. This Schedule makes the usual provision for repeals and revocations of other enactments consequent upon this Act.