



# Government of Wales Act 2006

## 2006 CHAPTER 32

### PART 6

#### MISCELLANEOUS AND SUPPLEMENTARY

##### *Miscellaneous*

#### **149 Resolution of devolution issues**

For provision about the resolution of devolution issues see Schedule 9.

#### **150 Power to make consequential provision**

- (1) The Secretary of State may by order make such provision as the Secretary of State considers appropriate in consequence of—
  - (a) any provision made by an Assembly Measure or Act of the Assembly,
  - (b) any provision of subordinate legislation made, or purporting to be made, under an Assembly Measure or Act of the Assembly,
  - (c) any provision of subordinate legislation made, or purporting to be made, by the Welsh Ministers, the First Minister or the Counsel General, or
  - (d) any provision of subordinate legislation made, or purporting to be made, by any other person (not being a Minister of the Crown) in the exercise of a function conferred or imposed by Act of Parliament where the statutory instrument (or a draft of the statutory instrument) containing the subordinate legislation is required to be laid before the Assembly.
- (2) An order under this section may make such modifications of—
  - (a) any enactment (including any enactment comprised in or made under this Act) or prerogative instrument, or
  - (b) any other instrument or document,as the Secretary of State considers appropriate.

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*Status: This is the original version (as it was originally enacted).*

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- (3) An order under this section may not make provision with respect to matters within the legislative competence of the Scottish Parliament.
- (4) An order under this section may make provision having retrospective effect.
- (5) No order under this section which contains provisions in the form of amendments or repeals of enactments contained in an Act is to be made unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.
- (6) A statutory instrument containing an order under this section is (unless a draft of the statutory instrument has been approved by a resolution of each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In subsection (1) “made” includes confirmed or approved.

### **151 Power to remedy ultra vires acts**

- (1) Her Majesty may by Order in Council make such provision as Her Majesty considers appropriate in consequence of—
  - (a) an Assembly Measure or Act of the Assembly, or any provision of an Assembly Measure or Act of the Assembly, which is not, or may not be, within the Assembly’s legislative competence, or
  - (b) any purported exercise by any person of a function conferred or imposed by or under an Assembly Measure or Act of the Assembly which is not, or may not be, an exercise or proper exercise of that function.
- (2) An Order in Council under this section may make such modifications of—
  - (a) any enactment (including any enactment comprised in or made under this Act) or prerogative instrument, or
  - (b) any other instrument or document,
 as Her Majesty considers appropriate.
- (3) An Order in Council under this section may make provision having retrospective effect.
- (4) No recommendation is to be made to Her Majesty in Council to make an Order in Council under this section which contains provisions in the form of amendments or repeals of enactments contained in an Act unless a draft of the statutory instrument containing the Order in Council has been laid before, and approved by a resolution of, each House of Parliament.
- (5) A statutory instrument containing an Order in Council under this section is (unless a draft of the statutory instrument has been approved by a resolution of each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament.

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

- (1) This section applies where it appears to the Secretary of State that the exercise of a relevant function (or the failure to exercise a relevant function) in any particular case might have a serious adverse impact on—
  - (a) water resources in England,

- (b) water supply in England, or
  - (c) the quality of water in England.
- (2) The Secretary of State may intervene under this paragraph in that case, so that—
- (a) the Secretary of State may in that case exercise the function, and
  - (b) the person or persons on whom the function is conferred or imposed may not in that case exercise the function.
- (3) “Relevant function” means—
- (a) a function conferred or imposed on any person by or under an Assembly Measure or Act of the Assembly, or
  - (b) a function which is not so conferred or imposed but is exercisable by the Welsh Ministers, the First Minister or the Counsel General.
- (4) An intervention by the Secretary of State under this section in relation to a function is to be made by giving notice to the person or persons on whom it is conferred or imposed.
- (5) The notice—
- (a) must state the reason for the Secretary of State’s intervention,
  - (b) may make provision about the effect of any steps previously taken by the person or persons on whom the function is conferred or imposed, and
  - (c) may extend the time for the taking of any steps by the Secretary of State or any other person (even if the time for taking them would otherwise have expired before the notice is given).
- (6) Where an intervention has been made under this section in a case, the Secretary of State must, in addition to the notice under subsection (4), give notice to—
- (a) any person who has previously been given notice of any steps taken, or proposed to be taken, in the case,
  - (b) the Environment Agency, if concerned in the case, and
  - (c) any water undertaker or sewerage undertaker concerned in the case.

### **153 Power to vary retrospective decisions**

- (1) This section applies where any court or tribunal decides—
- (a) that an Assembly Measure or Act of the Assembly, or any provision of an Assembly Measure or Act of the Assembly, is outside the Assembly’s legislative competence,
  - (b) that any provision of subordinate legislation made, or purporting to be made, under an Assembly Measure or Act of the Assembly is outside the powers under which it was, or purported to be, made, or
  - (c) that any provision of subordinate legislation made, or purporting to be made, by the Welsh Ministers, the First Minister or the Counsel General is outside the powers under which it was, or purported to be, made.
- (2) The court or tribunal may make an order—
- (a) removing or limiting any retrospective effect of the decision, or
  - (b) suspending the effect of the decision for any period and on any conditions to allow the defect to be corrected.

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- (3) In determining whether to make an order under this section, the court or tribunal must (among other things) have regard to the extent to which persons who are not parties to the proceedings would otherwise be adversely affected by the decision.
- (4) Where a court or tribunal is considering whether to make an order under this section, it must order notice (or intimation) of that fact to be given to the persons specified in subsection (5) (unless a party to the proceedings).
- (5) The persons mentioned in subsection (4) are—
  - (a) in relation to proceedings in England and Wales, the Attorney General and the Counsel General,
  - (b) in relation to proceedings in Scotland, the Advocate General for Scotland, and
  - (c) in relation to proceedings in Northern Ireland, the Advocate General for Northern Ireland.
- (6) A person to whom notice (or intimation) is given in pursuance of subsection (4) may take part as a party in the proceedings, so far as they relate to the making of the order.
- (7) In deciding any question as to costs or expenses, the court or tribunal may—
  - (a) take account of any additional expense which it considers that any party to the proceedings has incurred as a result of the participation of any person in pursuance of subsection (6), and
  - (b) award the whole or part of the additional expense as costs or expenses to the party who incurred it (whether or not it makes an order under this section and whatever the terms of any such order it does make).
- (8) Any power to make provision for regulating the procedure before any court or tribunal includes power to make provision for the purposes of this section including, in particular, provision for determining the manner in which and the time within which any notice (or intimation) is to be given.
- (9) In subsection (1) “made” includes confirmed or approved.

## **154 Interpretation of legislation**

- (1) This section applies to—
  - (a) any provision of an Assembly Measure, or proposed Assembly Measure, which could be read in such a way as to be outside the Assembly’s legislative competence,
  - (b) any provision of an Act of the Assembly, or a Bill for such an Act, which could be read in such a way as to be outside the Assembly’s legislative competence, and
  - (c) any provision of subordinate legislation made, or purporting to be made, under an Assembly Measure or Act of the Assembly which could be read in such a way as to be outside the powers under which it was, or purported to be, made.
- (2) The provision is to be read as narrowly as is required for it to be within competence or within the powers, if such a reading is possible, and is to have effect accordingly.
- (3) In subsection (1)(c) “made” includes confirmed or approved.

## **155 Functions exercisable in relation to Wales**

- (1) Her Majesty may by Order in Council specify functions which are to be treated for such purposes of this Act as may be specified in the Order in Council—
  - (a) as being, or as not being, functions which are exercisable by the Welsh Ministers, the First Minister or the Counsel General, or
  - (b) as being, or as not being, functions which are exercisable in relation to Wales.
- (2) A statutory instrument containing an Order in Council under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

## **156 English and Welsh texts of legislation**

- (1) The English and Welsh texts of—
  - (a) any Assembly Measure or Act of the Assembly which is in both English and Welsh when it is enacted, or
  - (b) any subordinate legislation which is in both English and Welsh when it is made,are to be treated for all purposes as being of equal standing.
- (2) The Welsh Ministers may by order provide in respect of any Welsh word or phrase that, when it appears in the Welsh text of any Assembly Measure or Act of the Assembly, or any subordinate legislation made under an Assembly Measure or Act of the Assembly or by the Welsh Ministers, it is to be taken as having the same meaning as the English word or phrase specified in relation to it in the order.
- (3) No order is to be made under subsection (2) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Assembly.
- (4) An Assembly Measure or Act of the Assembly, or any subordinate legislation made under an Assembly Measure or Act of the Assembly or by the Welsh Ministers, is to be construed in accordance with any order under subsection (2); but this is subject to anything to the contrary contained in the Assembly Measure, Act of the Assembly or subordinate legislation.
- (5) This section applies in relation to subordinate legislation made by the First Minister or the Counsel General as in relation to subordinate legislation made by the Welsh Ministers.