
EXPLANATORY NOTE

(This note is not part of the Order)

Article 2 of, and Schedule 1 to, the Order provide for the exercise by the National Assembly for Wales of statutory functions currently vested in Ministers of the Crown. Except as mentioned below in relation to cross-border bodies and English border areas, all functions are vested in the Assembly for exercise in relation to Wales.

The functions which become exercisable by the Assembly in pursuance of this Order are functions under the enactments listed in Schedule 1. Listing is as follows—

Public Acts are listed first, followed by a shorter list of private and local Acts and a list of statutory instruments;

all enactments are listed in chronological order;

where the list contains just the title of the enactment, all Minister of the Crown functions under that enactment are transferred to the Assembly;

where the list contains the title of the enactment followed immediately by a reference to sections etc it is only functions under those sections which are transferred;

where the list contains the title of the enactment followed by excepted sections etc, all functions under the enactment are transferred apart from those under excepted provisions;

the list of statutory instruments is confined to instruments under which functions would not automatically be transferred by article 3 (reference to functions under an enactment to include functions in subordinate legislation having effect thereunder).

Further specific provision is included in Schedule 1, principally in the Public Act entries, to provide for matters including the following—

functions to be exercisable by the Assembly concurrently with a Minister of the Crown instead of being transferred outright to the Assembly;

Treasury agreement and consultation requirements to be continued in effect notwithstanding paragraph 9(1) and (2) of Schedule 3 to the Government of Wales Act 1998 Act;

Treasury agreement and consultation requirements to be dis-applied in cases of concurrent exercise, in pursuance of paragraph 9(3) of Schedule 3 to the Act;

limited transfer of functions either by reference to the Ministers in whom they are vested or by reference to specific functional areas within a broader enabling power;

continuation of certain existing statutory joint exercise requirements by transfer only of the function of one Minister in relation to functions which are expressly stated in the relevant enactment to be exercisable jointly by two or more Ministers;

some functions of the Comptroller and Auditor General are transferred to, or made functions also of, the Auditor General for Wales, in pursuance of sections 96, 146 and 147;

retention of special parliamentary procedure in pursuance of section 44(5);

in respect of certain functions concerning water matters, provision is made in pursuance of paragraph 3 of Schedule 3 to the Act, for transfer not in relation to Wales but in relation to areas which do not comprise the whole of Wales but include an English border area;

in respect of certain functions relating to a cross-border body, provision is made for the function to be transferred in relation to the body, in pursuance of paragraph 3 of Schedule 3 to the Act.

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

Article 2(c) provides generally that functions exercisable in relation to a cross-border body which, by their nature are not functions which can be specifically exercised in relation to Wales, are to be exercisable by the Assembly in relation to that body rather than in relation to Wales and are to be exercisable concurrently with the Minister of the Crown by whom they are exercisable.

Article 2(e) excludes from transfer any power under which provisions of an Act may be brought into force by order.

Article 2(f) excludes from transfer any functions of the Lord Chancellor or the Attorney General.

Article 3 provides that the vesting in the Assembly of functions exercisable under any enactment includes functions exercisable by virtue of subordinate legislation made thereunder.

Article 4 provides that section 42 of the Act will not allow a function to be exercised by the Assembly on its own in cases where there is a statutory requirement for joint action which has been preserved by not transferring to the Assembly the function of all the Ministers who are required to act jointly.

Article 5 provides, in pursuance of section 22(1)(c) of the Act, that functions of a Minister of the Crown under the enactments specified in Schedule 2 are to be exercisable in relation to Wales only with the agreement of, or after consultation with, the Assembly. In the particular case of the two enactments referred to in paragraph 4 of Schedule 3 to the Act provision is made, in accordance with that paragraph, for consultation with the Assembly not in respect of functions exercisable in relation to Wales but in respect of functions exercisable in relation to “Welsh controlled waters”.

Article 6 and Schedule 3 determine, in pursuance of section 155(2), the boundaries between those parts of the Severn and Dee Estuaries which are to be treated as adjacent to Wales for the purpose of the definition of Wales, and those which are not.

Article 7 provides for the exclusion of specific property from transfer to the Assembly as would otherwise take place under the transfer provision in section 23.

The map referred to in the definition of “the catchment areas of the rivers Dee, Wye and Severn” in article 1(3) may be inspected during normal working hours at the offices of the Environment Agency at Rivers House, St. Mellons Business Park, St. Mellons, Cardiff.