



# Government of Wales Act 1998

## 1998 CHAPTER 38

### PART V

#### OTHER PROVISIONS ABOUT THE ASSEMBLY

##### *Decisions about Assembly functions*

#### **109 Resolution of devolution issues**

Schedule 8 (which makes provision about devolution issues) has effect.

#### **110 Power to vary retrospective decisions**

- (1) This section applies where any court or tribunal decides that the Assembly did not have the power to make a provision of subordinate legislation which it has purported to make.
- (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.
- (3) In determining whether to make an order under this section, the court or tribunal shall (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 shall order notice (or intimation) of that fact to be given to the relevant law officer and the Assembly (unless he or it is a party to the proceedings).
- (5) Where the relevant law officer or the Assembly is given notice (or intimation) under subsection (4), he or it may take part as a party in the proceedings so far as they relate to the making of the order.
- (6) In deciding any question as to costs or expenses, the court or tribunal may—

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*Status: This is the original version (as it was originally enacted).*

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- (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 (5), 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).
- (7) Any power to make provision for regulating the procedure before any court or tribunal shall include 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.
- (8) In this section “the relevant law officer” means—
- (a) in relation to proceedings in England and Wales, the Attorney General,
  - (b) in relation to proceedings in Scotland, the Advocate General for Scotland, and
  - (c) in relation to proceedings in Northern Ireland, the Attorney General for Northern Ireland;
- and in subsection (1) “make” includes confirm or approve.