



Government of Wales Act 1998

1998 CHAPTER 38

PART II

ASSEMBLY FUNCTIONS

Transfer of Ministerial functions to Assembly

22 Transfer of Ministerial functions.

- (1) Her Majesty may by Order in Council—
 - (a) provide for the transfer to the Assembly of any function so far as exercisable by a Minister of the Crown in relation to Wales,
 - (b) direct that any function so far as so exercisable shall be exercisable by the Assembly concurrently with the Minister of the Crown, or
 - (c) direct that any function so far as exercisable by a Minister of the Crown in relation to Wales shall be exercisable by the Minister only with the agreement of, or after consultation with, the Assembly.
- (2) The Secretary of State shall, before the first ordinary election, lay before each House of Parliament the draft of an Order in Council under this section making provision for the transfer of such functions in each of the fields specified in Schedule 2 as the Secretary of State considers appropriate.
- (3) An Order in Council under this section may contain any appropriate consequential, incidental, supplementary or transitional provisions or savings (including provisions in the form of amendments or repeals of enactments).
- (4) No recommendation shall be made to Her Majesty in Council to make an Order in Council under this section—
 - (a) 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, and

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- (b) in the case of an Order in Council varying or revoking a previous Order in Council, unless such a draft has also been laid before, and approved by a resolution of, the Assembly.
- (5) Schedule 3 (which makes further provision about the transfer etc. of functions by Order in Council under this section) has effect.

Modifications etc. (not altering text)

- C1** S. 22 modified (30.6.1999) by 1999 c. 9, ss. 14(1)(2), 17(2)(d)
S. 22 modified (E.W.S.) (1.1.2002 for E. and 1.9.2002 otherwise) by 2001 c. 10, s. 42(5) (with s. 43(13)); S.I. 2001/2217, art. 5 (as amended by virtue of S.I. 2001/2614, art. 4); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1
S. 22 modified (1.4.2003 for E. and 9.1.2004 for W.) by Education Act 2002 (c. 32), ss. 208(3), 211, 216 (with ss. 210(8), 214(4)); S.I. 2003/124, art. 4; S.I. 2003/2961, art. 7, Sch. Pt. IV
- C2** S. 22 extended (7.11.2002) by Adoption and Children Act 2002 (c. 38), s. 145(4) (with Sch. 4 paras. 6-8)
- C3** S. 22 modified (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), ss. 8(4)(5), 53(1); S.I. 2005/1126, art. 2(2)(e)

23 General transfer of property, rights and liabilities etc.

- (1) There shall be transferred to and vest in the Assembly by virtue of this subsection all property, rights and liabilities to which a Minister of the Crown is entitled or subject, at the coming into force of an Order in Council under section 22, in connection with any function exercisable by the Minister which is transferred by the Order in Council.
- (2) There may be continued by or in relation to the Assembly anything (including legal proceedings) which relates to—
- (a) any function exercisable by a Minister of the Crown which is transferred by an Order in Council under section 22, or
- (b) any property, rights or liabilities transferred by subsection (1) as the result of the transfer of any such function by such an Order in Council,
- and which is in the process of being done by or in relation to the Minister immediately before the coming into force of the Order in Council.
- (3) Anything which was done by a Minister of the Crown for the purpose of or in connection with—
- (a) any function exercisable by the Minister which is transferred by an Order in Council under section 22, or
- (b) any property, rights or liabilities transferred by subsection (1) as the result of the transfer of any such function by such an Order in Council,
- and which is in effect immediately before the coming into force of the Order in Council shall have effect as if done by the Assembly.
- (4) The Assembly shall be substituted for any Minister of the Crown in any instruments, contracts or legal proceedings which relate to—
- (a) any function exercisable by the Minister which is transferred by an Order in Council under section 22, or
- (b) any property, rights or liabilities transferred by subsection (1) as the result of the transfer of any such function by such an Order in Council,

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and which are made or commenced before the coming into force of the Order in Council.

Modifications etc. (not altering text)

- C4** S. 23(1) restricted (1.7.1999) by S.I. 1999/672, **art. 7**
S. 23(1) restricted (16.2.2000) by S.I. 2000/253, **arts. 1(2), 10**
- C5** S. 23(1) excluded (15.11.2001) by S.I. 2001/3679, **arts. 1, 3**; S.I. 2001/3686, **reg. 1**
- C6** S. 23(1) applied (18.11.2004) by The National Assembly for Wales (Transfer of Functions) Order 2004 (S.I. 2004/3044), **art. 1(2), 5**
- C7** S. 23(1) excluded (8.6.2006) by The National Assembly for Wales (Transfer of Functions) Order 2006 (S.I. 2006/1458), **arts. 1(2), 4**
- C8** S. 23(1) excluded (15.12.2006) by The National Assembly for Wales (Transfer of Functions) (No.2) Order 2006 (S.I. 2006/3334), **arts. 1(2), 5**

24 General transfer: supplementary.

- (1) An Order in Council under section 22 may provide that all or any of the provisions of section 23—
- (a) shall not apply in relation to the transfer of functions by the Order in Council or to the property, rights and liabilities connected with the functions,
 - (b) shall apply only in relation to the transfer of particular functions by the Order in Council or to particular property, rights or liabilities connected with the functions transferred by the Order in Council, or
 - (c) shall not apply in relation to the transfer of particular functions by the Order in Council or to particular property, rights or liabilities connected with the functions transferred by the Order in Council.
- (2) Section 23 does not apply to rights or liabilities relating to the employment of persons in Crown employment (as defined in section 191(3) of the ^{M1}Employment Rights Act 1996).

Marginal Citations

- M1** 1996 c. 18.

25 Power to make specific transfers etc.

- (1) The Secretary of State may by order make provision for the transfer to the Assembly of—
- (a) any specified property, rights or liabilities, or
 - (b) property, rights or liabilities of any specified description,
- to which a Minister of the Crown is entitled or subject.
- (2) An order under subsection (1) may provide for the transfer of any property, rights or liabilities to have effect subject to exceptions or reservations specified in or determined under the order.
- (3) An order under subsection (1) may provide—

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- (a) for the creation in favour of a Minister of the Crown of interests in, or rights over, property transferred to the Assembly,
 - (b) for the creation in favour of the Assembly of interests in, or rights over, property retained by a Minister of the Crown, or
 - (c) for the creation of new rights and liabilities between the Assembly and a Minister of the Crown.
- (4) The Secretary of State may by order make provision for the continuation by or in relation to the Assembly of—
- (a) any specified thing, or
 - (b) anything of a specified description,
- commenced by or in relation to a Minister of the Crown.
- (5) The Secretary of State may by order make provision for—
- (a) any specified thing, or
 - (b) anything of a specified description,
- done by a Minister of the Crown to have effect as if done by the Assembly.
- (6) The Secretary of State may by order make provision for the substitution of the Assembly for any Minister of the Crown in—
- (a) any specified instrument, contract or legal proceedings, or
 - (b) any instrument, contract or legal proceedings of a specified description.
- (7) An order under this section may be made in consequence of the making of an Order in Council under section 22 or in any other circumstances in which the Secretary of State considers it appropriate to make such an order.
- (8) An order under this section may contain any appropriate consequential, incidental, supplementary or transitional provisions or savings.

26 Transfers of property: supplementary.

- (1) A certificate issued by the Secretary of State that any property has been transferred by—
- (a) section 23, or
 - (b) an order under section 25,
- shall be conclusive evidence of the transfer.
- (2) Section 23 and an order under section 25 shall have effect in relation to property, rights or liabilities to which it applies in spite of any provision (of whatever nature) which would prevent or restrict the transfer of the property, rights or liabilities otherwise than by that section or such an order.

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