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Government of Wales Act 1998

1998 CHAPTER 38

PART V

OTHER PROVISIONS ABOUT THE ASSEMBLY

VALID FROM 01/12/1998

Community law, human rights and international obligations

106 Community law.

- (1) A Community obligation of the United Kingdom is also an obligation of the Assembly if, and to the extent that, the obligation could be implemented (or enabled to be implemented) or complied with by the exercise by the Assembly of any of its functions.
- (2) Subsection (1) does not apply in the case of a Community obligation of the United Kingdom if—
 - (a) it is an obligation to achieve a result defined by reference to a quantity (whether expressed as an amount, proportion or ratio or otherwise), and
 - (b) the quantity relates to the United Kingdom (or to an area including the United Kingdom or to an area consisting of a part of the United Kingdom which includes the whole or part of Wales).
- (3) But if such a Community obligation could (to any extent) be implemented (or enabled to be implemented) or complied with by the exercise by the Assembly of any of its functions, a Minister of the Crown may by order provide for the achievement by the Assembly (in the exercise of its functions) of so much of the result to be achieved under the Community obligation as is specified in the order.
- (4) The order may specify the time by which any part of the result to be achieved by the Assembly is to be achieved.

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- (5) No order shall be made by a Minister of the Crown under subsection (3) unless he has consulted the Assembly.
- (6) Where an order under subsection (3) is in force in relation to a Community obligation, to the extent that the Community obligation involves achieving what is specified in the order it is also an obligation of the Assembly (enforceable as if it were an obligation of the Assembly under subsection (1)).
- (7) The Assembly has no power—
 - (a) to make, confirm or approve any subordinate legislation, or
 - (b) to do any other act,
 so far as the subordinate legislation or act is incompatible with Community law or an obligation under subsection (6).

107 Human rights.

- (1) The Assembly has no power—
 - (a) to make, confirm or approve any subordinate legislation, or
 - (b) to do any other act,
 so far as the subordinate legislation or act is incompatible with any of the Convention rights.
- (2) Subsection (1) does not enable a person—
 - (a) to bring any proceedings in a court or tribunal, or
 - (b) to rely on any of the Convention rights in any such proceedings,
 in respect of an act unless he would be a victim for the purposes of Article 34 of the Convention if proceedings were brought in the European Court of Human Rights in respect of that act.
- (3) Subsection (2) does not apply to the Attorney General, the Assembly, the Advocate General for Scotland ^[F1], the Advocate General for Northern Ireland] or the Attorney General for Northern Ireland.
- (4) Subsection (1)—
 - (a) does not apply to an act which, by virtue of subsection (2) of section 6 of the Human Rights Act 1998, is not unlawful under subsection (1) of that section, and
 - (b) does not enable a court or tribunal to award in respect of an act any damages which it could not award on finding the act unlawful under that subsection.
- (5) In this Act “the Convention rights” has the same meaning as in the Human Rights Act 1998 and in subsection (2) “the Convention” has the same meaning as in that Act.

Textual Amendments

- F1** Words in 107(3) inserted (prosp.) by [Justice \(Northern Ireland\) Act 2002 \(c. 26\)](#), ss. 28, 87, [Sch. 7 para. 6](#)

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108 International obligations.

- (1) If a Minister of the Crown considers that any action proposed to be taken by the Assembly would be incompatible with any international obligation, he may by order direct that the proposed action shall not be taken.
- (2) If a Minister of the Crown considers that any action capable of being taken by the Assembly is required for the purpose of giving effect to any international obligation, he may by order direct the Assembly to take the action.
- (3) If a Minister of the Crown considers that any subordinate legislation made, or which could be revoked, by the Assembly is incompatible with any international obligation, he may by order revoke the legislation.
- (4) An order under subsection (3) may include provision for the order to have effect from a date earlier than that on which it is made; but—
 - (a) such a provision shall not affect any rights or liabilities acquired or incurred before the date on which the order is made, and
 - (b) no person shall be guilty of an offence merely because of such a provision.
- (5) An order under subsection (1), (2) or (3) may contain any appropriate consequential, incidental, supplementary or transitional provisions or savings.
- (6) In this section “international obligation” means an international obligation of the United Kingdom other than—
 - (a) an obligation under Community law, or
 - (b) an obligation not to act (or fail to act) in a way which is incompatible with any of the Convention rights.
- (7) A Minister of the Crown may make an order containing provision such as is specified in subsection (8) where—
 - (a) an international obligation is an obligation to achieve a result defined by reference to a quantity (whether expressed as an amount, proportion or ratio or otherwise), and
 - (b) the quantity relates to the United Kingdom (or to an area including the United Kingdom or to an area consisting of a part of the United Kingdom which includes the whole or part of Wales).
- (8) The provision referred to in subsection (7) is provision for the achievement by the Assembly (in the exercise of its functions) of so much of the result to be achieved under the international obligation as is specified in the order.
- (9) The order may specify the time by which any part of the result to be achieved by the Assembly is to be achieved.
- (10) Where an order under subsection (7) is in force in relation to an international obligation, references to the international obligation in subsections (1) to (3) are to an obligation to achieve so much of the result to be achieved under the international obligation as is specified in the order by the time or times so specified.
- (11) No order shall be made by a Minister of the Crown under subsection (2), (3) or (7) unless he has consulted the Assembly.
- (12) In this section “action” includes making, confirming or approving subordinate legislation.

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