

SCHEDULES

SCHEDULE 3

Section 22(5).

TRANSFER ETC. OF FUNCTIONS: FURTHER PROVISIONS

PART I

FUNCTIONS TRANSFERABLE ETC

Existing and future functions

- 1 (1) Subject to sub-paragraph (2), an Order in Council under section 22 may make provision about any function of a Minister of the Crown (including a function conferred or imposed after the passing of this Act).
- (2) Such an Order in Council may not make provision about any function conferred or imposed by any provision of this Act except—
- (a) section 3(4),
 - (b) section 36(5),
 - (c) paragraph 17(9) of Schedule 9,
 - (d) sections 126 to 143, and
 - (e) Part VII so far as relating to the provisions specified in paragraphs (a) to (d).

Functions relating to culture

- 2 If and to the extent that any function is exercisable by a Minister of the Crown in relation to the Welsh language or any other aspect of Welsh culture it shall be regarded for the purposes of section 22 as exercisable by the Minister in relation to Wales.

Cross-border functions

- 3 (1) The power conferred by section 22 to make an Order in Council about a function so far as exercisable by a Minister of the Crown in relation to Wales includes (as well as power to make provision about a function so far as exercisable by a Minister of the Crown in relation to the whole or any part of Wales) power to make provision about a function so far as exercisable by a Minister of the Crown in relation to—
- (a) a cross-border body, or
 - (b) subject to sub-paragraph (3), an English border area.
- (2) In this Act—
- “cross-border body” means any body (including a government department) or undertaker exercising functions, or carrying on activities, in or with respect to Wales (or any part of Wales) and anywhere else, and

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“English border area” means a part of England adjoining Wales (but not the whole of England).

- (3) An Order in Council under section 22 may only include provision about a function so far as exercisable by a Minister of the Crown in relation to an English border area if—
- (a) the function relates to water resources management, water supply, rivers or other watercourses, control of pollution of water resources, sewerage or land drainage, and
 - (b) the Order in Council makes (or another such Order in Council has made) corresponding provision about the function so far as so exercisable in relation to a part of Wales adjoining England or the whole of Wales.

Functions exercisable beyond the territorial sea

- 4 (1) The power conferred by section 22(1)(c) includes power to direct that any function under—
- (a) Part II of the Food and Environment Protection Act 1985 (deposits in the sea), or
 - (b) Part IV of the Petroleum Act 1998 (abandonment of offshore installations),
- so far as exercisable by a Minister of the Crown in relation to Welsh controlled waters shall be exercisable by the Minister only after consultation with the Assembly.
- (2) In this paragraph “Welsh controlled waters” means so much of the sea beyond the seaward boundary of the territorial sea as is adjacent to Wales.
- (3) The power conferred by section 22(3) includes (in particular) power to determine, or make provision for determining, for the purposes of the definition of “Welsh controlled waters” any boundary between—
- (a) the parts of the sea which are to be treated as adjacent to Wales, and
 - (b) those which are not,
- including power to make different determinations or provision for different purposes; and an order under section 155(2) may include any provision that by virtue of this sub-paragraph may be included in an Order in Council under section 22.

PART II

CONTINUING ROLE FOR TRANSFEROR ETC

Community obligations

- 5 Any power of a Minister of the Crown to make subordinate legislation which has been transferred by an Order in Council under section 22 shall continue to be exercisable by the Minister of the Crown (as it would be had it not been transferred) for the purpose of—
- (a) implementing any Community obligation of the United Kingdom, or enabling any such obligation to be implemented, or enabling any rights enjoyed or to be enjoyed by the United Kingdom under or by virtue of the Community Treaties to be exercised, or
 - (b) dealing with matters arising out of or related to any such obligation or rights or the operation of section 2(1) of the European Communities Act 1972.

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Intervention in case of functions relating to water etc.

- 6 (1) Where it appears to the Secretary of State that the exercise of a relevant transferred environmental function (or the failure to exercise such a function) in any particular case might have a serious adverse impact on—
- (a) water resources,
 - (b) water supply, or
 - (c) the quality of water,
- in England, he may intervene under this paragraph in that case.
- (2) If the Secretary of State intervenes in a case under this paragraph—
- (a) he may in that case exercise the function concerned, and
 - (b) that function shall not in that case be exercisable by the Assembly.
- (3) For the purposes of sub-paragraph (1) a function is a relevant transferred environmental function if it is a function—
- (a) under Part I of the Environmental Protection Act 1990, or
 - (b) under Part II, III or VII of the Water Resources Act 1991,
- and it has been transferred to the Assembly by an Order in Council under section 22 which states that this paragraph is to apply in relation to it.
- (4) An intervention by the Secretary of State under this paragraph shall be made by giving notice to the Assembly.
- (5) The notice—
- (a) shall state the reason for the Secretary of State's intervention,
 - (b) may make provision about the effect of any steps previously taken by the Assembly or any other person, 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 the Secretary of State has made an intervention under this paragraph in a case he shall, in addition to the notice under sub-paragraph (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.

Agreement or consultation

- 7 An Order in Council under section 22 which includes provision—
- (a) transferring to the Assembly any function so far as exercisable by a Minister of the Crown in relation to a cross-border body or an English border area, or
 - (b) directing that any function shall be exercisable by the Assembly in relation to a cross-border body or an English border area concurrently with the Minister of the Crown by whom it is exercisable,
- may provide that (either generally or to such extent as may be specified in the Order in Council) the function may be exercised by the Assembly only with the agreement of, or after consultation with, a Minister of the Crown.

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- 8 If an Order in Council under section 22 includes provision transferring to the Assembly the function of determining a formula for the purposes of section 80 of the Local Government and Housing Act 1989 (calculation of Housing Revenue Account subsidy), the Order in Council may provide that the Assembly shall not exercise the function without the agreement of the Secretary of State to the inclusion in the formula of any variable framed (in whatever way) by reference to rent rebates.
- 9 (1) This paragraph applies where a function is exercisable by a Minister of the Crown—
- (a) only with the agreement of, or after consultation with, another Minister of the Crown, or
 - (b) only with the authorisation of Parliament or either House of Parliament.
- (2) If an Order in Council under section 22 transfers the function, it shall be exercisable by the Assembly free from that requirement unless the Order in Council provides otherwise.
- (3) If an Order in Council under that section directs that the function shall be exercisable by the Assembly concurrently with the Minister of the Crown by whom it is exercisable, the Order in Council may provide that it shall be exercisable by the Assembly free from that requirement.

PART III

SUPPLEMENTARY

Interpretation

- 10 References in section 22 and this Schedule to a Minister of the Crown include references to—
- (a) two or more Ministers of the Crown acting jointly, and
 - (b) an officer of a Minister of the Crown or of a government department,
- and, in relation to functions of such an officer, the references in section 22(1) and this Schedule to the Assembly include a member of the Assembly's staff.
- 11 References in sections 22 to 25 and this Schedule to a Minister of the Crown include a member of the Scottish Executive.

Saving

- 12 An Order in Council under section 22—
- (a) transferring a function exercisable by a Minister of the Crown, or
 - (b) directing that a function shall be so exercisable only with the agreement of, or after consultation with, the Assembly,
- shall not affect the validity of anything done by or in relation to the Minister before the coming into force of the Order in Council.