

# GOVERNMENT OF WALES ACT 2006

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS AND SCHEDULES

#### *Witnesses and documents*

#### *Section 37: Power to call*

166. This section, together with the associated sections 38, 39 and 40, provides the Assembly with powers to require witnesses to appear to give evidence before, or to produce documents to the Assembly, its committees or their sub-committees.
167. The Assembly may, under subsection (1), require any person to attend Assembly proceedings to give evidence, or to produce documents which are in that person's possession or control, concerning any matter relevant to the exercise by the Welsh Ministers of any of their functions and provided the person in question is involved in the exercise of functions or the carrying on of activities in relation to Wales. It is anticipated that persons will almost always attend or produce documents to the Assembly voluntarily, and that this power will only need to be used very rarely.
168. "Assembly proceedings" includes any proceedings of the Assembly, its committees, or sub-committees.
169. "Document" is defined by section 40(6) as anything in which information is recorded in any form. It would therefore include, e.g., a video recording, a computer hard drive, a floppy disk, or CD-Rom. Section 40(6) also provides that a person is taken to comply with a requirement to produce a document on production of a copy of, or an extract of the relevant part of, the document. The information recorded in the document must be produced in a visible and legible form.
170. "Person" is intended to have the same meaning as in the Interpretation Act 1978, i.e. it applies to public bodies and officers, as well as to private bodies such as companies, trusts etc..
171. The Assembly cannot impose a requirement under subsection (1) on a current or former Minister of the Crown, or on anyone serving, or who has served, in a Minister of the Crown's department, in relation to the exercise of the functions of a Minister of the Crown.
172. Under subsection (4) current full-time judges are immune from being required to give evidence or produce a document under subsection (1). Other current and former members of courts (e.g. lay magistrates and Recorders), and current or former members of tribunals, are immune only in relation to the exercise of their functions as such.
173. Subsections (5) and (6) make special provision in relation to persons who are current or former members of staff of the Welsh Assembly Government, or are current or former secondees. Where such a person is required to give evidence or produce documents under subsection (1), then any of the Welsh Ministers, the First Minister or the Counsel General can issue a direction that the person summoned need not comply, and that a specified replacement is to comply instead. This means that it is for the Welsh Ministers

*These notes refer to the Government of Wales Act 2006  
(c.32) which received Royal Assent on 25 July 2006*

to decide which of their staff should appear before the Assembly or its committees. Welsh Ministers will ultimately be answerable to the Assembly for their decisions to direct that a different member of staff from the one identified by the Assembly is to appear.

174. The power under subsection (1) may be exercised by the Audit Committee or, with the authority of the Assembly, by any other committee or sub-committee.
175. No-one is obliged by this section to answer any question or produce any document which they would be entitled to refuse to answer or produce in court proceedings in England and Wales, for example under the privilege against self-incrimination or on grounds of legal privilege.
176. Subsection (9) entitles prosecutors to decline to answer questions or produce documents about particular criminal prosecutions if authorised by the appropriate officer on the grounds that to do so might prejudice criminal proceedings in that case, or would be contrary to the public interest. The appropriate officer for the purpose of subsection (9) is the Counsel General in cases where the criminal proceedings were instituted by or on behalf of the Welsh Ministers, the First Minister or the Counsel General and in all other cases is the Attorney General.