

GOVERNMENT OF WALES ACT 2006

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

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.

Section 38: Notice

177. This section sets out the procedure by which the Assembly exercises its power under section 37(1) to require persons to attend and give evidence at proceedings, or produce documents.
178. Subsections (1) and (2) require the Clerk of the Assembly to give written notice to those who are made subject to a requirement under section 37(1), specifying the following matters:
 - a) in all cases, whether they are being required to attend to give evidence or produce documents to the Assembly itself, or to a specified committee or sub-committee;
 - b) in cases of witnesses required to give evidence, the time and place at which they must attend, and the subjects about which they are required to give evidence;
 - c) in cases of people required to produce documents, the documents which they need to produce, the deadline for producing them, the person to whom they are to produce them and the subject concerning which the documents are required.
179. Notice is to be sent by registered or recorded delivery post. In the case of an individual, it is to be sent to that person's usual or last known address or to an address for service, where one has been given. In any other case (e.g. a limited company, a health board or another public body) the notice is to be sent to the person's registered or principal office.
180. Subsection (5) provides that where the Welsh Ministers, the First Minister, or the Counsel General issue a direction under section 37(6) that a particular person is not to attend or produce documents in response to a requirement under section 37(1), then the person issuing the direction must give notice of having done so. Where the requirement to give evidence or produce documents was imposed for the purposes of the Assembly, notice of a direction under section 37(6) must be given to the Presiding Officer. In other cases, notice of the direction must be given to the chair of the committee or sub-committee for the purposes of which the requirement was imposed.

Section 39: Offences

181. Subsection (1) of this section makes it a criminal offence for a person to whom a notice under section 38(1) has been given to:
 - a) refuse, or fail, without reasonable excuse, to attend proceedings as required by the notice;

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

- b) refuse, or fail, without reasonable excuse, to answer any question concerning the subjects specified in the notice;
 - c) refuse, or fail, without reasonable excuse, to produce a document which the notice required to be produced; or
 - d) intentionally alter, suppress, conceal or destroy any such document.
182. Subsection (1) is subject to the various grounds on which a person may decline to answer a question or produce a document (sections 34(3) and 37(5), (6), (8) and (9)).
183. If a person charged with an offence under subsection (1)(a), (b) or (c) can adduce evidence of a reasonable excuse for the refusal or failure, then it is for the prosecution to prove that the person did not have such an excuse.
184. The penalty in the case of a person found guilty of an offence under subsection (1) is a fine not exceeding level 5 on the standard scale (currently £5,000) or of imprisonment for up to 51 weeks, or both. (Under transitional provisions in paragraph 21 of Schedule 11 the maximum term of imprisonment will be three months until section 281(5) of the Criminal Justice Act 2003 is brought into force.) Offences are triable summarily.
185. Certain senior officers of a body corporate (e.g. a company) are personally liable (in addition to the body corporate itself) to prosecution where they have consented to or connived at the commission of an offence or the offence is attributable to their neglect.

Section 40: General

186. Under this section the Presiding Officer, or any other person authorised by standing orders, may require anyone giving evidence in Assembly proceedings to take an oath (or make an affirmation), and to administer such an oath or affirmation. This section applies both to a person who has been required to attend and to a person who attends by invitation.
187. Subsection (2) creates an offence where a person who has been required by notice under section 38(1) to attend to give evidence in Assembly proceedings refuses to take the oath or make an affirmation when required to do so. Anyone found guilty of such an offence will be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale (currently £5,000) or up to 51 weeks' imprisonment (again, subject to a transitional provision limiting the term to three months until section 281(5) of the Criminal Justice Act 2003 comes into force) or both.
188. Standing orders may provide for the payment of expenses and allowances to people who attend to give evidence to, or produce documents to, the Assembly, its committees and their sub-committees, whether or not they were required to do so by a notice under section 38(1). Standing orders can confer functions in relation to these matters on the Assembly Commission.