

# GOVERNMENT OF WALES ACT 2006

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## EXPLANATORY NOTES

### DETAILED COMMENTARY ON SECTIONS IN PART 2

#### *Ministers, staff, etc*

#### *Section 46: The First Minister*

221. This section provides for the First Minister to be appointed by Her Majesty. Section 47 deals with how the First Minister is chosen. The First Minister may tender resignation to Her Majesty at any time and ceases to hold office when the resignation is accepted. The First Minister would also cease to hold office on the appointment of another person as First Minister.
222. If the office of the First Minister is vacant (for example through resignation or death of the First Minister) or if the First Minister has ceased to be a Member of the Assembly or is for any reason unable to act, the functions of First Minister will be exercisable by a member of the Assembly designated for that purpose by the Presiding Officer. Except where the Assembly has been dissolved or where for any other reason all ministerial posts are vacant (e.g. because all the Welsh Ministers have resigned), the Presiding Officer must designate such a person on the recommendation of the Welsh Ministers. A person so designated as “acting” First Minister will be capable of continuing to exercise the functions of the First Minister even if the Assembly is subsequently dissolved.

#### *Section 47: Choice of the First Minister*

223. While section 46 provides for the First Minister to be appointed by Her Majesty, the person appointed will have been chosen in accordance with this section, which provides for the Assembly to nominate one of its members for appointment as First Minister and for the Presiding Officer to recommend the appointment of that person to Her Majesty.
224. Nomination of an Assembly member for appointment as First Minister is triggered by one of the events mentioned in subsection (2). These are:
- a) the holding of a poll at a general election;
  - b) the Assembly resolving that the Welsh Ministers no longer enjoy the confidence of the Assembly;
  - c) the First Minister tendering resignation to Her Majesty;
  - d) the First Minister dying or becoming permanently unable to act or to tender resignation;
  - e) the First Minister ceasing to be a member of the Assembly, other than on a dissolution (e.g. by resigning from the Assembly).
225. Once one of these events occurs, the Assembly must nominate a First Minister before the end of the period of 28 days after the occurrence of the event in question. If another such event occurs (for example if the holding of a poll at a general election were to

take place within 28 days of a First Minister having tendered resignation) the period is extended to the end of the period of 28 days after that second event. If the Assembly, within the 28 day period, resolves under section 5(2) that it should be dissolved, then the 28 day period ceases and a further 28 day period for nomination of a First Minister will begin when the poll for the consequent extraordinary general election is held.

- 226. If the Assembly fails to make a nomination within the period allowed, then the Secretary of State is required by section 5 to propose a day for the holding of an extraordinary general election.
- 227. Where the Assembly resolves that the Welsh Ministers no longer enjoy the confidence of the Assembly, sections 48 and 50 provide that all Welsh Ministers and Deputy Welsh Ministers resign with immediate effect. The First Minister remains in office with all the functions of that office and of the Welsh Ministers generally, until the Assembly nominates a First Minister (or re-nominates the same person as First Minister). The First Minister could therefore, during that period, appoint Ministers if this were necessary for the efficient and effective administration of government, for example in case of emergencies.

#### **Section 48: Welsh Ministers**

- 228. This section provides for the appointment of Ministers by the First Minister from among members of the Assembly. Appointments require the approval of Her Majesty. The Ministers appointed under this section, together with the First Minister, are known collectively as “the Welsh Ministers”.
- 229. A Minister may be removed from office by the First Minister and may resign at any time. A Minister must resign if the Assembly resolves that the Welsh Ministers no longer enjoy the confidence of the Assembly. Subsection (6) provides that a Minister ceases to hold office immediately upon resigning. A Minister also ceases to hold office upon ceasing to be a member of the Assembly other than by virtue of a dissolution (e.g. by resigning as an Assembly Member).

#### **Section 49: The Counsel General**

- 230. This section provides for there to be a Counsel General who is legal adviser to, and representative in the courts of, the Welsh Assembly Government. The Counsel General is appointed by Her Majesty on the recommendation of the First Minister but with the agreement of the Assembly. The person appointed need not be a member of the Assembly.
- 231. The Counsel General is a member of the Welsh Assembly Government but although the office is of “ministerial” status the holder is not one of “the Welsh Ministers”.
- 232. The Counsel General may resign at any time. Unlike Welsh Ministers and Deputy Welsh Ministers, the Counsel General can only be removed from office by Her Majesty and does not have to resign after a vote of no confidence in the Welsh Ministers. The Counsel General ceases to hold office on the nomination of a First Minister under section 47 (but could of course be re-appointed).
- 233. **Section 34** deals with the participation of the Counsel General in the proceedings of the Assembly and includes provision enabling the Counsel General to decline to provide documents or to answer questions about particular criminal cases (the Counsel General may be conducting criminal proceedings on behalf of the Welsh Assembly Government) if the Counsel General considers that doing so might prejudice the proceedings in that case or would otherwise be contrary to the public interest. If the office of Counsel General is vacant, or if the Counsel General is for any reason unable to act, the functions of the office can, under subsection (6) be exercised by a person designated by the First Minister. There is no requirement for Her Majesty’s approval or the agreement of the Assembly to this designation. The period during which Counsel

General functions can be exercised by virtue of a designation under subsection (6) is limited to a maximum of 6 months and a designation comes to an end if a person is nominated for appointment as First Minister. This ensures that a First Minister who has been newly appointed is not in a position where there is already an acting Counsel General in office.

234. A person who is appointed as Counsel General (or designated to exercise the functions of the office under subsection (6)) cannot also hold, or be appointed to the office of First Minister, or a Welsh Minister or Deputy Welsh Minister.

### ***Section 50: Deputy Welsh Ministers***

235. This section provides for the appointment of Deputy Welsh Ministers by the First Minister, with the approval of Her Majesty, from among members of the Assembly. The function of Deputy Welsh Ministers is to assist the First Minister, Welsh Ministers or the Counsel General in the exercise of their functions. They may be removed from office by the First Minister, may resign at any time and must do so, with immediate effect, if the Assembly resolves that the Welsh Ministers no longer enjoy the confidence of the Assembly. A Deputy Welsh Minister also ceases to hold office on ceasing to be a member of the Assembly other than by reason of a dissolution.

### ***Section 51: Limit on number of Ministers***

236. A limit of 12 is placed on the total number, together, of Welsh Ministers and Deputy Welsh Ministers (but not including the First Minister or the Counsel General).

### ***Section 52: Staff***

237. This section makes provision as respects persons appointed by the Welsh Ministers to be members of the staff of the Welsh Assembly Government. Staff are members of the Home Civil Service and, accordingly, their appointment is subject to the provisions of the Civil Service Order in Council. Responsibility for the management of such staff will therefore ultimately remain with the Minister for the Civil Service (i.e. the Prime Minister) but provision is made enabling responsibility for their day to day management to be delegated in the same way as happens for government departments in the UK Government.
238. The Welsh Ministers are responsible for payment of salary and allowances to or in respect of the staff of the Welsh Assembly Government. Section 1(2) and (3) of the Superannuation Act 1972 have effect as if references to a Minister of the Crown (other than the Minister for the Civil Service) included the Welsh Ministers. This allows functions relating to civil service pensions to be delegated to the Welsh Ministers.
239. The Welsh Ministers are required to make payments to the Minister for the Civil Service of such amounts as the Minister for the Civil Service may determine in respect of the pensions etc. payable to persons who are or have been in service as staff of the Welsh Assembly Government and in respect of any expenses to be incurred in administering those pensions etc.. The Welsh Ministers may also, if they so wish, make payments towards the provision of pensions, allowances and gratuities to or in respect of any person who is or has been a member of staff of the Welsh Assembly Government.
240. Subsection (9) gives statutory effect, in relation to the staff of the Welsh Assembly Government to the application of the “Carltona” principle (see *Carltona Ltd. v. Commissioners of Works* [1948] 2 All ER 560) namely that the functions vested in the Welsh Ministers (or First Minister or Counsel General) may, in the absence of any express statutory prohibition, be exercised in their name and under their authority by officials.

**Section 53: Remuneration**

241. This section is one of two on remuneration of members of the Welsh Assembly Government. It requires the Assembly to make provision for the payment of salaries to members of the Welsh Assembly Government. That is: the First Minister, Welsh Ministers, the Counsel General and Deputy Welsh Ministers. The amount of any salary is a matter for the Assembly to determine. The Assembly can also make provision for the payment of allowances, pensions and gratuities. In respect of pensions, the Assembly can provide for contributions or payments towards such pensions or for the establishment and administration, whether by the Assembly Commission or otherwise, of a pension scheme or schemes.
242. Monies required to make payments under this section are payable out of the Welsh Consolidated Fund and therefore have to be authorised annually by a budget resolution passed by the Assembly.
243. Provision made by the Assembly under this section can be made in the Assembly Standing Orders or by resolutions of the Assembly and both the Standing Orders and any such resolutions can confer functions on the Assembly Commission.
244. The Assembly also has the option of making provision on this matter by way of an Assembly Measure under Part 3 of this Act.

**Section 54: Remuneration: supplementary**

245. Subsection (1) of this section allows for different provisions to be made under section 53 for different cases. This allows the Assembly to provide for different salaries to be paid to the First Minister, Welsh Ministers, the Counsel General and Deputy Welsh Ministers according to the office that they hold in the Welsh Assembly Government.
246. Subsection (2) places a duty on the Assembly to publish, for each financial year, the total amount paid to members of the Welsh Assembly Government by way of salaries and allowances, and the amount of salary and allowances paid to each such individual. It allows the Assembly to do so by requiring the Assembly Commission to publish the information, but places no restriction as to the means used by the Assembly to make this information available.
247. Subsection (3) places a duty on the Assembly Commission, where the Assembly has conferred the power to determine salaries, etc under section 53, to publish every determination of the Assembly Commission as to those matters as soon as possible after a determination is made.
248. Subsection (4) provides that provision made under section 53(3) in respect of pensions or allowances does not affect pensions or allowances in payment before the provision was made.

**Section 55: Oath or affirmation**

249. This section requires the First Minister, Welsh Ministers and the Counsel General, on appointment, to take the official oath under the Promissory Oaths Act 1868. It also requires all members of the Welsh Assembly Government to take the oath of allegiance unless they have already taken it as a member of the Assembly. No payment of salary or allowances may be made until the oath(s) is (are) taken. This section further provides for the oath(s) to be taken before one of the Presiding Judges of the Wales and Chester Circuit

**Section 56: Introduction**

250. This section provides that the Welsh Ministers (and the First Minister and the Counsel General where distinct functions are conferred or imposed specifically on them) are to

have those functions which are conferred or imposed on them by or under the Act itself or by any other enactment or prerogative instrument.

### ***Section 57: Exercise of functions***

251. This section provides that functions may be conferred or imposed on the Welsh Ministers by specifying that they are functions of the Welsh Ministers. When this is done, those functions will be exercisable by any of the Welsh Ministers (including the First Minister). Similarly, any act or omission by or in relation to the First Minister or the other Welsh Ministers is to be treated as an act or omission in relation to each of them, unless the act or omission relates to a function which is that of the First Minister alone. This rule also applies where a function is conferred or imposed on the Counsel General and that function is exercisable concurrently with the First Minister or the Welsh Ministers, so that an act or omission in relation to that function is to be treated as an act or omission of each of them.
252. Functions of the First Minister, the Welsh Ministers and the Counsel General are to be exercisable on behalf of the Crown.

### ***Section 58: Transfer of Ministerial functions***

253. This section provides a mechanism for transferring to the Welsh Ministers (or specifically to the First Minister or to the Counsel General) functions in relation to Wales which are exercisable by a Minister of the Crown. The transfer is to be by Order in Council which will require approval by both Houses of Parliament and by the Welsh Ministers. (Any subsequent Order in Council varying or revoking such an Order would also require such approval).
254. The Order in Council transferring a function to the Welsh Ministers, to the First Minister or to the Counsel General may provide for the function to be exercised concurrently with any other of them.
255. An Order in Council under this section may, instead of transferring functions to the Welsh Ministers (etc.) provide for them to be exercisable, in relation to Wales, concurrently by the Welsh Ministers and by a Minister of the Crown. Where a function continues to be exercisable solely by a Minister of the Crown, an Order in Council may impose a requirement that the Minister in question, when proposing to exercise that function in relation to Wales, must first obtain the agreement of the Welsh Ministers or, alternatively, must first consult them.
256. A number of detailed provisions about the scope and operation of transfers of functions under this section are contained in Schedule 3.

### ***Section 59: Implementation of Community law***

257. This section enables the Welsh Ministers to be designated under section 2(2) of the European Communities Act 1972, thereby empowering them to make provision within the scope of the particular designation, to implement Community obligations or to enable United Kingdom rights under the European Treaties to be enjoyed and for associated purposes. Unless such provision is made by a Minister of the Crown, or relates to an English border area or to a cross-border body (and does not relate solely to functions or activities of that body in relation to Wales), the statutory instrument in which the provision is contained is not required to be laid before Parliament and to be subject to annulment in pursuance of a resolution of either House, but it will instead have to be laid before the Assembly and will be subject to annulment in pursuance of a resolution of the Assembly.
258. The section also confers on the Welsh Ministers the power, with the consent of the Treasury, to make regulations prescribing, or providing for the determination of fees and charges in respect of services provided by them in pursuance of a Community



obligation. Unless they are made together with a Minister of the Crown, relate to an English border area or relate to a cross-border body (and do not relate solely to functions or activities of that body in relation to Wales) no Parliamentary procedures are to apply to such regulations but they will have to be laid before the Assembly instead and will be subject to annulment in pursuance of a resolution of the Assembly.

***Section 60: Promotion etc. of well-being***

259. This section provides the Welsh Ministers with a power to do anything which they consider is appropriate to achieve the promotion of the economic, social or environmental well-being of Wales. The power may be exercised for the benefit of the whole or any part of Wales or of all or any persons resident or present in Wales. If the Welsh Ministers consider that it would promote the economic, social or environmental well-being of Wales it may also be exercised in relation to or for the benefit of areas outside Wales or persons resident or present in any area outside Wales.

***Section 61: Support of culture etc.***

260. This section empowers the Welsh Ministers to do anything which they consider appropriate to support archaeological remains, ancient monuments, buildings and places of historical or architectural interest, historic wrecks, and museums, galleries, and libraries in Wales; to support arts and crafts, archives and historical records, other cultural activities and projects, and sport and recreational activities relating to Wales; and to support the Welsh language.

***Section 62: Representations about any matter affecting Wales***

261. This section enables the Welsh Ministers, the First Minister and the Counsel General to make appropriate representations about any matter affecting Wales.

***Section 63: Consultation about cross-border bodies***

262. This section requires any Minister of the Crown who exercises certain functions in relation to relevant cross-border bodies (i.e. bodies which exercise functions, or carry on activities, of a public nature both in relation to Wales and elsewhere) to consult the Welsh Ministers before doing so. The functions in question are the appointment or removal of the body or the members or office-holders of the body (unless they are not concerned in functions in or with respect to Wales) and other functions which might affect Wales in relation to any matters as respects which the Welsh Ministers may exercise functions. The requirement does not apply if it is not reasonably practicable to comply with it (for example because of the urgency of the matter) but in such a case the Minister of the Crown in question is required to inform the Welsh Ministers of the action as soon as reasonably practicable and to give reasons for it. A failure to comply with the requirement before taking an action does not affect the validity of that action.

***Section 64: Polls for ascertaining views of the public***

263. This section gives the Welsh Ministers the power to hold a poll in the whole, or in any part of Wales, for the purpose of ascertaining the views of those polled as to whether or how the Welsh Ministers should exercise any of their functions (other than the function of making representations about matters affecting Wales). Orders making provision about the conduct of such polls may be made by the Welsh Ministers and are subject to annulment in pursuance of a resolution of the Assembly.

***Section 65: Private bills***

264. Under this section the Welsh Ministers will have the power to promote (or to oppose) any private bill in Parliament.

***Section 66: Provision of information to Treasury***

265. The Treasury is to have the power under this section to require the Welsh Ministers to provide the Treasury with information which is in the possession or under the control of the Welsh Ministers and which is required for the exercise of any of the functions of the Treasury.

***Section 67: Legal proceedings***

266. Under this section the Counsel General, as the representative of the Welsh Ministers in the courts, will be able to institute, defend or appear in any legal proceedings relating to matters with respect to which any functions of the Welsh Ministers, the First Minister of the Counsel General are exercisable, provided the Counsel General considers it appropriate to do so for the promotion or protection of the public interest.

***Section 68: Contracts***

267. This section allows the Secretary of State to make an order applying, subject to any appropriate modifications, the Local Government (Contracts) Act 1997 to contracts entered into by the Welsh Ministers, the First Minister or the Counsel General. A similar provision was contained in section 39 of GoWA. The effect of such an order would be to prevent it being argued in private law proceedings that a contract covered by the order is *ultra vires* and therefore unenforceable. This is intended to protect contractors and lenders dealing with the Welsh Assembly Government.

***Section 69: Charges for documents***

268. This section provides that (subject to any other specific enactment relating to charging for supplying copies of documents or for making documents available for inspection) the Welsh Ministers may charge for supplying copies of any document or any part of a document which they publish or make available for public inspection.

***Section 70: Financial assistance***

269. This section gives the First Minister, the Welsh Ministers and the Counsel General the power to give financial assistance (whether by grant, loan or guarantee) to any person engaged in any activity which the Welsh Ministers consider will secure, or help to secure, the attainment of any objective which they aim to achieve in the exercise of their functions. Conditions may be attached to such assistance.

***Section 71: Supplementary***

270. This section makes it clear that the Welsh Ministers, the First Minister and the Counsel General may do anything which is calculated to facilitate or is conducive or incidental to the exercise of any of their functions.