Government of Wales Act 2006

2006 CHAPTER 32

PART 4

ACTS OF THE ASSEMBLY

Power

107 Acts of the Assembly

(1) The Assembly may make laws, to be known as Acts of the National Assembly for Wales or Deddfau Cynulliad Cenedlaethol Cymru (referred to in this Act as “Acts of the Assembly”).

(2) Proposed Acts of the Assembly are to be known as Bills; and a Bill becomes an Act of the Assembly when it has been passed by the Assembly and has received Royal Assent.

(3) The validity of an Act of the Assembly is not affected by any invalidity in the Assembly proceedings leading to its enactment.

(4) Every Act of the Assembly is to be judicially noticed.

(5) This Part does not affect the power of the Parliament of the United Kingdom to make laws for Wales.

[F1(6) But it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Assembly.]

Textual Amendments

F1 S. 107(6) inserted (31.3.2017) by Wales Act 2017 (c. 4), ss. 2, 71(2)(a) (with Sch. 7 paras. 1, 6)

Commencement Information

I1 S. 107 in force at 5.5.2011 by S.I. 2011/1011, art. 3
F2 108 Legislative competence

Textual Amendments

F2 S. 108A substituted for s.108 (1.4.2018) by Wales Act 2017 (c. 4), ss. 3(1), 71(3) (with Sch. 7 paras. 1, 2, 6); S.I. 2017/1179, reg. 2

[F2 108A Legislative competence

(1) An Act of the Assembly is not law so far as any provision of the Act is outside the Assembly's legislative competence.

(2) A provision is outside that competence so far as any of the following paragraphs apply—

   (a) it extends otherwise than only to England and Wales;
   (b) it applies otherwise than in relation to Wales or confers, imposes, modifies or removes (or gives power to confer, impose, modify or remove) functions exercisable otherwise than in relation to Wales;
   (c) it relates to reserved matters (see Schedule 7A);
   (d) it breaches any of the restrictions in Part 1 of Schedule 7B, having regard to any exception in Part 2 of that Schedule from those restrictions;
   (e) it is incompatible with the Convention rights or with EU law.

(3) But subsection (2)(b) does not apply to a provision that—

   (a) is ancillary to a provision of any Act of the Assembly or Assembly Measure or to a devolved provision of an Act of Parliament, and
   (b) has no greater effect otherwise than in relation to Wales, or in relation to functions exercisable otherwise than in relation to Wales, than is necessary to give effect to the purpose of that provision.

(4) For this purpose, a provision of an Act of Parliament is ““devolved”” if it would be within the Assembly's legislative competence if it were contained in an Act of the Assembly (ignoring any requirement for consent or consultation imposed under paragraph 8, 10 or 11 of Schedule 7B or otherwise).

(5) In determining what is necessary for the purposes of subsection (3), any power to make laws other than that of the Assembly is disregarded.

(6) The question whether a provision of an Act of the Assembly relates to a reserved matter is determined by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances.

(7) For the purposes of this Act a provision is ancillary to another provision if it—

   (a) provides for the enforcement of the other provision or is otherwise appropriate for making that provision effective, or
   (b) is otherwise incidental to, or consequential on, that provision.]
109 Legislative competence: supplementary

(1) Her Majesty may by Order in Council amend [\textsuperscript{F3}Schedule 7A or 7B].

(2) An Order in Council under this section may make such modifications of—

(a) any enactment (including any enactment comprised in or made under this Act) or prerogative instrument, or

(b) any other instrument or document, as Her Majesty considers appropriate in connection with the provision made by the Order in Council.

(3) An Order in Council under this section may make provision having retrospective effect.

(4) No recommendation is to be made to Her Majesty in Council to make an Order in Council under this section unless a draft of the statutory instrument containing the Order in Council [\textsuperscript{F4}has been laid before, and approved by a resolution of, each House of Parliament and the Assembly].

[\textsuperscript{F5}(5) Any alteration of Schedule 7A or 7B, whether by virtue of the making, revocation or expiry of an Order in Council under this section or otherwise, does not (unless an enactment provides otherwise) affect—

(a) the validity of an Act of the Assembly passed before the alteration takes effect, or

(b) the previous or continuing operation of such an Act of the Assembly.]

Textual Amendments

F3 Words in s. 109(1) substituted (1.4.2018) by Wales Act 2017 (c. 4), s. 71(4), Sch. 6 para. 3(2) (with Sch. 7 paras. 1, 6); S.I. 2017/1179, reg. 3(q)

F4 Words in s. 109(4) substituted for s. 109(4)(a)(b) (1.4.2018) by Wales Act 2017 (c. 4), s. 71(4), Sch. 6 para. 3(3) (with Sch. 7 paras. 1, 6); S.I. 2017/1179, reg. 3(q)

F5 S. 109(5) substituted (1.4.2018) by Wales Act 2017 (c. 4), s. 71(4), Sch. 6 para. 3(4) (with Sch. 7 paras. 1, 6); S.I. 2017/1179, reg. 3(q)

[\textsuperscript{F8}109A Legislative competence: restriction relating to retained EU law

(1) An Act of the Assembly cannot modify, or confer power by subordinate legislation to modify, retained EU law so far as the modification is of a description specified in regulations made by a Minister of the Crown.
(2) But subsection (1) does not apply to any modification so far as it would, immediately before exit day, have been within the Assembly’s legislative competence.

(3) No regulations are to be made under this section unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.

(4) A Minister of the Crown must not lay a draft as mentioned in subsection (3) unless—
   (a) the Assembly has made a consent decision in relation to the laying of the draft, or
   (b) the 40 day period has ended without the Assembly having made such a decision.

(5) For the purposes of subsection (4) a consent decision is—
   (a) a decision to agree a motion consenting to the laying of the draft,
   (b) a decision not to agree a motion consenting to the laying of the draft, or
   (c) a decision to agree a motion refusing to consent to the laying of the draft;
   and a consent decision is made when the Assembly first makes a decision falling within any of paragraphs (a) to (c) (whether or not it subsequently makes another such decision).

(6) A Minister of the Crown who is proposing to lay a draft as mentioned in subsection (3) must—
   (a) provide a copy of the draft to the Welsh Ministers, and
   (b) inform the Presiding Officer that a copy has been so provided.

(7) See also section 157ZA (duty to make explanatory statement about regulations under this section including a duty to explain any decision to lay a draft without the consent of the Assembly).

(8) No regulations may be made under this section after the end of the period of two years beginning with exit day.

(9) Subsection (8) does not affect the continuation in force of regulations made under this section at or before the end of the period mentioned in that subsection.

(10) Any regulations under this section which are in force at the end of the period of five years beginning with the time at which they came into force are revoked in their application to any Act of the Assembly which receives Royal Assent after the end of that period.

(11) Subsections (4) to (9) do not apply in relation to regulations which only relate to a revocation of a specification.

(12) In this section—
   “the 40 day period” means the period of 40 days beginning with the day on which a copy of the draft instrument is provided to the Welsh Ministers, and, in calculating that period, no account is to be taken of any time during which the Assembly is dissolved or during which it is in recess for more than four days.]
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Government of Wales Act 2006. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

F6  S. 109A inserted (26.6.2018 for specified purposes) by European Union (Withdrawal) Act 2018 (c. 16), ss. 12(4), 25(2)(b) (with s. 19, Sch. 2 paras. 3(5), 14(5), Sch. 8 para. 37, Sch. 8 para. 41)

Modifications etc. (not altering text)

C3  S. 109A: power to repeal conferred (4.7.2018) by European Union (Withdrawal) Act 2018 (c. 16), ss. 12(9)-(11), 25(4) (with s. 19, Sch. 8 paras. 37, 41); S.I. 2018/808, reg. 3(c)
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View outstanding changes

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<td>Whole provisions yet to be inserted into this Act (including any effects on those provisions):</td>
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<tr>
<td>– s. 155A inserted by 2014 c. 29 s. 10</td>
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<tr>
<td>– Sch. 7 Pt. 1 para. 5 words inserted by 2017 c. 29 Sch. 12 para. 23</td>
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<tr>
<td>– Sch. 7A Section C15 para. 92 omitted by 2017 c. 4 s. 48(1)(a)</td>
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<td>– Sch. 7A Section C15 para. 93 words omitted by 2017 c. 4 s. 48(1)(b)</td>
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<td>– Sch. 7B para. 9(6)(d) inserted by S.I. 2019/1506 art. 2(2)</td>
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