



# Wales Act 2017

## 2017 CHAPTER 4

### PART 1

#### CONSTITUTIONAL ARRANGEMENTS

##### *Permanence of the National Assembly for Wales and Welsh Government*

#### **1 Permanence of the National Assembly for Wales and Welsh Government**

In the Government of Wales Act 2006, before Part 1 (National Assembly for Wales) insert—

#### **“PART A1**

##### PERMANENCE OF THE ASSEMBLY AND WELSH GOVERNMENT

#### **A1 Permanence of the Assembly and Welsh Government**

- (1) The Assembly established by Part 1 and the Welsh Government established by Part 2 are a permanent part of the United Kingdom's constitutional arrangements.
- (2) The purpose of this section is, with due regard to the other provisions of this Act, to signify the commitment of the Parliament and Government of the United Kingdom to the Assembly and the Welsh Government.
- (3) In view of that commitment it is declared that the Assembly and the Welsh Government are not to be abolished except on the basis of a decision of the people of Wales voting in a referendum.

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## A2 Recognition of Welsh law

- (1) The law that applies in Wales includes a body of Welsh law made by the Assembly and the Welsh Ministers.
- (2) The purpose of this section is, with due regard to the other provisions of this Act, to recognise the ability of the Assembly and the Welsh Ministers to make law forming part of the law of England and Wales.”

*Convention about Parliament legislating on devolved matters*

## 2 Convention about Parliament legislating on devolved matters

In section 107 of the Government of Wales Act 2006 (Acts of the National Assembly for Wales), after subsection (5) insert—

“(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.”

VALID FROM 01/04/2018

### *Legislative competence*

## 3 Legislative competence

- (1) For section 108 of the Government of Wales Act 2006 (legislative competence) substitute—

### “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

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- (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.”
- (2) For Schedule 7 to that Act (Acts of the Assembly) substitute—
  - (a) the Schedule 7A set out in Schedule 1 to this Act, and
  - (b) the Schedule 7B set out in Schedule 2 to this Act.

#### 4 Devolved Welsh authorities

- (1) After section 157 of the Government of Wales Act 2006 insert—

##### “157A Devolved Welsh authority”

- (1) In this Act ““devolved Welsh authority”” means—
  - (a) a public authority that meets the conditions in subsection (2),
  - (b) a public authority that is specified, or is of a description specified, in Schedule 9A (whether or not it meets those conditions), or
  - (c) the governing body of an institution within the higher education sector (within the meaning of section 91(5) of the Further and Higher Education Act 1992) whose activities are carried on, or principally carried on, in Wales.
- (2) A public authority meets the conditions in this section if its functions—
  - (a) are exercisable only in relation to Wales, and
  - (b) are wholly or mainly functions that do not relate to reserved matters.
- (3) In determining for the purposes of this section whether functions of a public authority are exercisable only in relation to Wales, no account is taken of any function that—
  - (a) is exercisable otherwise than in relation to Wales, and
  - (b) could (apart from this paragraph) be conferred or imposed by provision falling within the Assembly's legislative competence (by virtue of section 108A(3)).

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- (4) Where the conditions in subsection (2) are relevant to determining whether a provision of an Act of the Assembly is within the Assembly's legislative competence, the time for assessing whether those conditions are met is the time when the Act is passed.
- (5) Her Majesty may by Order in Council amend Schedule 9A—
- (a) so as to remove or revise an entry, or
  - (b) so as to add or substitute a public authority whose functions—
    - (i) are exercisable wholly or mainly in relation to Wales, and
    - (ii) are wholly or mainly functions that do not relate to reserved matters.
- (6) 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 has been laid before, and approved by a resolution of, each House of Parliament and the Assembly.
- (7) Subsection (6) does not apply to a statutory instrument containing an Order in Council that only makes provision for—
- (a) the omission of an entry where the authority concerned has ceased to exist, or
  - (b) the variation of an entry in consequence of a change of name or transfer of functions.

Such an Order in Council is subject to annulment in pursuance of a resolution of either House of Parliament.

- (8) In this section “public authority” means a body, office or holder of an office that has functions of a public nature.”

(2) After Schedule 9 to that Act insert the Schedule 9A set out in Schedule 3 to this Act.

VALID FROM 01/04/2018

### *Elections*

#### **5 Power to make provision about elections**

- (1) For section 13 of the Government of Wales Act 2006 (power to make provision about elections etc) substitute—

##### **“13 Power of the Welsh Ministers to make provision about elections etc**

- (1) The Welsh Ministers may by order make provision that would be within the legislative competence of the Assembly, if included in an Act of the Assembly, as to—
- (a) the conduct of elections of Assembly members,
  - (b) the questioning of an election of Assembly members and the consequences of irregularities, and
  - (c) the return of an Assembly member otherwise than at an election.

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- (2) The provision that may be made under subsection (1)(a) includes, in particular, provision—
- (a) about the registration of electors,
  - (b) for disregarding alterations in a register of electors,
  - (c) about the limitation of the election expenses of candidates (and the creation of criminal offences in connection with the limitation of such expenses),
  - (d) for the combination of polls,
  - (e) for modifying the application of sections 6 and 8(2) where the poll at an election for the return of an Assembly constituency member is abandoned (or notice of it is countermanded), and
  - (f) for modifying section 9(7) to ensure the allocation of the correct number of seats for the region.
- (3) The provision that may be made under subsection (1)(c) includes, in particular, provision modifying section 11(3) to (5).
- (4) An order under this section may—
- (a) apply or incorporate, with or without modifications or exceptions, any provision of or made under the election enactments, and
  - (b) so far as may be necessary in consequence of any provision made by an order under this section, make modifications of any provision made by or under any enactment relating to the registration of parliamentary electors or local government electors.
- (5) In subsection (4)(a) “the election enactments” means—
- (a) the Representation of the People Acts,
  - (b) the Political Parties, Elections and Referendums Act 2000,
  - (c) the European Parliamentary Elections Act 2002, and
  - (d) any other enactments relating to parliamentary elections, European Parliamentary elections or local government elections.
- (6) No return of an Assembly member at an election may be questioned except by an election petition under the provisions of Part 3 of the Representation of the People Act 1983 as applied or incorporated in an order under this section.
- (7) No order is to be made under this section unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Assembly.

### **13A Power of the Secretary of State to make provision about the combination of polls**

- (1) The Secretary of State may by regulations make provision for—
- (a) the combination of polls at ordinary general elections of Assembly members with polls at the elections listed in subsection (2), and
  - (b) the combination of polls at extraordinary general elections of Assembly members, and by-elections for the return of Assembly members, with polls at the elections listed in subsections (2) and (3).
- (2) The elections are—

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- (a) early parliamentary general elections,
  - (b) parliamentary by-elections, and
  - (c) European Parliamentary by-elections.
- (3) The elections are—
- (a) parliamentary general elections, and
  - (b) European Parliamentary general elections.
- (4) The Secretary of State may not make regulations under this section without the agreement of the Welsh Ministers.
- (5) Regulations under this section may—
- (a) apply or incorporate, with or without modifications or exceptions, any provision made by or under the election enactments, and
  - (b) modify any form contained in, or in regulations or rules made under, the Representation of the People Acts so far as may be necessary to enable it to be used both for the original purpose and in relation to elections of Assembly members.
- (6) In subsection (5)(a) “the election enactments” has the meaning given by section 13(5).
- (7) 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.”
- (2) In section 15 of the Representation of the People Act 1985 (combination of polls), after subsection (5C) insert—
- “(5D) Before making provision under subsection (5) in connection with the combination of polls where one of the elections is a local government election in Wales, the Secretary of State must consult the Welsh Ministers.”
- (3) In section 7 of the Political Parties, Elections and Referendums Act 2000 (Commission to be consulted on changes to electoral law), in subsection (2)(f), after “64(3)” insert “ or regulations under section 13A ”.

## 6 Timing of elections

- (1) Section 3 of the Government of Wales Act 2006 (ordinary general elections) is amended as set out in subsections (2) to (5).
- (2) In subsection (1), for the words after ““was held,”” substitute “unless—
- (a) subsection (1A) prevents the poll being held on that day, or
  - (b) the day of the poll is determined by a proclamation under section 4.”
- (3) After subsection (1) insert—
- “(1A) The poll is not to be held on the same date as the date of the poll at—
- (a) a parliamentary general election (other than an early parliamentary general election), or
  - (b) a European Parliamentary general election.
- (1B) Where subsection (1A) prevents the poll being held on the day specified in subsection (1), the poll is to be held on such day, subject to subsection (1A),

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as the Welsh Ministers may by order specify unless the day of the poll is determined by a proclamation under section 4(2) as modified by section 4(2A).”

(4) In subsection (2), after ““May”” insert “ or on the day specified by an order under subsection (1B) ”.

(5) After subsection (4) insert—

“(5) No order is to be made under subsection (1B) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Assembly.”

(6) Section 4 of that Act (power to vary date of ordinary general election) is amended in as set out in subsections (7) to (11).

(7) For subsections (1) and (2) substitute—

“(1) Subject to section 3(1A), the Presiding Officer may propose, for the holding of the poll at an ordinary general election, a day which is not more than one month earlier, nor more than one month later, than the first Thursday in May.

(2) If the Presiding Officer proposes a day under subsection (1), Her Majesty may by proclamation under the Welsh Seal—

- (a) dissolve the Assembly,
- (b) require the poll at the election to be held on the day proposed, and
- (c) require the Assembly to meet within the period of seven days beginning immediately after the day of the poll.

(2A) Where a day is specified by an order under section 3(1B), subsection (1) applies as if the reference to the first Thursday in May were a reference to that day.”

(8) In subsection (3), for ““(2)(b)”” substitute “ (2)(c) ”.

(9) In subsection (4)—

- (a) for ““An order under this section may”” substitute “ The Welsh Ministers may by order ”;
- (b) for ““Secretary of State considers”” substitute “ Welsh Ministers consider ”;
- (c) after ““poll”” insert “ under this section ”.

(10) Omit subsection (5).

(11) In subsection (6), for ““either House of Parliament”” substitute “ the Assembly ”.

(12) Section 5 of that Act (extraordinary general elections) is amended as set out in subsections (13) and (14).

(13) In subsection (1), for ““Secretary of State”” substitute “ Presiding Officer ”.

(14) In subsection (4)—

- (a) for ““Secretary of State”” substitute “ Presiding Officer ”;
- (b) for ““Order in Council”” substitute “ proclamation under the Welsh Seal ”.

(15) The Representation of the People Act 1983 is amended as set out in subsections (16) to (20).

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- (16) In section 37 (ordinary day of local elections in England and Wales)—
- (a) in subsection (1), and in the heading, omit ““and Wales””;
  - (b) in subsection (2A), for the words after ““under”” substitute “ section 37A. ”

(17) After that section insert—

**“37ZA Ordinary day of local elections in Wales**

- (1) In every year the ordinary day of election of councillors is the same for all local government areas in Wales and, subject to section 37B, and unless subsection (2) applies, is—
    - (a) the first Thursday in May;
    - (b) such other day as may be fixed by the Welsh Ministers by order made not later than 1st February in the year preceding the year (or, in the case of an order affecting more than one year, the first year) in which the order is to take effect.
  - (2) The ordinary day of election of councillors is not the day specified in or fixed under subsection (1) if that day is the day of the poll at an ordinary general election of members of the National Assembly for Wales.
  - (3) Where under subsection (2) the ordinary day of election of councillors is not the day specified in or fixed under subsection (1), it is such other day as the Welsh Ministers may by order specify.
  - (4) The power to make an order under subsection (1)(b) or (3) is exercisable by statutory instrument.
  - (5) A statutory instrument containing an order under subsection (3) may not be made unless a draft of the instrument has been laid before and approved by a resolution of the National Assembly for Wales.”
- (18) Section 37B (power to change date of local elections to date of European Parliamentary general election: Wales) is amended as follows.
- (19) After subsection (1) insert—
- “(1A) The Welsh Ministers may not make an order under this section if the date of the poll at the European Parliamentary general election is the same date as the poll at an ordinary general election of members of the National Assembly for Wales.”
- (20) In subsection (4)(b), for ““37(1)(b)”” substitute “ 37ZA(1)(b) ”.

**7 Electoral registration: the digital service**

- (1) Section 10ZC of the Representation of the People Act 1983 (registration of electors in Great Britain) is amended as set out in subsections (2) to (4).
- (2) In subsection (4)—
  - (a) for ““this section, so far as”” substitute “this section—
    - (a) so far as”;
  - (b) at the end insert “, and



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- (b) so far as it is exercisable by a Minister of the Crown to make provision about a UK digital service in relation to elections in Wales, is exercisable by the Welsh Ministers concurrently with that Minister.”

- (3) After subsection (5) insert—

“(5A) The power of the Welsh Ministers to make regulations by virtue of subsection (4) is not exercisable without the agreement of a Minister of the Crown.

(5B) A statutory instrument containing regulations made by the Welsh Ministers by virtue of subsection (4) is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”

- (4) In subsection (6), after the definition of ““election in Scotland”” insert—

““election in Wales”” means—

- (a) an election of Assembly members, or
- (b) a local government election in Wales;”.

- (5) Section 10ZD of that Act (registration of electors in Great Britain: alterations) is amended as set out in subsections (6) to (8).

- (6) In subsection (4)—

(a) for ““this section, so far as”” substitute “this section—

(a) so far as”;

(b) at the end insert “, and

(b) so far as it is exercisable by a Minister of the Crown to make provision about a UK digital service in relation to elections in Wales, is exercisable by the Welsh Ministers concurrently with that Minister.”

- (7) After subsection (5) insert—

“(5A) The power of the Welsh Ministers to make regulations by virtue of subsection (4) is not exercisable without the agreement of a Minister of the Crown.

(5B) A statutory instrument containing regulations made by the Welsh Ministers by virtue of subsection (4) is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”

- (8) In subsection (6), after ““election in Scotland”” insert “, election in Wales”.

- (9) Section 53 of that Act (power to make regulations about registration etc) is amended as set out in subsections (10) to (12).

- (10) In subsection (9)—

(a) for ““this section, so far as”” substitute “this section—

(a) so far as”;

(b) at the end insert “, and

(b) so far as it is exercisable by a Minister of the Crown to make provision about a UK digital service in relation to elections

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in Wales, is exercisable by the Welsh Ministers concurrently with that Minister.”

(11) After subsection (10) insert—

“(10A) The power of the Welsh Ministers to make regulations by virtue of subsection (9) is not exercisable without the agreement of a Minister of the Crown.

(10B) A statutory instrument containing regulations made by the Welsh Ministers by virtue of subsection (9) is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”

(12) In subsection (11), after the definition of ““election in Scotland”” insert—

““election in Wales”” means—

- (a) an election of Assembly members, or
- (b) a local government election in Wales;”.

## 8 Elections of police and crime commissioners

(1) Section 50 of the Police Reform and Social Responsibility Act 2011 (timing of ordinary election of police and crime commissioners) is amended as set out in subsections (2) to (4).

(2) In subsection (3), for ““the ordinary day of election”” substitute “ the first Thursday in May ”.

(3) In subsection (5)—

- (a) in paragraph (a), for ““the ordinary day of election”” substitute “ the first Thursday in May ”;
- (b) in paragraph (b), for the words from ““the ordinary day of election”” to ““in relation to Wales,”” substitute “ the first Thursday in May ”.

(4) Omit subsection (6).

(5) In section 51 of that Act (election to fill vacancy in office of commissioner), for subsection (6) substitute—

“(6) A person is a relevant elector for the purposes of subsection (5) in relation to a police area in England if the person is registered in a register of local government electors in respect of an address within the police area.

(6A) A person is a relevant elector for the purposes of subsection (5) in relation to a police area in Wales if subsection (6B) or (6C) applies.

(6B) This subsection applies if—

- (a) the person is registered in a register of parliamentary electors in respect of an address within the police area, and
- (b) the registration is not in pursuance of an overseas elector’s declaration.

(6C) This subsection applies if—

- (a) the person is disqualified as a peer from voting as an elector at parliamentary elections, or is a relevant citizen of the Union, and

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- (b) the person is registered in a register of local government electors in respect of an address within the police area.”
- (6) Section 52 of that Act (persons entitled to vote) is amended as set out in subsections (7) and (8).
- (7) In subsection (1), after ““a police area”” insert “ in England ”.
- (8) After subsection (1) insert—
- “(1A) A person is entitled to vote as an elector at an election of a police and crime commissioner for a police area in Wales if subsection (1B) or (1C) applies.
- (1B) This subsection applies if on the date of the poll—
- (a) the person would be entitled to vote as an elector at a parliamentary election in a constituency wholly or partly comprised in the police area,
  - (b) the address in respect of which the person is registered in the register of parliamentary electors for that constituency is within the police area, and
  - (c) the registration is not in pursuance of an overseas elector's declaration.
- (1C) This subsection applies if on the date of the poll—
- (a) the person is disqualified as a peer from voting as an elector at parliamentary elections, or is a relevant citizen of the Union who has attained the age of 18,
  - (b) the person would be entitled to vote as an elector at a local government election in an electoral area wholly or partly comprised in the police area, and
  - (c) the address in respect of which the person is registered in the register of local government electors for that electoral area is within the police area.”

(9) Section 64 of that Act (disqualification for election as police and crime commissioner) is amended as set out in subsections (10) and (11).

(10) In subsection (1), after ““a police area”” insert “ in England ”.

(11) After subsection (1) insert—

“(1A) A person is disqualified from being elected to the office of police and crime commissioner for a police area in Wales at any election unless—

    - (a) the person has attained the age of 18 when nominated as a candidate at the election, and
    - (b) on each relevant day subsection (1B) or (1C) applies.

(1B) This subsection applies if—

    - (a) the person is registered in a register of parliamentary electors in respect of an address within the police area, and
    - (b) the registration is not in pursuance of an overseas elector's declaration.

(1C) This subsection applies if—

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- (a) the person is disqualified as a peer from voting as an elector at parliamentary elections, or is a relevant citizen of the Union, and
- (b) the person is registered in a register of local government electors in respect of an address within the police area.”

(12) In section 102 of that Act (interpretation of Part 1), in subsection (1), at the appropriate places insert—

““overseas elector's declaration”” has the meaning given by section 2 of the Representation of the People Act 1985;”;

““relevant citizen of the Union”” has the meaning given by section 202(1) of the Representation of the People Act 1983;”.

*Other provision about legislation by the Assembly*

## 9 Super-majority requirement for certain legislation

In the Government of Wales Act 2006, after section 111 insert—

### “111A Bills with protected subject-matter: super-majority requirement

- (1) For the purposes of this Part a provision of a Bill relates to a protected subject-matter if it would modify, or confer power to modify, any of the matters listed in subsection (2) (but not if the provision is incidental to or consequential on another provision of the Bill).
- (2) The matters are—
  - (a) the name of the Assembly,
  - (b) the persons entitled to vote as electors at an election for membership of the Assembly,
  - (c) the system by which members of the Assembly are returned,
  - (d) the specification or number of constituencies, regions or any equivalent electoral area,
  - (e) the number of members to be returned for each constituency, region or equivalent electoral area, and
  - (f) the number of persons who may hold the office of Welsh Minister appointed under section 48 or the office of Deputy Welsh Minister.
- (3) The Presiding Officer must, after the last time when a Bill may be amended but before the decision whether to pass or reject it—
  - (a) decide whether or not, in the view of the Presiding Officer, any provision of the Bill relates to a protected subject-matter, and
  - (b) state that decision.
- (4) If the Presiding Officer decides that any provision of the Bill relates to a protected subject-matter, the Bill is not passed unless the number of Assembly members voting in favour of it at the final stage is at least two-thirds of the total number of Assembly seats.

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### **111B Scrutiny of Bills by the Supreme Court (protected subject-matter)**

- (1) The Counsel General or the Attorney General may refer the question whether any provision of a Bill relates to a protected subject-matter to the Supreme Court for decision.
- (2) Subject to subsection (3), the Counsel General or the Attorney General may make a reference in relation to a Bill—
  - (a) at any time during the period of four weeks beginning with the rejection of the Bill, if the Presiding Officer has decided under section 111A(3) that a provision of the Bill relates to a protected subject-matter, or
  - (b) at any time during the period of four weeks beginning with the passing of the Bill, if the Presiding Officer has decided under section 111A(3) that no provision of the Bill relates to a protected subject-matter, unless the number of Assembly members voting in favour of the Bill at its passing is at least two-thirds of the total number of Assembly seats.
- (3) No reference may be made in relation to a Bill—
  - (a) by the Counsel General if the Counsel General has notified the Presiding Officer that no reference is to be made in relation to it by the Counsel General, or
  - (b) by the Attorney General if the Attorney General has notified the Presiding Officer that no reference is to be made in relation to it by the Attorney General.
- (4) But subsection (3) does not apply if the Bill has, since the notification, been approved or rejected in accordance with standing orders made by virtue of section 111(7).”

#### **Commencement Information**

**II** S. 9 in force for specified purposes at 31.3.2017, see s. 71(2)(c)

## **10 Super-majority requirement: amendments relating to procedure etc**

- (1) Section 111 of the Government of Wales Act 2006 (proceedings on Bills) is amended as set out in subsections (2) to (5).
- (2) In subsection (6), before paragraph (a) insert—
  - “(za) the Supreme Court decides on a reference made in relation to the Bill under section 111B(2)(b) (reference following Presiding Officer’s decision that Bill does not contain protected subject-matter) that any provision of the Bill relates to a protected subject-matter.”.
- (3) After subsection (6) insert—
  - “(6A) The standing orders must provide for an opportunity for the reconsideration of a Bill after its rejection if (and only if), on a reference made in relation to the Bill under section 111B(2)(a) (reference following Presiding Officer’s decision that Bill contains protected subject-matter), the Supreme Court decides that no provision that is subject to the reference relates to a protected subject-matter.”

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(4) For subsection (7) substitute—

“(7) The standing orders must, in particular, ensure that—

- (a) any Bill amended on reconsideration in accordance with standing orders made by virtue of subsection (6)(a), (b) or (c), and
- (b) any Bill reconsidered in accordance with standing orders made by virtue of subsection (6)(za) or (6A),

is subject to a final stage at which it can be approved or rejected.”

(5) In subsection (8)—

- (a) after ““109(5)”” insert “ , 111A(3) and (4), 111B(2)(b) ”;
- (b) for ““which has been amended on reconsideration”” substitute “ to which subsection (7)(a) or (b) applies ”.

(6) In section 112 of that Act—

- (a) in the heading, at the end insert “ (legislative competence) ”;
- (b) in subsection (2)(b) omit ““subsequent””.

(7) In section 114 of that Act (power of Secretary of State to intervene), in subsection (4)

- (a) in paragraph (b) omit ““subsequent””;
- (b) in paragraph (c), after ““section”” insert “ 111B or ”.

(8) In section 115 of that Act (Royal Assent)—

- (a) in subsection (2)(a), after ““section”” insert “ 111B or ”;
- (b) after subsection (3) insert—

“(3A) The Presiding Officer may not submit a Bill for Royal Assent if the Supreme Court has decided on a reference made in relation to the Bill under section 111B(2)(b) (reference following Presiding Officer's decision that Bill does not contain protected subject-matter) that any provision of the Bill relates to a protected subject-matter unless, since the decision, the Bill has been approved in accordance with standing orders made by virtue of section 111(7).”

#### Commencement Information

**I2** S. 10 in force for specified purposes at 31.3.2017, see s. 71(2)(c)

VALID FROM 01/04/2018

#### **11 Introduction of Bills: justice impact assessment**

After section 110 of the Government of Wales Act 2006 insert—

##### **“110A Introduction of Bills: justice impact assessment**

- (1) The standing orders must include provision requiring the person in charge of a Bill, on or before the introduction of the Bill, to make a written statement

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setting out the potential impact (if any) on the justice system in England and Wales of the provisions of the Bill (a “justice impact assessment”).

- (2) The form of the justice impact assessment and the manner in which it is to be made are to be determined under the standing orders.
- (3) The standing orders must provide for the justice impact assessment to be published.”

VALID FROM 01/04/2018

## 12 Submission of Bills for Royal Assent: role of Presiding Officer

- (1) In section 115 of the Government of Wales Act 2006, in subsections (1), (2) and (3), for ““Clerk”” substitute “ Presiding Officer ”.
- (2) In consequence of the amendments made by subsection (1)—
  - (a) in section 112(3) of that Act (scrutiny of Bills by Supreme Court for legislative competence: notification of lack of reference), in paragraphs (a) and (b), for ““Clerk”” substitute “ Presiding Officer ”;
  - (b) in section 113(2)(a) of that Act (ECJ references), for ““Clerk”” substitute “ Presiding Officer ”;
  - (c) in section 114 of that Act (power of Secretary of State to intervene), in subsections (2) and (5), for ““Clerk”” substitute “ Presiding Officer ”.

*Other provision about the Assembly*

VALID FROM 01/04/2018

## 13 Financial control, accounts and audit

- (1) Omit section 119 of the Government of Wales Act 2006 (statement of estimated payments).
- (2) In section 124 of that Act (payments out of Welsh Consolidated Fund), after subsection (4) insert—

“(4A) A sum paid out of the Welsh Consolidated Fund may not be applied for any purpose other than that for which it was charged or (as the case may be) paid out.”
- (3) After section 130 of that Act insert—

### “130A Financial control, accounts and audit

- (1) Welsh legislation must provide—
  - (a) for proper accounts to be prepared by the First Minister, the Welsh Ministers, the Counsel General, the Assembly Commission and by other persons to whom sums are paid out of the Welsh Consolidated Fund, of their expenditure and receipts,

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- (b) for the Welsh Ministers to prepare an account of payments into and out of the Fund,
- (c) for the Auditor General for Wales to exercise, or ensure the exercise by other persons of, the functions mentioned in subsection (2),
- (d) for access by persons exercising those functions to such documents as they may reasonably require,
- (e) for members of the staff of the Welsh Government and Assembly Commission designated for the purpose to be answerable to the Assembly in respect of the expenditure and receipts of each part of the Welsh Government or Assembly Commission, and
- (f) for the publication of Assembly accounts and of reports on such accounts and for the laying of such accounts and reports before the Assembly.

(2) The functions referred to in subsection (1)(c) are—

- (a) issuing credits for the payment of sums out of the Fund;
- (b) examining Assembly accounts (which includes determining whether sums paid out of the Fund have been paid out and applied in accordance with section 124), and certifying and reporting on them;
- (c) carrying out examinations into the economy, efficiency and effectiveness with which the First Minister, the Welsh Ministers, the Counsel General, the Assembly Commission and other persons to whom sums are paid out of the Welsh Consolidated Fund have used their resources in discharging their functions.

(3) Standing orders must provide for the consideration by the Assembly of accounts and reports laid before it in pursuance of subsection (1)(f).

(4) Welsh legislation may make further provision for the purpose of ensuring that devolved Welsh authorities that receive sums derived from the Fund are accountable.

That provision may, in particular, include provision for a devolved Welsh authority to which subsection (1)(a) does not apply to be accountable for its expenditure and receipts in respect of functions for which it receives sums derived from the Fund.

(5) Persons (other than the Auditor General for Wales) charged with the exercise of any function mentioned in subsection (2) or other like function conferred by Welsh legislation are not subject, in the exercise of that or any ancillary function, to the direction or control of any member of the Welsh Government or of the Assembly.

(6) Subsection (2)(b) does not apply to accounts prepared by the Auditor General for Wales.

(7) This section does not require Welsh legislation to impose any requirement that is imposed by any other legislation.

(8) In this section—

“‘Assembly accounts’” means any accounts prepared in pursuance of subsection (1)(a) or (b);



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“Welsh legislation” means provision made by or under an Act of the Assembly, and “other legislation” means provision made by any other enactment.”

- (4) Omit section 136 of that Act (examinations by Comptroller and Auditor General).
- (5) Sections 6 and 7 of the National Audit Act 1983 (value for money studies) do not apply in relation to a devolved Welsh authority.

#### 14 Composition of Assembly committees

In the Government of Wales Act 2006 omit section 29 (composition of committees).

#### 15 Assembly proceedings: participation by UK Ministers etc

In the Government of Wales Act 2006—

- (a) omit section 32 (participation by UK Ministers etc);
- (b) omit section 33 (consultation about UK Government's legislative programme).

#### 16 Change of name of the Assembly etc: translation of references

- (1) After section 150 of the Government of Wales Act 2006 insert—

##### “150A Change of name of the Assembly etc: translation of references

- (1) Subsection (2) applies if an Act of the Assembly, or subordinate legislation made under an Act of the Assembly, changes the name of—
  - (a) the National Assembly for Wales (Cynulliad Cenedlaethol Cymru),
  - (b) the National Assembly for Wales Commission (Comisiwn Cynulliad Cenedlaethol Cymru), or
  - (c) Acts of the National Assembly for Wales (Deddfau Cynulliad Cenedlaethol Cymru).

(See paragraph 7(2)(a)(i) and (xi) and paragraph 7(2)(c)(i) of Schedule 7B.)

- (2) Unless the context requires otherwise, a reference to the National Assembly for Wales, the National Assembly for Wales Commission or an Act of the National Assembly for Wales (as the case may be), or the Welsh equivalent shown in subsection (1), in—

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

is to be read as, or as including, a reference to the new name.”

- (2) In section 158 of that Act (interpretation), in subsection (2), after ““116C(2)”” insert “ , 150A(2) ”.

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### *Taxation and borrowing*

#### **17 Welsh rates of income tax: removal of referendum requirement**

- (1) The Wales Act 2014 is amended as follows.
- (2) Omit—
  - (a) section 12 and Schedule 1 (referendum about commencement of income tax provisions),
  - (b) section 13 (proposal for referendum by Assembly), and
  - (c) the italic heading before section 12.
- (3) In section 14 (commencement of income tax provisions etc if majority in favour)—
  - (a) omit subsection (1);
  - (b) in the heading omit ““etc if majority in favour””.
- (4) In section 23 (reports on the implementation and operation of Part 2) omit subsection (8).
- (5) In section 29 (commencement)—
  - (a) in subsection (2)(b), for ““referendum-related”” substitute “ income tax ”;
  - (b) in subsection (4)—
    - (i) for ““referendum-related”” substitute “ “income tax””;
    - (ii) omit ““(commencement if majority in favour at referendum)””.

#### **18 Lending for capital expenditure**

In section 122A of the Government of Wales Act 2006 (lending for capital expenditure), in subsections (1) and (3), for ““£500 million”” substitute “ £1,000 million ”.

VALID FROM 08/01/2018

### *Executive competence etc*

VALID FROM 01/04/2018

#### **19 Functions of Welsh Ministers**

- (1) After section 58 of the Government of Wales Act 2006 insert—

##### **“58A Executive ministerial functions**

- (1) Executive ministerial functions, so far as exercisable within devolved competence, are exercisable by the Welsh Ministers.
- (2) Executive ministerial functions that are ancillary to a function of the Welsh Ministers exercised outside devolved competence are also exercisable by the Welsh Ministers.

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- (3) Functions exercisable by the Welsh Ministers under subsection (1) or (2) are not exercisable by a Minister of the Crown unless they are functions to which subsection (4) applies.

If they are functions to which subsection (4) applies, they are exercisable by the Welsh Ministers concurrently with any relevant Minister of the Crown.

- (4) This subsection applies to—
- (a) functions ancillary to a function of the Welsh Ministers that is exercisable concurrently or jointly with a Minister of the Crown;
  - (b) functions ancillary to a function of a Minister of the Crown;
  - (c) functions that are not ancillary to another function;
  - (d) functions in relation to observing and implementing obligations under EU law.

- (5) In this section—
- ““executive ministerial function”” means a function of Her Majesty of a kind that is exercisable on Her behalf by a Minister of the Crown (including a function involving expenditure or other financial matters), but not a function conferred or imposed by or by virtue of any legislation or the prerogative;
- ““within devolved competence”” and ““outside devolved competence”” are to be read in accordance with subsections (7) and (8).

- (6) For the purposes of this section a function is ““ancillary to”” another function if or to the extent that it is exercisable with a view to facilitating, or in a way that is conducive or incidental to, the exercise of the other function.

- (7) It is outside devolved competence—
- (a) to make any provision by subordinate legislation that would be outside the legislative competence of the Assembly if it were included in an Act of the Assembly (see section 108A), or
  - (b) to confirm or approve any subordinate legislation containing such provision.

- (8) In the case of a function other than a function of making, confirming or approving subordinate legislation, it is outside devolved competence to exercise the function (or to exercise it in a particular way) if or to the extent that a provision of an Act of the Assembly conferring the function (or conferring it so as to be exercisable in that way) would be outside the legislative competence of the Assembly.”

- (2) In section 70 of that Act (financial assistance)—

- (a) in subsection (1)—
  - (i) for ““The Welsh Ministers”” substitute “ The First Minister ”;
  - (ii) for ““the Welsh Ministers consider”” substitute “ the First Minister considers ”;
  - (iii) for ““they aim”” substitute “ the Minister aims ”;
  - (iv) for ““their functions”” substitute “ the Minister's functions ”;
- (b) in subsection (2)—

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- (i) for ““The Welsh Ministers”” substitute “ The First Minister ”;
- (ii) for ““by them”” substitute “ by the Minister ”;

(c) for subsection (3) substitute—

“(3) This section applies in relation to the Counsel General as in relation to the First Minister.

(As regards the Welsh Ministers, see section 58A.)”

(3) In section 71 of that Act (incidental etc powers of Welsh Ministers etc), for subsection (2) substitute—

“(2) This section applies to the First Minister and the Counsel General.

(As regards the Welsh Ministers, see section 58A.)”

VALID FROM 01/04/2018

## 20 Implementation of EU law

(1) After section 58A of the Government of Wales Act 2006 (inserted by section 19 above) insert—

### “58B Implementation of EU law: general

- (1) Section 2(2) of the European Communities Act 1972 (secondary legislation implementing EU obligations, etc) applies to the Welsh Ministers as if they were a Minister of the Crown or government department designated by Order in Council under that provision.
- (2) But subsection (1) confers no power to make provision that would be outside the legislative competence of the Assembly if it were included in an Act of the Assembly (see section 108A).
- (3) In particular, it confers no power to make provision that may be included in an Act of the Assembly only—
  - (a) with the consent of the appropriate Minister (see paragraphs 8(1), 10(1) and 11(1) of Schedule 7B), or
  - (b) after consultation with the appropriate Minister (see paragraph 11(2) of that Schedule),
 unless that consent has been given or that consultation has been carried out.
- (4) Subsection (1) does not restrict any power conferred on a Minister of the Crown or government department by an Order in Council under section 2(2) of the European Communities Act 1972.
- (5) In section 2(4) of the European Communities Act 1972 as it has effect by virtue of subsection (1) above, the reference to an Act of Parliament is to be read as a reference to an Act of the Assembly.
- (6) A statutory instrument containing any order, rules, regulations or scheme made by virtue of this section, if made without a draft having been approved by resolution of the Assembly, is subject to annulment in

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pursuance of a resolution of the Assembly; and paragraph 2(2) of Schedule 2 to European Communities Act 1972 does not apply to such an instrument.

(7) In this section ““appropriate Minister”” has the same meaning as in paragraph 8 of Schedule 7B.”

(2) In section 59 of that Act (implementation of EU law)—

- (a) in the heading, at the end insert “ : designation of Welsh Ministers, etc ”;
- (b) after subsection (2) insert—

“(2A) Any such restrictions or conditions do not apply in relation to the power that the Welsh Ministers have under that section by virtue of section 58B above.”;

- (c) in subsection (3), for ““that power”” substitute “ a power exercisable by virtue of a designation under section 2(2) of the European Communities Act 1972 ”.

## 21 Transfer of Ministerial functions

(1) In section 58 of the Government of Wales Act 2006 (transfer of Ministerial functions), in subsection (1)(b), for ““concurrently with the Minister of the Crown,”” substitute “—

- (i) concurrently or jointly with a Minister of the Crown, or
- (ii) only with the agreement of, or after consultation with, a Minister of the Crown.”.

(2) In Part 2 of Schedule 3 to that Act (exercise of transferred functions), in paragraph 6(a) and (b) omit ““in relation to a cross-border body or an English border area””.

(3) After section 59 of that Act insert—

### “59A Shared powers

Schedule 3A, which sets out functions of Ministers of the Crown and others that are exercisable concurrently or jointly with the Welsh Ministers, has effect.”

(4) After Schedule 3 to that Act insert the Schedule 3A set out in Schedule 4 to this Act.

VALID FROM 01/04/2018

## 22 Consultation about cross-border bodies

Omit section 63 of the Government of Wales Act 2006 (consultation about cross-border bodies).

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