

GOVERNMENT OF WALES ACT 2006

EXPLANATORY NOTES

DETAILED COMMENTARY ON SECTIONS IN PART 6

Welsh public records

Section 146: Status of Welsh public records

522. This section carries through, with some amendments, the provision made by section 116 of the Government of Wales Act 1998. The effect of the section is that Welsh public records, as defined by section 148, are governed by the Public Records Act 1958 until such time as the Lord Chancellor makes an order under section 147 imposing or conferring functions in respect of them (for example, a duty to preserve them) on either the Welsh Ministers, or a member of staff of the Welsh Assembly Government. The Public Records Act 1958 provides for the preservation and safe-keeping of public records. Rights of access to such records are now governed by the Freedom of Information Act 2000.
523. However, under the definition in section 148, the records of the Assembly and the Assembly Commission are not Welsh public records. Therefore, the Lord Chancellor cannot make an order under section 147 imposing a duty on the Welsh Ministers or a member of staff of the Welsh Assembly Government to preserve those records. Furthermore, those records are not public records for the purposes of the Public Records Act 1958. Accordingly, in analogy with the position in respect of the records of the UK Parliament and the Scottish Parliament, the Assembly and the Assembly Commission will be responsible for their own records, and are not subject to a statutory regime in relation to the records' maintenance. However, under this Act, the Assembly and the Assembly Commission will both be subject to the access to information regime in the Freedom of Information Act 2000.
524. Records which are records of the Assembly constituted under the Government of Wales Act 1998, but which are to transfer to the Welsh Ministers, the First Minister or the Counsel General by virtue of paragraphs 38 and 39 of Schedule 11 of this Act (unless an Order in Council makes alternative provision, records connected with a function which is transferred under this Act to the Welsh Ministers, the First Minister or the Counsel General will transfer to the same transferee), are Welsh public records by virtue of section 148(1)(a). Accordingly, by virtue of section 146 they will be subject to the provisions of the Public Records Act 1958 until such time as the Lord Chancellor makes an order under section 147. Records of the Assembly constituted under GoWA which have not transferred to the Welsh Ministers will be the responsibility of the Assembly/ Assembly Commission.

Section 147: Transfer of responsibility

525. This section replicates the Lord Chancellor's order-making power under section 117 of the Government of Wales Act 1998 except in so far as post-separation the duty to preserve Welsh public records can only be imposed on the Welsh Assembly Government rather than on the Assembly.

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

526. It allows the Lord Chancellor (who is otherwise responsible for Welsh public records by virtue of section 146 and the Public Records Act 1958) to confer or impose functions, including responsibility for the preservation and safe-keeping of such records on the Welsh Ministers, or on a member of staff of the Welsh Assembly Government.
527. The Lord Chancellor must consult the Welsh Ministers before making an order under this section.

Section 148: Meaning of “Welsh public records”

528. This section defines “Welsh public records”. The Lord Chancellor can make an order under this section designating other records as “Welsh public records”, but cannot do so in respect of certain records, including those of the Assembly or the Assembly Commission.