

SCHEDULES

SCHEDULE 11

Section 162

TRANSITIONAL PROVISIONS

Alteration of Assembly electoral regions

- 1 (1) Until the coming into force of section 16(1) of the Political Parties, Elections and Referendums Act 2000 (c. 41) for the purpose of transferring the functions of the Boundary Commission for Wales to the Electoral Commission and conferring functions on the Boundary Committee for Wales, Schedule 1 has effect subject to the following modifications.
 - (2) In paragraph 1, omit sub-paragraphs (2) and (3).
 - (3) In paragraph 2, for sub-paragraph (1) substitute—

“(1) This paragraph applies if the Boundary Commission for Wales (“the Commission”) provisionally determine (in pursuance of section 3 of the Parliamentary Constituencies Act 1986 (“the 1986 Act”)) to recommend the making of alterations affecting any parliamentary constituencies in Wales.”, and, in sub-paragraph (2), for “Committee” substitute “Commission”.
 - (4) In paragraph 3—
 - (a) in sub-paragraph (1), for “Committee have provisionally determined to propose” substitute “Commission have provisionally determined to make”,
 - (b) in sub-paragraph (2)(b), for “effect of the recommendations is” substitute “Commission propose to recommend”,
 - (c) in sub-paragraphs (2)(c), (3), (4) and (5), for “Committee” substitute “Commission”, and
 - (d) in sub-paragraph (6), for “Committee's” substitute “Commission's”,and in the heading before that paragraph, for “Committee's” substitute “Commission's”.
 - (5) In paragraph 4—
 - (a) in sub-paragraphs (1) and (2), for “Committee” substitute “Commission”,
 - (b) in sub-paragraph (3), for “Committee may not proceed with the proposed” substitute “Commission may not make the”, and
 - (c) in sub-paragraphs (4), (5) and (6), for “Committee” substitute “Commission”.
 - (6) Omit paragraphs 5 to 7.
 - (7) In paragraph 10(1), after “effect” insert “, with or without modifications,”.
 - (8) Omit paragraph 11(3).

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(9) In paragraph 12—

- (a) in the definitions of “the 1986 Act” and “the Commission”, for “1(2)(a)” substitute “2(1)”, and
- (b) omit the definition of “the Committee”.

2007 election to be election to Assembly constituted by this Act

- 2 The 2007 election is an election to the Assembly constituted by this Act (and not that constituted by the Government of Wales Act 1998 (c. 38)).

First meeting after 2007 election

- 3 The first meeting of the Assembly constituted by this Act after the 2007 election is to be held on the day specified by or in accordance with an order made by statutory instrument by the Assembly constituted by the Government of Wales Act 1998 (c. 38); and that day must be within the period of seven days beginning immediately after the day of the poll at the 2007 election.

Date of 2011 election

- 4 Until the first ordinary general election (or any extraordinary general election the poll for which is held as mentioned in section 5(5)), section 3(1) has effect as if the reference to the previous ordinary general election were to the 2007 election.

No dual constituency and regional candidacy

- 5 (1) Section 5 of the Government of Wales Act 1998 (ordinary elections: party lists of candidates, and individual candidates, to be Assembly members for Assembly electoral regions) is amended as follows.
- (2) In subsection (5) (those who may not be included on party list), for paragraphs (c) and (d) (candidate to be Assembly member for Assembly constituency outside electoral region and candidate of different party to be Assembly member for Assembly constituency within electoral region) substitute “or
- (c) who is a candidate to be the Assembly member for an Assembly constituency.”
- (3) In subsection (6) (those who may not be an individual candidate), for paragraphs (c) and (d) (candidate to be Assembly member for Assembly constituency outside electoral region and candidate of registered political party to be Assembly member for Assembly constituency within electoral region) substitute “or
- (c) a candidate to be the Assembly member for an Assembly constituency.”
- 6 (1) Section 7 of that Act (return of electoral region members) is amended as follows.
- (2) In subsection (6) (party to be disregarded once party list exhausted by return of all persons on it as constituency or electoral region members), omit “for Assembly constituencies or”.
- (3) Omit subsection (10) (person on party list returned as Assembly member to be treated as ceasing to be on list for purposes of drawing on list at ordinary election or in case of vacancy in electoral region seat).

Electoral region vacancies before first general election etc.

- 7 Section 11 has effect until the first general election as if—
- (a) the references in subsections (2) and (8) to section 9 were to section 7 of the Government of Wales Act 1998, and
 - (b) the references to the last general election were to the 2007 election.

Election orders

- 8 An order under section 11 of the Government of Wales Act 1998 which is in force immediately before the commencement of the repeal of that section by this Act has effect after that time as if made under section 13 of this Act.

Term of office of Assembly members

- 9 Section 14 has effect until the first general election as if the reference in paragraph (a) to being declared to be returned included being declared to be returned at the 2007 election.

Disqualification Orders

- 10 An Order in Council under section 12(1)(b) of the Government of Wales Act 1998 (c. 38) which is in force immediately before the commencement of the repeal of that provision by this Act has effect after that time as if made under section 16(1)(b) of this Act.

Disqualification of Lords of Appeal in Ordinary

- 11 A Lord of Appeal in Ordinary is disqualified from being a member of the Assembly constituted by the Government of Wales Act 1998 or this Act.

Remuneration of Assembly members etc.

- 12 (1) This paragraph has effect in relation to a determination under section 16 of the Government of Wales Act 1998 which is in force immediately before the commencement of the repeal of that section by this Act.
- (2) So far as relating to the Assembly First Secretary elected under that Act and the Assembly Secretaries appointed under that Act, the determination has effect after that time as if made under section 53, and applies—
- (a) in relation to the First Minister as it applied before that time in relation to the Assembly First Secretary elected under that Act, and
 - (b) in relation to the Welsh Ministers appointed under section 48 of this Act as it applied before that time in relation to the Assembly Secretaries appointed under that Act.
- (3) Otherwise, the determination has effect after that time as if made under section 20, and applies—
- (a) in relation to the Presiding Officer as it applied before that time in relation to the presiding officer elected under the Government of Wales Act 1998,
 - (b) in relation to the Deputy Presiding Officer as it applied before that time in relation to the deputy presiding officer elected under that Act,

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- (c) in relation to the leader of the largest political group without an executive role as it applied before that time in relation to the leader of the largest political party not represented on the executive committee constituted by that Act, and
 - (d) in relation to any other Assembly member as it applied before that time in relation to members of the Assembly constituted by that Act.
- (4) For the purposes of sub-paragraph (3)(c) a political group is the largest political group without an executive role if—
- (a) it is not a political group with an executive role, and
 - (b) more Assembly members belong to it than to each other political group which is not a political group with an executive role.
- (5) This paragraph has effect in relation to determinations under section 18 of the Government of Wales Act 1998 (c. 38) as it has effect in relation to determinations under section 16 of that Act, but as if references in this paragraph to members of, or office-holders in connection with, the Assembly (as constituted by the Government of Wales Act 1998 or this Act) were references to persons who have ceased to be such members or office-holders.
- 13 An order under section 17 of the Government of Wales Act 1998 which is in force immediately before the commencement of the repeal of that section by this Act has effect after that time as if made under section 21.

Publication of information about remuneration of Assembly members

- 14 (1) Section 22(2) does not apply in relation to the financial year ending with 31st March 2007.
- (2) The Assembly constituted by this Act has the same duty in relation to that financial year as the Assembly constituted by the Government of Wales Act 1998 would have by virtue of section 19 of that Act but for this Act.
- (3) In relation to the financial year ending with 31st March 2008 the references in section 22(2) to salaries and allowances of the kind mentioned in section 20 include sums paid under sections 16 and 18 of the Government of Wales Act 1998.

Assistance to groups of Assembly members

- 15 (1) A determination under section 34A of the Government of Wales Act 1998 which is in force immediately before the commencement of the repeal of that section by this Act has effect after that time as if it were made in accordance with section 24.
- (2) In relation to the financial year ending with 31st March 2008 the reference in subsection (6)(b) of section 24 to sums paid under that section includes sums paid under section 34A of the Government of Wales Act 1998.

First Presiding Officer

- 16 The reference in subsection (1) of section 25 to the first meeting of the Assembly following a general election includes a reference to the first meeting of the Assembly following the 2007 election.

First Clerk

- 17 The member of the staff of the Assembly constituted by the Government of Wales Act 1998 who, immediately before the day of the poll at the 2007 election, holds the post referred to in the standing orders made under that Act as the Clerk to the Assembly is to be taken to be appointed under section 26(1) at the beginning of that day.

Promotion of awareness of election system and devolved government

- 18 Paragraphs 5 and 6 of Schedule 2 have effect until the end of the initial period as if for the references to the Assembly Commission there were substituted references to the Assembly constituted by the Government of Wales Act 1998 (c. 38).

Crown status of Assembly Commission

- 19 Sub-paragraph (4) of paragraph 12 of Schedule 2 has effect until the end of the initial period with the omission of paragraph (b) (and the word “or” before it).

Standing orders

- 20 (1) The Secretary of State must, no later than 31st March 2007, make the standing orders which are to have effect in relation to the proceedings of the Assembly following the 2007 election.
- (2) The standing orders made under this paragraph—
- (a) must include provision as to the matters which this Act requires to be covered by the standing orders, and
 - (b) may include provision as to the matters which this Act provides may be so covered.
- (3) In making standing orders made under this paragraph the Secretary of State must give effect to any relevant Assembly proposals (but subject to sub-paragraph (5)).
- (4) For this purpose proposals are relevant Assembly proposals if—
- (a) they are proposals for the inclusion in the standing orders made under this paragraph of provision relating to any matters which must or may be covered by them,
 - (b) they are made by the Assembly constituted by the Government of Wales Act 1998 by a resolution passed by that Assembly,
 - (c) where the motion for the resolution is passed on a vote, at least two-thirds of the members of the Assembly voting support it,
 - (d) the proposals are made in both English and Welsh, and
 - (e) a copy of the proposals are sent to the Secretary of State no later than 28th February 2007.
- (5) The Secretary of State may make modifications of any relevant Assembly proposals—
- (a) in order to give full effect to what appears to the Secretary of State to be the policy contained in the proposals, or
 - (b) in consequence of other provision to be included in the standing orders made under this paragraph.

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- (6) The Secretary of State must publish the standing orders made under this paragraph as soon as reasonably practicable after they are made and must do so in both English and Welsh.
- (7) The standing orders made under this paragraph have effect (subject to any revisions made by the Assembly under section 31) unless and until they are remade by the Assembly under that section.

Witnesses and documents: penalties

- 21 In relation to an offence committed before the coming into force of section 281(5) of the Criminal Justice Act 2003 (c. 44) the references in section 39(4)(b) and 40(3)(b) to 51 weeks are to three months.

Exercise of functions before appointment of first First Minister

- 22 (1) Nothing in this Act (including in particular the repeal of section 1 of the Government of Wales Act 1998 (c. 38)), or in that Act, is to be taken to dissolve the Assembly constituted by that Act until the end of the initial period.
- (2) Despite this Act and section 2(5) of that Act, during the initial period the Assembly constituted by that Act is to be treated as consisting of the persons who—
- (a) immediately before the beginning of the initial period, hold office as the Assembly First Secretary, an Assembly Secretary or the presiding officer, and
 - (b) are candidates to be Assembly members at the 2007 election.
- (3) But a person ceases to be a member of that Assembly—
- (a) if not returned as an Assembly member at that election, when the Assembly members for the Assembly constituency or Assembly electoral region for which that person is a candidate are returned, or
 - (b) if disqualified from being an Assembly member, when that disqualification takes effect.
- (4) For so long as a person is a member of the Assembly constituted by the Government of Wales Act 1998 by virtue of this paragraph the person continues to be entitled to the same salary and allowances as the person was entitled to by virtue of section 16 of that Act immediately before the beginning of the initial period.
- 23 (1) This paragraph and paragraph 24 have effect during the initial period.
- (2) The functions of the Assembly constituted by the Government of Wales Act 1998, other than functions to which paragraph 24 applies, are exercisable—
- (a) by the person who immediately before the beginning of the initial period held office as the Assembly First Secretary, if that person is a member of that Assembly, or
 - (b) by such of the persons who at that time held office as an Assembly Secretary and are members of that Assembly as those persons may designate, if that person is not a member of that Assembly (or if the office of Assembly First Secretary was vacant at that time).
- (3) A person designated for the purposes of sub-paragraph (2)(b) must inform the Secretary of State of the designation as soon as is reasonably practicable.

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- (4) Functions which are exercisable by virtue of sub-paragraph (2) may be delegated by the person by whom they are exercisable (to such extent as that person may determine) to any other member of the Assembly constituted by the Government of Wales Act 1998 who immediately before the beginning of the initial period held office as an Assembly Secretary.
- (5) Functions which—
- (a) are exercisable by virtue of sub-paragraph (2), or
 - (b) are delegated under sub-paragraph (4),
- may be delegated by the person by whom they are exercisable or to whom they have been delegated (to such extent as that person may determine) to members of the staff of the Assembly constituted by the Government of Wales Act 1998 (c. 38).
- (6) Where a function is delegated under sub-paragraph (5), arrangements for the exercise of the function are to be made by the person who, immediately before the beginning of the initial period, was the Permanent Secretary to the Assembly for the purposes of section 63(2) of the Government of Wales Act 1998.
- (7) The delegation of any function under this paragraph does not prevent the exercise of the function by the person by whom the delegation is made.
- (8) The exercise of any function in accordance with this paragraph is subject to any condition, limitation or restriction which applied to the exercise of that function immediately before the beginning of the initial period.
- 24 (1) This paragraph applies to functions of the Assembly constituted by the Government of Wales Act 1998 which, immediately before the beginning of the initial period, were delegated under section 62 of that Act to the committee of the Assembly referred to in the standing orders made under that Act as the House Committee.
- (2) Functions to which this paragraph applies are exercisable—
- (a) by the person who, immediately before the beginning of the initial period, held office as the presiding officer of the Assembly constituted by the Government of Wales Act 1998, if that person is a member of that Assembly, or
 - (b) by the person who, at that time, held the post referred to in the standing orders made under that Act as the Clerk to the Assembly, if the person mentioned in paragraph (a) is not a member of that Assembly (or if the office of presiding officer was vacant at that time).
- (3) Functions which are exercisable by virtue of sub-paragraph (2) may be delegated by the person by whom they are exercisable (to such extent as that person may determine) to members of the staff of the Assembly constituted by the Government of Wales Act 1998.
- (4) Where a function is delegated under sub-paragraph (3), arrangements for the exercise of the function are to be made by the person who, immediately before the beginning of the initial period, held the post referred to in the standing orders made under the Government of Wales Act 1998 as the Clerk to the Assembly.
- (5) The delegation of any function under sub-paragraph (3) does not prevent the exercise of the function by the person by whom the delegation is made.

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- (6) The exercise of any function in accordance with this paragraph is subject to any condition, limitation or restriction which applied to the exercise of that function immediately before the beginning of the initial period.
- 25 (1) Where a function of making, confirming or approving subordinate legislation is exercised during the initial period in accordance with paragraph 23, it is to be made, confirmed or approved by being signed by the person by whom the function is exercised.
- (2) Despite sub-paragraph (8) of paragraph 23, nothing contained in the following provisions of the Government of Wales Act 1998 (c. 38), or included in the standing orders of the Assembly constituted by that Act by virtue of the following provisions of that Act, applies to subordinate legislation made in accordance with that paragraph—
- (a) section 65 (regulatory appraisals),
 - (b) sections 66 and 67 (procedure), and
 - (c) section 68 (financial initiative).
- (3) But as soon as is reasonably practicable after the end of the initial period the Clerk must lay before the Assembly every statutory instrument containing subordinate legislation made, confirmed or approved in accordance with paragraph 23.

Saving for existing instruments conferring or imposing functions

- 26 (1) Any provision of an Order in Council under section 22 of the Government of Wales Act 1998 (whether included by virtue of that section or any other enactment apart from section 155(2) of that Act) which is in force immediately before the commencement of the repeal of that section by this Act continues to have effect after the commencement of that repeal as if it were a provision of an Order in Council under section 58.
- (2) Accordingly—
- (a) the reference in paragraph 7(2) of Schedule 3 to an Order in Council under section 58 of this Act which includes provision transferring a function to the Welsh Ministers, the First Minister or the Counsel General includes a reference to an Order in Council under section 22 of the Government of Wales Act 1998 which includes provision having that effect by virtue of this Schedule, and
 - (b) the reference in paragraph 18(5) of Schedule 8 to an Order in Council under section 58 transferring a function of preparing accounts to the Welsh Ministers includes a reference to an Order in Council under section 22 of the Government of Wales Act 1998 which makes provision having that effect by virtue of this Schedule.
- (3) Any provision which—
- (a) is included in an Order in Council under section 22 of the Government of Wales Act 1998 by virtue of section 155(2) of that Act (meaning of “Wales”), and
 - (b) is in force at the time when this Act is passed,
- is to be treated after that time as if it were also contained in an order under subsection (3) of section 158 of this Act (having effect for the purposes of the definition of “Wales” in subsection (1) of that section).

- 27 Orders under section 27 of the Government of Wales Act 1998 which are in force immediately before the commencement of the repeal of that section by this Act continue to have effect despite the commencement of that repeal.
- 28 (1) Designations made under section 2(2) of the European Communities Act 1972 (c. 68) by virtue of subsection (1) of section 29 of the Government of Wales Act 1998 which are in force immediately before the commencement of the repeal of that subsection by this Act continue to have effect after the commencement of that repeal as if made by virtue of subsection (1) of section 59 of this Act.
- (2) Regulations made under section 56 of the Finance Act 1973 (c. 51) by virtue of subsection (4) of that section which are in force immediately before the commencement of the repeal of that subsection by this Act continue to have effect after the commencement of that repeal as if made by virtue of subsection (5) of section 59 of this Act.

First nomination of First Minister

- 29 The reference in section 47(2)(a) to the holding of a poll at a general election includes a reference to the holding of the poll at the 2007 election.

Transfer of Assembly functions

- 30 (1) Subject to paragraph 31, the relevant Assembly functions are transferred to the Welsh Ministers immediately after the end of the initial period.
- (2) “The relevant Assembly functions” means functions exercisable by the Assembly constituted by the Government of Wales Act 1998 (c. 38)—
- (a) immediately before the end of the initial period, by virtue of an Order in Council under section 22 of the Government of Wales Act 1998,
 - (b) immediately before the end of that period, as a result of a designation made under section 2(2) of the European Communities Act 1972 (c. 68) by virtue of subsection (1) of section 29 of the Government of Wales Act 1998,
 - (c) immediately before the end of that period, as a result of having been conferred or imposed on it by an enactment contained in an Act, other than an enactment contained in the Government of Wales Act 1998, or by a prerogative instrument, or
 - (d) immediately before the end of that period, as a result of having been conferred or imposed on it by subordinate legislation (including subordinate legislation made under the Government of Wales Act 1998).
- (3) For the purposes of this paragraph a function is “exercisable” at any time even if the enactment transferring, conferring or imposing it has not come into force at that time.
- 31 (1) Her Majesty may by Order in Council provide for—
- (a) the transfer of any of the relevant Assembly functions to—
 - (i) the First Minister, or
 - (ii) the Counsel General,
 - (b) the transfer of any of the relevant Assembly functions, other than functions of making, confirming or approving subordinate legislation, to the Assembly Commission, or

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- (c) any of the relevant Assembly functions, other than functions of making, confirming or approving subordinate legislation, to be functions of the Assembly.
- (2) Her Majesty may by Order in Council provide for any relevant Assembly function that is a function of making, confirming or approving subordinate legislation in relation to any matter not to be transferred to the Welsh Ministers and, unless the Assembly already has power to pass Assembly Measures in relation to that matter, amend Part 1 of Schedule 5 to enable the Assembly to have instead power to pass Assembly Measures in relation to that matter—
- (a) in the same terms as the relevant Assembly function, or
 - (b) in terms differing from those terms to such extent as appears appropriate.
- (3) Her Majesty may by Order in Council—
- (a) direct that any function transferred by paragraph 30 is to be exercisable by any one or more of the First Minister, the Counsel General, the Assembly Commission and the Assembly concurrently with the Welsh Ministers,
 - (b) direct that any function in relation to which provision is made by virtue of sub-paragraph (1) for it to be transferred to, or continue to be a function of, any person or body is to be exercisable by any other person or body specified in that sub-paragraph concurrently with that person or body, or
 - (c) direct that any function transferred by paragraph 30, or transferred to the First Minister or the Counsel General by virtue of sub-paragraph (1), is to be exercisable by the Welsh Ministers, the First Minister or the Counsel General only with the agreement of, or after consultation with, the Assembly Commission.
- (4) An Order in Council under sub-paragraph (1), (2) or (3) 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.
- (5) No recommendation is to be made to Her Majesty in Council to make an Order in Council under sub-paragraph (1) or (3) in relation to a function which has already been transferred to the Welsh Ministers, the First Minister or the Counsel General without the consent of those persons or that person to the recommendation.
- (6) No recommendation is to be made to Her Majesty in Council to make an Order in Council under sub-paragraph (2) unless a draft of the statutory instrument containing the Order in Council has been laid before, and approved by a resolution of, the Assembly constituted by the Government of Wales Act 1998 (c. 38); and a statutory instrument containing an Order in Council under that sub-paragraph is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) No recommendation is to be made to Her Majesty in Council to make an Order in Council under sub-paragraph (1) or (3) 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.
- (8) But sub-paragraph (7) does not apply if the Assembly constituted by the Government of Wales Act 1998 or the Assembly constituted by this Act has resolved that a

recommendation should be made to Her Majesty in Council to make the Order in Council.

- 32 (1) This paragraph applies so far as may be necessary for the purpose or in consequence of the exercise of any functions of—
- (a) the Welsh Ministers,
 - (b) the First Minister,
 - (c) the Counsel General,
 - (d) the Assembly Commission, or
 - (e) the Assembly constituted by this Act,
- which are made exercisable by them by or by virtue of paragraph 30 or 31.
- (2) Any relevant reference to the Assembly constituted by the Government of Wales Act 1998 (c. 38) is to be construed as being or including a reference to—
- (a) the Welsh Ministers,
 - (b) the First Minister,
 - (c) the Counsel General,
 - (d) the Assembly Commission, or
 - (e) the Assembly constituted by this Act,
- (according to by whom the function in question is, or is to be, exercised).
- (3) In sub-paragraph (2) “relevant reference to the Assembly constituted by the Government of Wales Act 1998” means—
- (a) a reference in any enactment, prerogative instrument or other document to that Assembly, or
 - (b) a reference in any enactment or other document which, immediately before the commencement of the repeal by this Act of section 43 of the Government of Wales Act 1998, had effect as a reference to that Assembly.

Functions transferred by Order in Council under section 22 of the Government of Wales Act 1998: Parliamentary and Assembly procedure

- 33 (1) This paragraph applies where—
- (a) a function to make subordinate legislation was transferred to, or made exercisable by, the Assembly constituted by the Government of Wales Act 1998 by an Order in Council under section 22 of that Act, and
 - (b) the function has been transferred to, or made exercisable by, the Welsh Ministers, the First Minister or the Counsel General by or by virtue of paragraph 30 or 31.
- (2) If, immediately before the coming into force of the provisions of the Order in Council relating to the function, a provision of any of the descriptions specified in sub-paragraph (3) applied to its exercise by a Minister of the Crown—
- (a) that provision does not apply to its exercise by the Welsh Ministers, the First Minister or the Counsel General unless the case is one to which sub-paragraph (6) applies, but
 - (b) (whether or not the case is one to which that sub-paragraph applies) that provision has effect in relation to its exercise by the Welsh Ministers, the First Minister or the Counsel General as if any reference in it to Parliament or either House of Parliament were (or, if it is such a case, included) a reference to the Assembly.

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- (3) The descriptions of provision referred to in sub-paragraph (2) are—
- (a) provision requiring any instrument made in the exercise of the function, or a draft of any such instrument, to be laid before Parliament or either House of Parliament,
 - (b) provision for the annulment or approval of any such instrument or draft by or in pursuance of a resolution of either House of Parliament or of each House, and
 - (c) provision prohibiting the making of any such instrument without such approval.
- (4) If, immediately before the coming into force of the provisions of the Order in Council relating to the function, a provision of either of the descriptions specified in sub-paragraph (5) applied to its exercise by a Minister of the Crown—
- (a) that provision does not apply to its exercise by the Welsh Ministers, the First Minister or the Counsel General unless the case is one to which sub-paragraph (6) or (7) applies, but
 - (b) (whether or not the case is one to which either of those sub-paragraphs applies) any instrument made in the exercise of the function by the Welsh Ministers, the First Minister or the Counsel General is (or, if it is such a case, is also) subject to the procedure in the Assembly specified by the standing orders.
- (5) The descriptions of provision referred to in sub-paragraph (4) are—
- (a) provision for any instrument made in the exercise of the function to be a provisional order (that is, an order which requires to be confirmed by Act of Parliament), and
 - (b) provision requiring any order (within the meaning of the Statutory Orders (Special Procedure) Act 1945 (9 & 10 Geo. 6 c. 18)) made in the exercise of the function to be subject to special parliamentary procedure.
- (6) This sub-paragraph applies in any case if the instrument made in the exercise of the function or (if provision specified in sub-paragraph (3)(a) or (b) applied to a draft of an instrument made in the exercise of the function) a draft of an instrument to be so made—
- (a) contains subordinate legislation made or to be made by a Minister of the Crown or government department (whether or not jointly with the Welsh Ministers, the First Minister or the Counsel General),
 - (b) contains (or confirms or approves) subordinate legislation relating to an English border area, or
 - (c) contains (or confirms or approves) subordinate legislation relating to a cross-border body (and not relating only to the exercise of functions, or the carrying on of activities, by the body in or with respect to Wales or a part of Wales).
- (7) This sub-paragraph applies in any case if, immediately before the coming into force of the provisions of the Order in Council relating to the function, a provision of the description specified in sub-paragraph (5)(b) applied to an instrument made in exercise of the function by a Minister of the Crown and the Order in Council provided that—
- (a) any order made by the Assembly constituted by the Government of Wales Act 1998 (c. 38) in the exercise of the function, or
 - (b) any order so made in circumstances including those of the case,

is to be subject to special parliamentary procedure.

- (8) In this paragraph “make” includes confirm or approve and related expressions (except “made exercisable”) are to be construed accordingly; but an instrument (or draft) does not fall within sub-paragraph (6)(a) just because it contains subordinate legislation made (or to be made) by the Welsh Ministers, the First Minister or the Counsel General with the agreement of a Minister of the Crown or government department.

Functions conferred or imposed by pre-commencement enactment: Parliamentary and Assembly procedure

- 34 (1) This paragraph applies where—
- (a) a function to make subordinate legislation was conferred or imposed on the Assembly constituted by the Government of Wales Act 1998 (c. 38) by a pre-commencement enactment (“the Welsh function”),
 - (b) the Welsh function has been transferred to the Welsh Ministers, the First Minister or the Counsel General by or by virtue of paragraph 30 or 31, and
 - (c) when the Welsh function was transferred, a Minister of the Crown had the same or substantially the same function exercisable in relation to England (“the corresponding function”).
- (2) If, immediately after the transfer of the Welsh function, a provision of any of the descriptions specified in sub-paragraph (4)—
- (a) applied to the exercise of the corresponding function by the Minister of the Crown, but
 - (b) did not apply to the exercise of the Welsh function by the Welsh Ministers, the First Minister or the Counsel General,
- the provision applies to any exercise of the Welsh function by the Welsh Ministers, the First Minister or the Counsel General as if any reference in it to Parliament or either House of Parliament were a reference to the Assembly.
- (3) If, immediately after the transfer of the Welsh function, a provision of any of the descriptions specified in sub-paragraph (4) applied to both—
- (a) the exercise of the corresponding function by the Minister of the Crown, and
 - (b) the exercise of the Welsh function by the Welsh Ministers, the First Minister or the Counsel General,
- the provision applies to any exercise of the Welsh function by the Welsh Ministers, the First Minister or the Counsel General as if any reference in it to Parliament or either House of Parliament were a reference both to the Assembly and to Parliament or either House of Parliament.
- (4) The descriptions of provision referred to in sub-paragraphs (2) and (3) are—
- (a) provision requiring any instrument made in the exercise of the function, or a draft of any such instrument, to be laid before Parliament or either House of Parliament,
 - (b) provision for the annulment or approval of any such instrument or draft by or in pursuance of a resolution of either House of Parliament or of both Houses, and
 - (c) provision prohibiting the making of any such instrument without such approval.

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- (5) If, immediately after the transfer of the Welsh function, a provision of either of the descriptions specified in sub-paragraph (7)—
- (a) applied to the exercise of the corresponding function by the Minister of the Crown, but
 - (b) did not apply to the exercise of the Welsh function by the Welsh Ministers, the First Minister or the Counsel General,
- an instrument made in any exercise of the Welsh function by the Welsh Ministers, the First Minister or the Counsel General is subject to the procedure in the Assembly specified by the standing orders.
- (6) If, immediately after the transfer of the Welsh function, a provision of either of the descriptions specified in sub-paragraph (7) applied to both—
- (a) the exercise of the corresponding function by the Minister of the Crown, and
 - (b) the exercise of the Welsh function by the Welsh Ministers, the First Minister or the Counsel General,
- the instrument made in any exercise of the Welsh function by the Welsh Ministers, the First Minister or the Counsel General is subject to that provision and to the procedure in the Assembly specified by the standing orders.
- (7) The descriptions of provision referred to in sub-paragraphs (5) and (6) are—
- (a) provision for any instrument made in the exercise of the function to be a provisional order (that is, an order which requires to be confirmed by Act of Parliament), and
 - (b) provision requiring any order (within the meaning of the Statutory Orders (Special Procedure) Act 1945 (9 & 10 Geo. 6 c. 18)) made in the exercise of the function to be subject to special parliamentary procedure.
- (8) In this paragraph—
- “make” includes confirm or approve and related expressions are to be construed accordingly, and
- “pre-commencement enactment” means an enactment contained in an Act passed or subordinate legislation made before the end of the initial period.
- (9) This paragraph does not apply if the Welsh function was transferred as a result of the operation of paragraph 30(2)(b) (see paragraph 28 and section 59).
- 35 (1) This paragraph applies where—
- (a) a function to make subordinate legislation was conferred or imposed on the Assembly constituted by the Government of Wales Act 1998 (c. 38) by a pre-commencement enactment,
 - (b) the function has been transferred to the Welsh Ministers, the First Minister or the Counsel General by or by virtue of paragraph 30 or 31, and
 - (c) when the function was transferred, no Minister of the Crown had the same or substantially the same function exercisable in relation to England.
- (2) No procedure for scrutiny by the Assembly applies to any instrument made in the exercise of the function, or a draft of any such instrument, unless the function is specified in Table 1 or Table 2.
- (3) No subordinate legislation is to be made by the Welsh Ministers, the First Minister or the Counsel General in the exercise of any function specified in Table 1 unless a

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draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Assembly.

TABLE 1

<i>Function</i>	<i>Description</i>
Section 45B(1) of the Environmental Protection Act 1990 (c. 43).	Power to apply section 45A to Welsh waste collection authorities.
Section 45D of the School Standards and Framework Act 1998 (c. 31).	Power to repeal school funding provisions.
Section 8(3) of the Care Standards Act 2000 (c. 14).	Power to confer functions in relation to Part 2 services in Wales.
Section 72B(2) of that Act.	Power to amend list of persons reviewable by Commissioner.
Section 73(5A) of that Act.	Power to amend list of arrangements reviewable by Commissioner.
Section 76(4) of that Act.	Power to confer further functions on Commissioner.
Section 78(1A) of that Act.	Power to provide that person aged 18 or over is a child for the purposes of Part 5.
Section 78(6) of that Act.	Power to make provision about persons to whom Part 5 applies.
Paragraph 2 of Schedule 2 to that Act.	Power to make provision about the appointment etc. of Commissioner.
Section 68(1) of the Local Government Act 2000 (c. 22), if exercised to amend or repeal any enactment contained in an Act.	Power to confer functions on Public Services Ombudsman for Wales.
Section 68(3) of that Act, if exercised to amend or repeal any enactment contained in an Act.	Power to make provision relating to Ombudsman's functions and expenses.
Section 70(1) of that Act.	Power to make provision about investigations by Ombudsman.
Section 3(4) of the Health (Wales) Act 2003 (c. 4).	Power to transfer functions of Wales Centre for Health to Welsh Minister.
Section 4(1) of that Act.	Power to establish Health Professions Wales (HPW).
Section 4(3) of that Act.	Power to provide for HPW to carry out Welsh Ministers' functions.
Section 5(8) of that Act.	Power to abolish HPW.
Section 83(2) of the Local Government Act 2003 (c. 26).	Power to make fire authorities in Wales major precepting authorities.

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<i>Function</i>	<i>Description</i>
Section 92(2) of that Act.	Power to repeal section 24(3) of the Housing Act 1985 (c. 68).
Section 23(9) of the Anti-social Behaviour Act 2003 (c. 38).	Power to apply to Wales provisions about penalty notices in cases of truancy.
Section 75(1) of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), if exercised to amend or repeal any part of the text of an Act.	Power to require prescribed persons to provide explanation of documents etc.
Section 96 of that Act, if exercised to amend or repeal any part of the text of an Act.	Power to confer additional functions in relation to Welsh local authority social services.
Section 101(1) of that Act, if exercised to amend or repeal any part of the text of an Act.	Power to require prescribed persons to provide explanation of documents etc.
Section 33(3)(a)(ii) of the Higher Education Act 2004 (c. 8).	Power to require institutions' plans to include provision relating to promotion of higher education.
Section 12(2) of the Public Audit (Wales) Act 2004 (c. 23).	Power to add to definition of “local government body in Wales”.
Section 39(1) of that Act, if exercised so as to include a declaration that a contravention is an offence.	Power to make provision about publication etc. of accounts.
Section 46(2) of that Act.	Power to apply sections 47 to 49 to other local government bodies.
Section 47(5) of that Act.	Power to shorten period within which body must publish information.
Section 62(1) of the Education Act 2005 (c. 18), if exercised to amend or repeal an enactment.	Power to change inspection framework for Wales.
Section 103(3) of that Act.	Power to repeal certain provisions in the Education Act 2002 (c. 32).
Section 124(1) of that Act, if exercised to amend or repeal an enactment.	Power to make consequential etc. provision.

- (4) A statutory instrument containing subordinate legislation made by the Welsh Ministers, the First Minister or the Counsel General in the exercise of any function specified in Table 2 is (unless a draft of the statutory instrument has been laid before, and approved by a resolution of, the Assembly) subject to annulment in pursuance of a resolution of the Assembly.

Status: This is the original version (as it was originally enacted).

TABLE 2

<i>Function</i>	<i>Description</i>
Section 16BA(1), (2) and (3) of the National Health Service Act 1977 (c. 49).	Power to establish Local Health Boards.
Section 16BB(1) of that Act.	Power to direct Local Health Board to exercise functions.
Section 16BB(2) of that Act.	Power to direct Local Health Board to exercise functions.
Section 16BB(4) of that Act.	Power to direct Local Health Board about functions.
Section 16BC(2) and (3) of that Act.	Power to direct Local Health Board about functions.
Section 20A(2)(a) of that Act.	Power to rename Community Health Councils.
Section 20A(2)(b) of that Act.	Power to abolish etc. Community Health Councils.
Paragraph 6 of Schedule 5B to that Act.	Power to make provision about constitution of Local Health Boards.
Paragraph 9(3) of Schedule 5B to that Act.	Power to make provision about officers of Local Health Boards.
Paragraph 17 of Schedule 5B to that Act.	Power to make provision about reports etc. of Local Health Boards.
Paragraph 2 of Schedule 7A to that Act.	Power to make provision about Community Health Councils.
Paragraph 3 of Schedule 7A to that Act.	Power to make provision about access for Community Health Councils.
Paragraph 4 of Schedule 7A to that Act.	Power to provide for advisory body for Community Health Councils.
Section 79S(2) of the Children Act 1989 (c. 41).	Power to confer functions relating to child minding or day care.
Section 79T(2) of that Act.	Power to make provision about inspection of child minding and day care.
Section 16A(3) of the Environment Act 1995 (c. 25).	Power to alter composition of regional flood defence committees in Wales.
Paragraph 5(2) of Schedule 7 to the School Standards and Framework Act 1998 (c. 31).	Power to prescribe content and form of publication of proposals.
Paragraph 12(2)(d) of Schedule 7 to that Act.	Power to prescribe period within which objections to proposals may be made.

Status: This is the original version (as it was originally enacted).

<i>Function</i>	<i>Description</i>
Paragraph 17(2) of Schedule 7 to that Act.	Power to make transitional exemption order relating to proposal for school to cease to be single sex.
Paragraph 13B(1) of Schedule 26 to that Act.	Power to prescribe period within which nursery inspection report must be made.
Section 73(5) of the Care Standards Act 2000 (c. 14).	Power to confer power on the Commissioner to require information.
Section 74(1) of that Act.	Power to provide for examination by Commissioner of particular cases.
Section 76(1) of that Act.	Power to confer power on Commissioner to assist children.
Paragraph 6(4) of Schedule 2 to that Act.	Power to specify the financial years of Commissioner.
Paragraph 8 of that Schedule.	Power to require Commissioner to make reports to Assembly.
Paragraph 17 of that Schedule.	Power to add Commissioner to the Superannuation Act 1972 (c. 11).
Section 77(4) of the Learning and Skills Act 2000 (c. 21).	Power to prescribe period within which report must be made.
Section 83(7) of that Act.	Power to make further provision about obligation to provide information.
Section 128(4)(b) and (c) of that Act.	Power about statement of proposed action.
Section 68(1) of the Local Government Act 2000 (c. 22), unless exercised to amend or repeal any enactment contained in an Act.	Power to confer functions on Public Services Ombudsman for Wales.
Section 68(3) of that Act, unless exercised to amend or repeal any enactment contained in an Act.	Power to make provision relating to Ombudsman's functions and expenses.
Section 109(6)(b) of the Transport Act 2000 (c. 38).	Power to specify date by which deemed local transport plan to be replaced.
Section 24(4) and (5) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17).	Power relating to health and well-being strategies.
Section 102 of the Education Act 2002 (c. 32).	Power to specify period which is foundation stage.
Section 108(2)(a) of that Act.	Power to specify areas of learning in respect of foundation stage.
Section 139(1) of that Act.	Power to approve institutions to provide course of higher education etc.

Status: This is the original version (as it was originally enacted).

<i>Function</i>	<i>Description</i>
Section 192 of that Act.	Power to prescribe content and manner of publication of proposals to secure regional provision.
Section 193 of that Act.	Power to make provision about proposals to secure regional provision.
Section 197 of that Act.	Power relating to partnership agreements and statements.
Section 198 of that Act.	Power relating to transition from primary to secondary school.
Section 207(4) of that Act.	Power relating to adjustments between local education authorities.
Section 3(3) of the Health (Wales) Act 2003 (c. 4).	Power to make provision about functions of Wales Centre for Health.
Section 4(4) of that Act.	Power to make provision for HPW to make arrangements about functions.
Section 4(7) of that Act.	Power to make provision about constitution of HPW.
Section 5(1) of that Act.	Power to permit HPW to charge for services.
Section 5(2) of that Act.	Power to transfer property etc. and personnel to HPW.
Section 5(7) of that Act.	Power to make provision about accounts and audit of HPW.
Section 5(9) of that Act.	Power to transfer property etc. and staff from HPW.
Paragraph 10 of Schedule 2 to that Act.	Power to make provision about Wales Centre for Health.
Paragraph 27 of Schedule 2 to that Act.	Power to make provision about accounts and audit of Centre.
Section 29(1) of the Waste and Emissions Trading Act 2003 (c. 33)	Power to require Welsh local authority to have waste management strategy.
Section 30(1) of that Act.	Power to require Welsh local authority to provide information about waste.
Section 75(1) of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), unless exercised to amend or repeal any part of the text of an Act.	Power to require prescribed persons to provide explanation of documents etc.
Section 94(6) of that Act.	Power to require Welsh local authority to pay fee in relation to review of adoption and fostering functions.

Status: This is the original version (as it was originally enacted).

<i>Function</i>	<i>Description</i>
Section 96 of that Act, unless exercised to amend or repeal any part of the text of an Act.	Power to confer additional functions in relation to Welsh local authority social services.
Section 101(1) of that Act, unless exercised to amend or repeal any part of the text of an Act.	Power to require prescribed persons to provide explanation of documents etc.
Section 62(4) of the Planning and Compulsory Purchase Act 2004 (c. 5).	Power to prescribe form and content of local development plan.
Section 63(3)(a) of that Act.	Power to prescribe persons to be included in community involvement scheme.
Section 63(7) of that Act.	Power to prescribe requirements in relation to that scheme and local development plan.
Section 69(1) of that Act.	Power to prescribe times for review of local development plan.
Section 69(3) of that Act.	Power to prescribe form of, and publication requirements for, review.
Section 76(2) of that Act.	Power to prescribe information to be contained in annual monitoring report.
Section 76(3) of that Act.	Power to prescribe timing, form and content of report.
Section 77 of that Act.	Power to make provision about functions conferred by Part 6.
Section 30(1)(b) of the Higher Education Act 2004 (c. 8).	Power to designate “relevant authority”.
Section 38(2) of that Act.	Power to prescribe maximum period during which relevant authority can refuse to approve institution’s new plan.
Section 18(2)(c) of the Public Audit (Wales) Act 2004 (c. 23).	Power to specify documents to which right of access applies.
Section 21(1) of that Act.	Power to replace scale of audit fees.
Section 39(1) of that Act, unless exercised so as to include a declaration that a contravention is an offence.	Power to make provision about publication etc. of accounts.
Section 52(2)(c) of that Act.	Power to specify documents to which right of access applies.
Section 26(2)(f) of the Children Act 2004 (c. 31).	Power to make provision about implementation of children and young people’s plans.
Section 26(4) of that Act.	Power to require approval of such plans.

Status: This is the original version (as it was originally enacted).

<i>Function</i>	<i>Description</i>
Section 22(1) of the Education Act 2005 (c. 18).	Power to establish panel to advise on Chief Inspector's functions.
Section 25(2) of that Act.	Power to prescribe categories of persons who may be registered inspectors.
Section 25(3)(b) of that Act.	Power to prescribe fees for applications for registration.
Section 36(2) of that Act.	Power to make provision as to timing of inspections and reports.
Section 38(3)(e) and (4)(b) and (c) of that Act.	Power to make provision relating to destination of reports about maintained schools.
Section 39(2)(a), (3), (5) and (7)(b) of that Act.	Power to make provision relating to statement prepared by appropriate authority for school.
Section 40(3)(a) of that Act.	Power to make provision relating to statement prepared by local education authority.
Section 41(4)(b) and (c) of that Act.	Power to make provision relating to destination of reports about non-maintained schools.
Section 42(2)(a), (3), (4) and (5)(b) of that Act.	Power to make provision relating to statement prepared by proprietor of school.
Section 52(5) of that Act.	Power to make provision about provision of inspection services by LEAs.
Section 55(4) of that Act.	Power to prescribe intervals at which careers services are inspected.
Section 56(3) of that Act.	Power to prescribe intervals at which related services are inspected.
Section 57(7)(a), (b) and (c) of that Act.	Power to require a person inspected to prepare written statement in response.
Section 57(9) of that Act.	Power to make provision about inspection reports.
Section 62(1) of that Act, unless exercised to amend or repeal an enactment.	Power to change inspection framework for Wales.
Section 85(3)(d) of that Act.	Power to designate institutions eligible for HEFCW funding.
Section 90(1) of that Act.	Power to confer functions on HEFCW.
Section 91(1) of that Act.	Power to give directions to HEFCW.

Status: This is the original version (as it was originally enacted).

<i>Function</i>	<i>Description</i>
Section 92(4) of that Act.	Power to authorise joint exercise of HEFCW functions.
Section 100(2) of that Act.	Power to make provision as to meaning of “governing body”.
Section 124(1) of that Act, unless exercised to amend or repeal an enactment.	Power to make consequential etc. provision.
Paragraph 2 of Schedule 3 to that Act.	Power to make provision about appeals to, and procedure of, tribunals.
Paragraph 3(2)(b) of Schedule 4 to that Act.	Power to prescribe persons who may not be members of inspection team.
Paragraph 4(3) of Schedule 4 to that Act.	Power to waive fees for applications to be on the list of inspection team members.
Paragraph 6(b) of Schedule 4 to that Act.	Power to make provisions about meetings between inspectors and pupils.

(5) In this paragraph—

“make” includes confirm or approve and related expressions are to be construed accordingly, and

“pre-commencement enactment” means an enactment contained in an Act passed or subordinate legislation made before the end of the initial period.

(6) This paragraph does not apply if the function was transferred as a result of the operation of paragraph 30(2)(b) (see paragraph 28 and section 59).

Transfers of Assembly functions: laying of reports and statements

36 (1) This paragraph applies where—

- (a) a function to make or receive a report or statement was transferred to, or made exercisable by, the Assembly constituted by the Government of Wales Act 1998 (c. 38) by an Order in Council under section 22 of that Act,
- (b) the function has been transferred to, or made exercisable by, the Welsh Ministers, the First Minister, the Counsel General or the Assembly Commission by or by virtue of paragraph 30 or 31, and
- (c) immediately before the transfer of the function to that Assembly, any enactment made provision (“provision for Parliamentary laying”) for a report or statement made or received in the exercise of the function to be laid before Parliament or either House of Parliament by the person making or receiving it.

(2) The provision for Parliamentary laying applies to the exercise of the function by the Welsh Ministers, the First Minister, the Counsel General or the Assembly Commission as if it required the report or statement to be laid before the Assembly instead of before Parliament or either House of Parliament.

(3) In this paragraph and paragraph 37 references to a report or statement include any other document (except one containing subordinate legislation).

Status: This is the original version (as it was originally enacted).

- 37 (1) This paragraph applies where—
- (a) a function to make or receive a report or statement was conferred or imposed on the Assembly constituted by the Government of Wales Act 1998 by a pre-commencement enactment,
 - (b) the function has been transferred to the Welsh Ministers, the First Minister, the Counsel General or the Assembly Commission by or by virtue of paragraph 30 or 31, and
 - (c) immediately before the transfer, any enactment made provision for a report or statement made or received in the exercise of the function (or the matter contained in such a report or statement) to be published by that Assembly.
- (2) A copy of the report or statement must be laid before the Assembly after it has been made or received.
- (3) In this paragraph “pre-commencement enactment” means an enactment contained in an Act passed or subordinate legislation made before the end of the initial period.

Transfers of Assembly functions: property, rights and liabilities

- 38 (1) In paragraphs 39 and 40 “transferred function” means a function—
- (a) which is conferred or imposed on the Welsh Ministers, the First Minister or the Counsel General by a provision of this Act which re-enacts (with or without modifications) a provision of the Government of Wales Act 1998 (c. 38) which conferred or imposed the same or substantially the same function on the Assembly constituted by that Act,
 - (b) which is transferred to a person or body other than the Assembly by or by virtue of paragraph 30 or 31, or
 - (c) which is conferred or imposed on the Welsh Ministers, the First Minister or the Counsel General by a provision of any Act in consequence of the amendment of that Act by or under this Act.
- (2) In paragraphs 39 and 40 “the transferee”, in relation to a transferred function, means—
- (a) in the case of a function within paragraph (a) or (c) of sub-paragraph (1), the person or body on whom the function is conferred or imposed, and
 - (b) in the case of a function within paragraph (b) of that sub-paragraph, the person or body to whom the function is transferred.
- (3) In paragraph 39 “transfer time”, in relation to a transferred function, means the time when the function first becomes exercisable by the transferee of the transferred function.
- 39 (1) The property, rights and liabilities to which the Assembly constituted by the Government of Wales Act 1998 is entitled or subject in connection with any transferred function are transferred to and vest in the transferee of the function.
- (2) Anything (including legal proceedings) which relates to—
- (a) any transferred function, or
 - (b) any property, rights or liabilities transferred by sub-paragraph (1) in connection with any transferred function,
- and which is in the process of being done by or in relation to the Assembly constituted by the Government of Wales Act 1998 immediately before the transfer time may be continued by or in relation to the transferee of the transferred function.

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- (3) Anything which was done by or in relation to the Assembly constituted by the Government of Wales Act 1998 for the purpose of or in connection with—
- (a) any transferred function, or
 - (b) any property, rights or liabilities transferred by sub-paragraph (1) in connection with any transferred function,
- and which is in effect immediately before the transfer time has effect as if done by or in relation to the transferee of the transferred function.
- (4) In any instruments, contracts or legal proceedings which relate to—
- (a) any transferred function, or
 - (b) any property, rights or liabilities transferred by sub-paragraph (1) in connection with any transferred function,
- and which are made or commenced before the transfer time, the transferee of the transferred function is substituted for the Assembly constituted by the Government of Wales Act 1998.
- 40 (1) Her Majesty may by Order in Council provide that all or any of the provisions of paragraph 39—
- (a) do not apply in relation to particular transferred functions or to the property, rights and liabilities connected with the particular transferred functions or particular property, rights and liabilities so connected,
 - (b) are to apply only in relation to particular transferred functions or to particular property, rights or liabilities connected with transferred functions, or
 - (c) apply with modifications in relation to particular transferred functions or to the property, rights and liabilities connected with the particular transferred functions or particular property, rights and liabilities so connected.
- (2) Paragraph 39 does not apply in relation to rights and liabilities under a contract of employment of a member of the staff of the Assembly constituted by the Government of Wales Act 1998 (c. 38).
- (3) No recommendation is to be made to Her Majesty in Council to make an Order in Council under this paragraph unless a draft of the statutory instrument containing the Order in Council has been laid before and approved by a resolution of—
- (a) each House of Parliament, and
 - (b) the Assembly constituted by the Government of Wales Act 1998 or the Assembly constituted by this Act.
- 41 (1) The Secretary of State may by order provide for the transfer to the Welsh Ministers, the First Minister, the Counsel General or the Assembly Commission of—
- (a) any specified property, rights or liabilities, or
 - (b) property, rights or liabilities of any specified description,
- to which the Assembly constituted by the Government of Wales Act 1998 is entitled or subject or to which that Assembly was entitled or subject immediately before the end of the initial period.
- (2) An order under sub-paragraph (1) may provide for the transfer of any property, rights or liabilities to have effect subject to exceptions or reservations specified in or determined under the order.
- (3) An order under sub-paragraph (1) may provide—

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- (a) for the creation in favour of the Assembly Commission of interests in, or rights over, property transferred to the Welsh Ministers, the First Minister or the Counsel General,
 - (b) for the creation in favour of the Welsh Ministers, the First Minister or the Counsel General of interests in, or rights over, property transferred to the Assembly Commission, or
 - (c) for the creation of new rights and liabilities between the Welsh Ministers, the First Minister or the Counsel General on the one hand and the Assembly Commission on the other.
- (4) The Secretary of State may by order make provision for the continuation by or in relation to the Welsh Ministers, the First Minister, the Counsel General, or the Assembly Commission of—
- (a) any specified thing, or
 - (b) anything of a specified description,
- commenced by or in relation to the Assembly constituted by the Government of Wales Act 1998 (c. 38).
- (5) The Secretary of State may by order make provision for—
- (a) any specified thing, or
 - (b) anything of a specified description,
- done by or in relation to the Assembly constituted by the Government of Wales Act 1998 to have effect as if done by or in relation to the Welsh Ministers, the First Minister, the Counsel General or the Assembly Commission.
- (6) The Secretary of State may by order make provision for the substitution of the Welsh Ministers, the First Minister, the Counsel General or the Assembly Commission for the Assembly constituted by the Government of Wales Act 1998 in—
- (a) any specified instrument, contract or legal proceedings, or
 - (b) any instrument, contract or legal proceedings of a specified description.
- (7) An order under this paragraph may be made in consequence of provision made by this Act or in any other circumstances in which the Secretary of State considers it appropriate to make such an order.
- (8) An order under this paragraph may not provide for the transfer of rights and liabilities under a contract of employment of a member of the staff of the Assembly constituted by the Government of Wales Act 1998.
- (9) A statutory instrument containing an order under this paragraph is subject to annulment in pursuance of a resolution of either House of Parliament.
- 42 (1) A certificate issued by the Secretary of State that any property has been transferred by—
- (a) paragraph 39, or
 - (b) an order under paragraph 41,
- is conclusive evidence of the transfer.
- (2) Paragraph 39, and orders under paragraph 41, have effect in relation to property, rights or liabilities to which they apply in spite of any provision (of whatever nature) which would otherwise prevent, penalise or restrict the transfer of the property, rights or liabilities.

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- (3) A right of pre-emption, right of return or other similar right does not operate or become exercisable as a result of any transfer of property or rights by virtue of paragraph 39 or an order under paragraph 41.
- (4) Any such right has effect in the case of any such transfer as if the transferee were the same person in law as the transferor and no transfer of the property or rights had taken place.
- (5) Such compensation as is just is to be paid to any person in respect of any such right which would, apart from sub-paragraph (3), have operated in favour of or become exercisable by that person but which, in consequence of the operation of that sub-paragraph, cannot subsequently operate in favour of or become exercisable by that person.
- (6) Any compensation payable by virtue of sub-paragraph (5) is to be paid by the transferor or by the transferee or by both.
- (7) The Secretary of State may by order make provision for the determination of disputes as to—
 - (a) whether compensation is payable under sub-paragraph (5),
 - (b) how much compensation is payable, and
 - (c) the person to whom or by whom it is to be paid.
- (8) A statutory instrument containing an order under this paragraph is subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) Sub-paragraphs (2) to (8) apply in relation to the creation of rights or interests, or the doing of anything else, in relation to property as they apply in relation to a transfer of property; and references to the transferor and transferee are to be read accordingly.
- (10) In this paragraph “right of return” means any right under a provision for the return or reversion of property in specified circumstances.

Staff of the Assembly

- 43
- (1) Subject as follows, at the end of the initial period the members of the staff of the Assembly constituted by the Government of Wales Act 1998 (c. 38) (“relevant employees”) are to be taken to have been appointed as members of the staff of the Welsh Assembly Government.
 - (2) But the Secretary of State may by order make a scheme (“a transfer scheme”) for the transfer to the Assembly Commission of the rights and liabilities of listed relevant employees under their contracts of employment at the end of the initial period.
 - (3) A relevant employee is a listed relevant employee if the relevant employee is named in, or is of a description of relevant employees specified in, a list produced by the Secretary of State; and the Secretary of State—
 - (a) may at any time amend the list, and
 - (b) must make the list (and any amendments of it) available to such persons, and in such manner, as appear appropriate.
 - (4) The transfer by a transfer scheme of the rights and liabilities of a relevant employee under the relevant employee’s contract of employment does not break the continuity of the relevant employee’s employment and accordingly—

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- (a) the relevant employee is not to be regarded for the purposes of Part 11 of the Employment Rights Act 1996 (c. 18) (redundancy) as having been dismissed by virtue of the transfer, and
 - (b) the relevant employee's period of employment with the Assembly constituted by the Government of Wales Act 1998 counts as a period of employment with the Assembly Commission for the purposes of the Employment Rights Act 1996.
- (5) A transfer scheme transferring the rights and liabilities of a relevant employee under the relevant employee's contract of employment must provide for the terms and conditions of the relevant employee's employment with the Assembly Commission (taken as a whole) to be no less favourable to the relevant employee than the terms and conditions on which the relevant employee is employed immediately before the transfer.
- (6) A transfer scheme must provide that, if a listed relevant employee informs the Assembly constituted by the Government of Wales Act 1998 or the Assembly Commission that the relevant employee objects to becoming employed by the Assembly Commission—
- (a) the transfer scheme does not operate to transfer any rights or liabilities under the relevant employee's contract of employment, and
 - (b) the relevant employee's contract of employment is terminated at the end of the initial period, but
 - (c) the relevant employee is not, by virtue of that termination, to be treated for any purpose as having been dismissed.
- (7) Anything (including legal proceedings) which relates to any rights or liabilities transferred by a transfer scheme which is in the process of being done by or in relation to the Assembly constituted by the Government of Wales Act 1998 (c. 38) immediately before they are transferred may be continued by or in relation to the Assembly Commission.
- (8) Anything which was done by or in relation to the Assembly constituted by the Government of Wales Act 1998 for the purpose of or in connection with any rights or liabilities transferred by a transfer scheme which is in effect immediately before they are transferred has effect as if done by or in relation to the Assembly Commission.
- (9) In any instruments, contracts or legal proceedings which relate to any rights or liabilities transferred by a transfer scheme and which are made or commenced immediately before they are transferred, the Assembly Commission is substituted for the Assembly constituted by the Government of Wales Act 1998.
- (10) Before making an order under sub-paragraph (2) the Secretary of State must consult the Assembly constituted by the Government of Wales Act 1998.
- (11) A statutory instrument containing an order under sub-paragraph (2) is subject to annulment in pursuance of a resolution of either House of Parliament.

Powers to lend money

- 44 (1) This paragraph applies where—
- (a) a power to lend money was transferred to the Assembly constituted by the Government of Wales Act 1998 by an Order in Council under section 22 of that Act, and

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- (b) the power has been transferred to the Welsh Ministers by paragraph 30.
- (2) Sub-paragraph (3) applies to any sums which, for the purpose or as a result of the exercise of the power, would be required (apart from that sub-paragraph)—
 - (a) to be issued by the Treasury out of the National Loans Fund, or
 - (b) to be paid into that Fund.
 - (3) Those sums are instead—
 - (a) to be charged on the Welsh Consolidated Fund, or
 - (b) to be paid into that Fund.
 - (4) The following provisions apply where—
 - (a) the power was exercised by a Minister of the Crown before its transfer to the Assembly constituted by the Government of Wales Act 1998 (c. 38) or by that Assembly after its transfer, and
 - (b) the sums required for the exercise of the power were issued by the Treasury out of the National Loans Fund.
 - (5) Any amount payable by way of repayment of, or of interest on, the loan is to be paid to the Welsh Ministers and into the Welsh Consolidated Fund (instead of to the Minister of the Crown and into the National Loans Fund).
 - (6) Amounts equal to those which are to be received by the Welsh Ministers in repayment of principal are to be treated as being loans made to the Welsh Ministers by the Secretary of State on the date of the transfer of the power to the Welsh Ministers.
 - (7) Such loans are to be repaid to the Secretary of State at such times and by such methods, and interest is to be paid to the Secretary of State at such rates and at such times, as the Treasury may from time to time determine.
 - (8) Sums required to be paid to the Secretary of State under sub-paragraph (7) are to be charged on the Welsh Consolidated Fund.
 - (9) Sums received by the Secretary of State under sub-paragraph (7) are to be paid into the National Loans Fund.
 - (10) Her Majesty may by Order in Council disapply this paragraph (in whole or in part) in relation to any power to lend money.
 - (11) No recommendation is to be made to Her Majesty in Council to make an Order in Council under sub-paragraph (10) 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.

Local government scheme

- 45 (1) Any scheme under section 113(1) of the Government of Wales Act 1998 which is in force immediately before the commencement of the repeal of that provision by this Act has effect after that time (with appropriate modifications) as if made under section 73.
- (2) Sub-paragraph (1) does not give rise to any obligation under section 73(4) to publish the scheme.
- (3) Section 73(6) does not apply in relation to the financial year ending with 31st March 2007.

- (4) But if the Assembly constituted by the Government of Wales Act 1998 has not complied with the duty imposed by paragraph 9 of Schedule 11 to that Act in relation to that financial year before the commencement of the repeal of that paragraph by this Act, that duty becomes a duty of the Welsh Ministers on the commencement of that repeal.
- (5) In relation to the financial year ending with 31st March 2008, the reference in section 73(6)(a) to the proposals set out in the local government scheme includes those set out in a scheme under section 113(1) of the Government of Wales Act 1998.

Voluntary sector scheme

- 46 (1) Any scheme under section 114(1) of the Government of Wales Act 1998 (c. 38) which is in force immediately before the commencement of the repeal of that provision by this Act has effect after that time (with appropriate modifications) as if made under section 74.
- (2) Sub-paragraph (1) does not give rise to any obligation under section 74(7) to publish the scheme.
- (3) Section 74(9) does not apply in relation to the financial year ending with 31st March 2007.
- (4) But if the Assembly constituted by the Government of Wales Act 1998 has not complied with the duty imposed by subsection (9) of section 114 of that Act in relation to that financial year before the commencement of the repeal of that subsection by this Act, that duty becomes a duty of the Welsh Ministers on the commencement of that repeal.
- (5) In relation to the financial year ending with 31st March 2008, the reference in section 74(9)(a) to the proposals set out in the voluntary sector scheme includes those set out in a scheme under section 114(1) of the Government of Wales Act 1998.

Equality of opportunity arrangements

- 47 (1) Any arrangements under section 120(1) of the Government of Wales Act 1998 which are in force immediately before the commencement of the repeal of that provision by this Act have effect after that time (with appropriate modifications) as if made under section 77.
- (2) Section 77(2) does not apply in relation to the financial year ending with 31st March 2007.
- (3) But if the Assembly constituted by the Government of Wales Act 1998 has not complied with the duty imposed by subsection (2) of section 120 of that Act in relation to that financial year before the commencement of the repeal of that subsection by this Act, that duty becomes a duty of the Welsh Ministers on the commencement of that repeal.
- (4) In relation to the financial year ending with 31st March 2008, the references in subsection (2) of section 77 to the arrangements made in pursuance of subsection (1) of that section include those made in pursuance of section 120(1) of the Government of Wales Act 1998.

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Welsh language strategy and scheme

- 48 (1) The National Action Plan for a Bilingual Wales (or *Iaith Pawb*) as it stands immediately before the coming into force of section 78 has effect after that time (with appropriate modifications) as if it were a strategy adopted under subsection (1) of that section.
- (2) Any Welsh language scheme adopted by the Assembly constituted by the Government of Wales Act 1998 and current immediately before the coming into force of section 78 has effect after that time (with appropriate modifications) as if adopted under subsection (2) of that section.
- (3) Sub-paragraphs (1) and (2) do not give rise to any obligation under section 78(6).
- (4) Section 78(8) does not apply in relation to the financial year ending with 31st March 2007.

Sustainable development scheme

- 49 (1) Any scheme under section 121(1) of the Government of Wales Act 1998 (c. 38) which is in force immediately before the commencement of the repeal of that provision by this Act has effect after that time (with appropriate modifications) as if made under section 79.
- (2) Sub-paragraph (1) does not give rise to any obligation under section 79(4) to publish the scheme.
- (3) Section 79(6) does not apply in relation to the financial year ending with 31st March 2007.
- (4) But if the Assembly constituted by the Government of Wales Act 1998 has not complied with the duty imposed by subsection (6) of section 121 of that Act in relation to that financial year before the commencement of the repeal of that subsection by this Act, that duty becomes a duty of the Welsh Ministers on the commencement of that repeal.
- (5) In relation to the financial year ending with 31st March 2008, the reference in section 79(6)(a) to the proposals set out in the sustainable development scheme includes those set out in a scheme under section 121(1) of the Government of Wales Act 1998.
- (6) Section 79(7) has effect as if 2008 were the year following that in which an ordinary general election is held.

Orders in Council amending Schedule 5

- 50 (1) Section 95 has effect until the end of the initial period subject to the following modifications.
- (2) In subsection (2), for the words after “exercisable by” substitute “the Assembly constituted by the Government of Wales Act 1998”.
- (3) In subsection (5)(a), after “Assembly” insert “constituted by the Government of Wales Act 1998”.
- (4) Omit subsections (6) to (10).

51 Section 96 has effect until the end of the initial period with the substitution of “Assembly constituted by the Government of Wales Act 1998” for “Counsel General”.

Assembly Measures: criminal penalties

52 (1) No term of imprisonment of more than six months is to be imposed on conviction of a summary offence created by or by virtue of an Assembly Measure if the offence is committed before the coming into force of section 281(5) of the Criminal Justice Act 2003 (c. 44).

(2) No term of imprisonment of more than six months is to be imposed on summary conviction of an offence triable either way created by or by virtue of an Assembly Measure if the offence is committed before the coming into force of section 154(1) of that Act.

Welsh Consolidated Fund

53 On 2nd April 2007 the Assembly constituted by the Government of Wales Act 1998 (c. 38) must pay into the Welsh Consolidated Fund all monies standing to its credit immediately before that day.

Grants

54 Until the end of the initial period section 118(2) has effect with the substitution of a reference to the Assembly constituted by the Government of Wales Act 1998 for the reference to the Welsh Ministers, the First Minister or the Counsel General.

Statement of estimated payments

55 In its application for the financial year beginning on 1st April 2007 section 119 has effect as if—

- (a) the references in subsection (1)(b) and (c) to the Welsh Ministers, the First Minister or the Counsel General included the Assembly constituted by the Government of Wales Act 1998, and
- (b) the reference in subsection (6) to the Assembly were to that Assembly.

Destination of receipts

56 Until the end of the initial period section 120 has effect—

- (a) with the substitution of a reference to the Assembly constituted by the Government of Wales Act 1998 for paragraphs (a) and (b) of subsection (1), and
- (b) as if the references in subsections (3), (4) and (5) to the Welsh Ministers were to that Assembly;

and the reference in subsection (2)(a) to a resolution of the Assembly includes a resolution made before the beginning of the initial period by that Assembly.

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Borrowing

- 57 (1) Until the end of the initial period section 121(1) has effect with the substitution of a reference to the Assembly constituted by the Government of Wales Act 1998 for the reference to the Welsh Ministers.
- (2) For the purpose of section 122(2) the aggregate amount which, immediately before 1st April 2007, is outstanding in respect of the principal of—
- (a) loans made under section 82 of the Government of Wales Act 1998, and
 - (b) any other loans issued out of the National Loans Fund which the Assembly constituted by the Government of Wales Act 1998 is liable to repay,
- is treated as outstanding in respect of the principal of sums borrowed under section 121.

Payments out of Welsh Consolidated Fund.

- 58 Until the end of the initial period section 124(3) has effect with the substitution of a reference to the Assembly constituted by the Government of Wales Act 1998 (c. 38) for paragraphs (a) and (b).
- 59 Until the end of the initial period—
- (a) paragraph 5(3) of Schedule 31 to the Local Government, Planning and Land Act 1980 (c. 65) (financial provisions relating to urban development corporations: guarantees),
 - (b) paragraph 16 of Schedule 8 to the Local Government Finance Act 1988 (c. 41) (non-domestic rating: pooling), and
 - (c) paragraph 5(3) of Schedule 8 to the Housing Act 1988 (c. 50) (financial provisions relating to housing action trusts: guarantees),
- have effect with the substitution of references to that Assembly for the references to the Welsh Ministers.

Annual Budget motions

- 60 (1) In its application for the financial year beginning on 1st April 2007 section 125 has effect as if—
- (a) the reference in subsection (1) to the Assembly included the Assembly constituted by the Government of Wales Act 1998 (except as it continues in existence by virtue of paragraph 22), and
 - (b) the references in paragraphs (b) and (c) of subsection (3) to the Welsh Ministers, the First Minister or the Counsel General included that Assembly.
- (2) In relation to a Budget motion moved in that Assembly that section has effect as if—
- (a) the reference in subsection (2) to the First Minister or a Welsh Minister appointed under section 48, and
 - (b) the reference in subsection (3) to the Welsh Ministers in the words before the paragraphs,
- were to a member of the executive committee within the meaning of the Government of Wales Act 1998 and as if the references in paragraphs (a), (b) and (c) of that subsection to the estimate of the Welsh Ministers were to the estimate of the member of that committee by whom the statement is made.

Supplementary Budget motions

- 61 (1) In its application for the financial year beginning on 1st April 2007 section 126 has effect as if the reference in subsection (1) to the Assembly included the Assembly constituted by the Government of Wales Act 1998 (except as it continues in existence by virtue of paragraph 22).
- (2) In relation to a supplementary Budget resolution moved in that Assembly that section has effect as if the reference in subsection (5) to the First Minister or a Welsh Minister appointed under section 48 were to a member of the executive committee within the meaning of the Government of Wales Act 1998.

Contingencies

- 62 Until the end of the initial period section 128 has effect with the substitution of a reference to £50 million for the words after “this section” in subsections (4) and (5) and as if the references to the Welsh Ministers were—
- (a) before the beginning of the initial period, to two or more members of the executive committee within the meaning of the Government of Wales Act 1998 (c. 38), and
 - (b) during the initial period, to two or more members of the Assembly constituted by that Act (as it continues in existence by virtue of paragraph 22) not including the person who immediately before the beginning of the initial period held office as the presiding officer.

Approvals to draw

- 63 (1) This paragraph applies until the end of the initial period.
- (2) Section 129 has effect as if the reference in subsection (1) to the Welsh Ministers were—
- (a) before the beginning of the initial period, to a member of the executive committee within the meaning of the Government of Wales Act 1998, and
 - (b) during the initial period, to a member of the Assembly constituted by that Act (as it continues in existence by virtue of paragraph 22) other than the person who immediately before the beginning of the initial period held office as the presiding officer.
- (3) That section has effect as if the reference in subsection (3) to the Welsh Ministers were to the Assembly.
- (4) And that section has effect as if the reference in subsection (5)(b) to the principal accounting officer for the Welsh Assembly Government were—
- (a) before the beginning of the initial period, to the Assembly’s principal accounting officer (designated under section 98 of the Government of Wales Act 1998), and
 - (b) during the initial period, to the person who was the Assembly’s principal accounting officer immediately before the beginning of the initial period.

Auditor General

- 64 The person who, immediately before the commencement of the repeal of section 90 of the Government of Wales Act 1998, holds the post of Auditor General for Wales

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is to be taken after that time to have been appointed to that post under paragraph 1 of Schedule 8.

Advocate General for Northern Ireland

- 65 (1) Until the coming into force of section 27(1) of the Justice (Northern Ireland) Act 2002 (c. 26) this Act has effect subject to the following modifications.
- (2) In section 81(3), omit “, the Advocate General for Northern Ireland”.
- (3) In section 153(5)(c) and paragraphs 23(1) and (2), 24(1) and 29(2)(c) of Schedule 9, for “Advocate General” substitute “Attorney General”.

The Supreme Court

- 66 (1) Until the coming into force of section 23(1) of the Constitutional Reform Act 2005 (c. 4) this Act has effect subject to the following modifications.
- (2) In section 96, for “Supreme Court” substitute “Judicial Committee of the Privy Council”.
- (3) In section 98(6)(a), for “the Supreme Court decides” substitute “the Judicial Committee of the Privy Council decide”.
- (4) In the following provisions, for “Supreme Court” substitute “Judicial Committee of the Privy Council”—
- (a) the title to section 99,
 - (b) subsection (1) of that section,
 - (c) section 100(1)(b),
 - (d) section 101(4)(c), and
 - (e) section 102(2)(b).
- (5) In section 102(3)(a), for “the Supreme Court has” substitute “the Judicial Committee of the Privy Council have”.
- (6) In section 111(6)(a), for “the Supreme Court decides” substitute “the Judicial Committee of the Privy Council decide”.
- (7) In the following provisions, for “Supreme Court” substitute “Judicial Committee of the Privy Council”—
- (a) the title to section 112,
 - (b) subsection (1) of that section,
 - (c) section 113(1)(b),
 - (d) section 114(4)(c), and
 - (e) section 115(2)(b).
- (8) In section 115(3)(a), for “the Supreme Court has” substitute “the Judicial Committee of the Privy Council have”.
- (9) In section 148(1)(f), for “Senior Courts” substitute “Supreme Court”.
- (10) In paragraph 1(2) of Schedule 9 after “Schedule” insert “—
- (a) “the Judicial Committee” means the Judicial Committee of the Privy Council, and

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(b)".

- (11) In paragraphs 7(2)(a), 9, 15 and 25 of that Schedule, for "Supreme Court" substitute "House of Lords".
- (12) In the following provisions of that Schedule—
- (a) paragraph 10 and the heading before it,
 - (b) paragraph 18 and the heading before it,
 - (c) paragraph 19,
 - (d) paragraph 20 and the heading before it,
 - (e) paragraph 27 and the heading before it,
 - (f) sub-paragraph (1) of paragraph 29 and the heading before it, and
 - (g) paragraph 30(1),
- for "Supreme Court" substitute "Judicial Committee".
- (13) In paragraph 11 of that Schedule—
- (a) for "Supreme Court", in both places, substitute "Judicial Committee",
 - (b) for "permission", in the first two places, substitute "leave", and
 - (c) for "permission", in the third place, substitute "special leave",
- and in the heading before it, for "Supreme Court" substitute "Judicial Committee".
- (14) In paragraph 21 of that Schedule—
- (a) for "Supreme Court apart from this paragraph" substitute "House of Lords",
 - (b) for "Supreme Court", in the second and third places, substitute "Judicial Committee",
 - (c) for "permission", in the first two places, substitute "leave", and
 - (d) for "permission", in the third place, substitute "special leave".
- (15) In paragraph 28 of that Schedule—
- (a) for "Supreme Court", in both places, substitute "Judicial Committee",
 - (b) for "permission", in the first two places, substitute "leave", and
 - (c) for "permission", in the third place, substitute "special leave",
- and in the heading before it, for "Supreme Court" substitute "Judicial Committee".
- (16) Before paragraph 29 of that Schedule insert—

"Proceedings in the House of Lords

28A Any devolution issue which arises in judicial proceedings in the House of Lords is to be referred to the Judicial Committee unless the House considers it more appropriate, having regard to all the circumstances, that it should determine the issue."

- 67 (1) This paragraph has effect until the coming into force of section 23(1) of the Constitutional Reform Act 2005 (c. 4).
- (2) Any decision of the Judicial Committee in proceedings under this Act—
- (a) must be stated in open court, and
 - (b) is binding in all legal proceedings (other than proceedings before the Judicial Committee).

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- (3) The only members of the Judicial Committee who may sit and act as members of the Judicial Committee in proceedings under this Act are those who hold or have held—
- (a) the office of a Lord of Appeal in Ordinary, or
 - (b) high judicial office as defined in section 25 of the Appellate Jurisdiction Act 1876 (c. 59) (ignoring for this purpose section 5 of the Appellate Jurisdiction Act 1887 (c. 70)).
- (4) Her Majesty may by Order in Council—
- (a) confer on the Judicial Committee in relation to proceedings under this Act such powers as appear to be appropriate,
 - (b) apply the Judicial Committee Act 1833 (c. 41) in relation to proceedings under this Act with exceptions and modifications, and
 - (c) make rules for regulating the procedure with respect to proceedings under this Act before the Judicial Committee.
- (5) An Order in Council under sub-paragraph (4) 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.
- (6) No recommendation is to be made to Her Majesty in Council to make an Order in Council under sub-paragraph (4) which contains provisions in the form of amendments or repeals of enactments contained in an Act 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.
- (7) A statutory instrument containing an Order in Council which makes provision falling within sub-paragraph (4)(a) or (b) is (unless a draft of the statutory instrument has been approved by a resolution of each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament.