

GOVERNMENT OF WALES ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

General Overview of the Act

19. The Act is organised in six Parts.
20. [Part 1](#), together with Schedules 1 and 2, makes provision for the election and remuneration of Assembly Members; for the offices of Presiding Officer, Deputy Presiding Officer, and Clerk; for the establishment of an Assembly Commission (to be responsible for providing the Assembly with staff and support services); for committees; and for the Assembly's powers to summon witnesses and call for documents.
21. [Part 2](#), with Schedule 3, establishes the Welsh Assembly Government as an entity separate from, but accountable to, the National Assembly. It deals with the appointment and remuneration of the First Minister and other Ministers and Deputy Ministers; creates the office of Counsel-General to the Welsh Assembly Government and makes provision for appointment to it; and authorises the appointment of staff (who are civil servants) in support of the Assembly Government. It provides for the exercise of statutory functions by Ministers in their own right (rather than as delegates of the Assembly), and places duties on them in respect of carrying out regulatory impact assessments in connection with Welsh subordinate legislation, and duties in respect of equality of opportunity, sustainable development and the Welsh Language. Ministers will also be required to engage with stakeholders through consultation mechanisms with business, local government, and the voluntary sector.
22. [Part 3](#), with Schedule 5, introduces the new mechanism, proposed in the White Paper¹, by which legislative competence will be conferred on the Assembly, with Parliament's approval, in respect of specified matters set out in the Schedule as amended by Orders in Council. The Assembly's legislation in exercise of these powers will be known as Assembly Measures.
23. [Part 4](#) and Schedules 6 and 7 make provision for the holding of a referendum on whether the Assembly should have more extensive ("primary") legislative powers, and specify the subject-matter on which the Assembly would be able to legislate without further recourse to Parliament if such a proposal was approved in a referendum. Provision is made in the Act for the subject-matter on which the Assembly could legislate, following approval in a referendum, to be adjusted and updated to reflect the circumstances of the time when any referendum is held.
24. [Part 5](#), with Schedule 8, deals with Finance. It provides for the creation of a Welsh Consolidated Fund, which will receive payments from the Secretary of State out of moneys voted by Parliament. Payments out of the Fund to meet the costs of Welsh Assembly Government programmes, will be authorised by Annual and Supplementary Budget Motions adopted by the Assembly. No payment out will be made unless

¹ "Better Governance for Wales", paras. 3.14-3.21.

approved by the Auditor General for Wales, who will need to be satisfied that it is in line with a Budget Resolution (or otherwise lawful under the Act). Provision is made for preparation of the accounts of the Welsh Ministers, and of the Assembly Commission, and the Act appoints Accounting Officers to have personal responsibility for these accounts. Schedule 8 re-enacts with modifications the existing provisions relating to the office of the Auditor General for Wales; in particular, appointments to that office will in future be made by Her Majesty on the nomination of the Assembly.

25. Finally, Part 6, with Schedules 9-12, deals with Miscellaneous and Supplementary matters. The provisions in the 1998 Act dealing with Welsh public records are re-enacted to reflect the new circumstances created by this Act. Provision is also made for legal proceedings in relation to “Devolution Issues”. Schedule 11 contains transitional provisions to cover the transfer in May 2007 (when the next Assembly elections take place) from the legal and governmental regime created by the 1998 Act to that envisaged by this Act.

Part 1: National Assembly for Wales

Overview of Part 1

26. **Part 1** of the Act re-enacts many of the 1998 Act’s provisions relating to the establishment of the Assembly, but additional provision is made, in part because the Assembly will no longer be a “corporate body”.
27. By virtue of sections 1 and 2, 40 constituency members will continue to be directly elected from constituencies identical with Parliamentary constituencies, and 20 Assembly regional members from Assembly electoral regions. (Schedule 1 effectively re-enacts provision in the 1998 Act for the areas of those regions to be adjusted to reflect changes from time to time in Assembly/Parliamentary constituency boundaries so that electoral regions will always consist of a number of whole constituencies; and for additional regional members to maintain the 2:1 ratio if there is an increase in the number of Assembly constituencies). Under the 1998 Act, Welsh general elections to the Assembly are held every four years, and that continues generally to be the case under the new Act; but new provision, equivalent to s.3 of the Scotland Act 1998, is made by section 5 of the Act to allow for an extraordinary (early) Welsh general election to be held if not less than two-thirds of all Assembly Members (i.e. 40) vote for a resolution to that effect. Such circumstances might arise if, for example, it became clear that, given the existing composition of the Assembly, no Assembly Government could be formed that would be likely to enjoy the confidence of the Assembly.
28. Provisions on the entitlement to vote, and the voting arrangements, whereby electors are able to vote for a constituency candidate and separately for a party list (or independent candidate) at regional level, are carried forward from the 1998 Act. Assembly elections will be held in accordance with an order to be made by the Secretary of State under section 13 (and new provision will be made for the 2007 Welsh general election, taking into account the provisions of the Electoral Administration Act 2006). On candidacy, section 7 includes the provision so that a person may not appear on a party list as a candidate for a regional seat if that individual is also an Assembly constituency candidate. Provisions on the allocation of regional seats at a general election, and the filling of casual constituency or regional vacancies, are carried forward from the 1998 Act. Provisions relating to the disqualification from Assembly membership of the holders of specified offices are also carried forward, with amendments to reflect changes in legislation since 1998. On becoming Assembly Members, individuals are by section 23 required to take an oath or make an affirmation of allegiance, as was required by the 1998 Act.
29. Arrangements for determining Assembly Members’ remuneration are set out in sections 20-22, broadly in line with what was provided for in the 1998 Act. Section 22 provides for the publication of information about the salaries and allowances paid to individual

Assembly Members. Provision is also made in section 24 for the Assembly to make payments by way of assistance to groups of Assembly Members to assist them to perform their functions; this is the Assembly equivalent of what is known in Parliament as “Short money”. The Assembly’s standing orders must make provision about the publication of information on the use made of this power in each financial year.

30. [Sections 25, 26 and 27](#) make provision respectively for the offices of Presiding Officer and Deputy Presiding Officer, the Clerk, and the establishment of an Assembly Commission to be responsible for providing the Assembly with staff and support services. The offices of Presiding Officer and Deputy Presiding Officer were created by the GoWA, but the Act sets out their responsibilities in fuller detail. Statutory recognition, by section 26, of the office of Clerk of the Assembly is new, and broadly follows s.20 of the Scotland Act 1998; by paragraph 17 of Schedule 11, the member of staff currently serving as Clerk to the Assembly will become the first holder of the office from the 2007 election.
31. Provision for the Commission broadly follows that made in the Scotland Act 1998 for the Scottish Parliamentary Corporate Body. It is a consequence of the fact that the Assembly will no longer be a corporate body and will not therefore have the benefit of legal personality. The Commission, whose membership, duties and powers are set out in fuller detail in Schedule 2, will be a body corporate, capable of entering into contracts and holding property etc in its own right in pursuance of its functions. In recruiting staff, the Commission is to ensure that its procedures, including its selection procedures, and the terms of conditions of employment it offers, are to be broadly in line with those of the Welsh Assembly Government. Paragraphs 5 and 6 of Schedule 2 confer specific powers on the Assembly Commission to promote public awareness of the current or any pending system of Assembly elections, and of devolved government in Wales.² The Commission is specifically empowered to provide financial assistance to the Electoral Commission for these purposes, but will also be able to take other such action as it thinks fit in pursuit of these objectives.
32. [Sections 28-30](#) are about Assembly Committees. Generally speaking it will be for the Assembly in future to decide what committees it wishes to establish via its standing orders, but there is a requirement for an Audit Committee. Section 29 makes new provision for determining the membership of such committees as the Assembly may wish to establish after May 2007, so that (as far as reasonably practicable) the allocation of places on committees secures that the membership of each committee reflects the overall representation of political groups in the Assembly. It includes provision for determining the allocation of places in the event that there is not a consensus (that is, if there is no resolution to allocate committee places which is supported by two-thirds of those voting) and provision to secure that – subject to the total number of places available on committees – members who do not belong to a political group are each offered at least one place and all political groups are offered at least as many places as they have members, thus protecting the position of independent members and small political parties and groups.
33. The Assembly’s proceedings generally are to be regulated by its standing orders. By virtue of paragraph 20 of Schedule 11, the Secretary of State is to make standing orders to be in place when the Assembly first meets after the May 2007 elections. In making those standing orders, the Secretary of State must give effect (subject to a power to modify them to make them precisely fit for purpose) to any draft standing orders adopted by the Assembly on a two-thirds vote. After the Assembly is elected in 2007, it will be able to revise any provisions of its standing orders as it sees fit, subject, as now, to two-thirds of Members voting to support such revisions; but any such revisions will need to be compatible with the Act’s requirements that certain matters (e.g. integrity and the need for a register of interests, see section 36), are provided for in standing orders.

² See “Better Governance in Wales”, para.4.8, for the background to this proposal.

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

34. Sections 32-34 of the Act provide variously for the Secretary of State for Wales to participate (but not to vote) in Assembly proceedings; for other Ministers of the Crown to participate, to the extent that is permitted by standing orders; and for the Counsel General, who need not necessarily be an Assembly Member, also to participate as standing orders allow. The Secretary of State for Wales' duty under s.31 of the GoWA to consult the Assembly on the UK Government's legislative programme is carried forward into the new Act as section 33. Assembly proceedings generally are, by virtue of section 35, to reflect equal opportunity principles and equal treatment of the Welsh and English languages. Statements in Assembly proceedings are absolutely privileged for the purposes of the law of defamation (section 42).
35. Finally in this Part, sections 37- 40 make revised provision enabling the Assembly, or any of its committees, to summon witnesses or call for documents, "concerning any matter relevant to the exercise by the Welsh Ministers of any of their functions". Section 40 envisages that a witness giving evidence in such circumstances may be required to do so on oath (or affirmation). It will still be open to an Assembly committee to invite witnesses to give evidence on any matter in which the committee has an interest. There are exceptions to the power to compel attendance or the production of documents. For example, it will not be open to the Assembly to summon to give evidence someone who has been a Minister of the Crown, or has served as a civil servant in support of a Minister of the Crown, in relation to the exercise of any functions of a Minister of the Crown (section 37(3)). On the other hand, Welsh Ministers' officials will be summonable; although provision is made for a Welsh Minister to appear themselves, or to nominate a different official to represent them to the one summoned by the Assembly committee, if the Minister considers that appropriate in the particular circumstances (section 37(5), (6)).