

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.

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)).

Detailed Comments on Part 1

The Assembly

Section 1: The Assembly

36. This section provides for establishment of the legislative body called the National Assembly for Wales ("the Assembly") and the Assembly Members who comprise its membership. The corporate body which was set up under the Government of Wales Act 1998 with legislative and executive powers, and which was also called the "National Assembly for Wales", will cease to exist.
37. Membership of the Assembly is to consist of Assembly Members of two descriptions: Assembly constituency members and Assembly regional members. Each Assembly constituency elects one Assembly constituency member. Each Assembly region, of which there are five, elects four regional members.
38. Assembly Members will be elected in general elections (in which all Assembly seats are up for election), in by-elections (for Assembly constituency members only), or by application of the rules for filling vacant regional seats. The rules for all these processes are to be found in this Act, in subordinate legislation made under it and in other legislation relating to elections.
39. When a seat in the Assembly becomes vacant (for example, because of the death or resignation of an Assembly constituency or regional member), the fact that there is a vacancy does not invalidate anything done by the Assembly, or by its committees or sub-committees.

Section 2: Assembly constituencies and electoral regions

40. This section and Schedule 1 to the Act provide for the Assembly constituencies (for which Assembly constituency members are returned), and the Assembly electoral regions (for which Assembly regional members are returned).

41. Assembly constituencies have the same boundaries as the parliamentary constituencies for which Members of the UK Parliament are returned. Therefore, at the passing of this Act, there are 40 Assembly constituencies. If the parliamentary constituencies change (by Her Majesty making an Order in Council under the Parliamentary Constituencies Act 1986, following a report of the Electoral Commission), the Assembly constituencies will also change accordingly.
42. At the outset, the 5 electoral regions in Wales are: North Wales, Mid and West Wales, South Wales West, South Wales Central and South Wales East. The boundaries of these electoral regions are laid down by the Parliamentary Constituencies and Assembly Electoral Regions (Wales) Order 2006, which was made under the Parliamentary Constituencies Act 1986.
43. The boundaries of the electoral regions and the numbers of Assembly regional seats allocated to each region will be able to be altered by an Order in Council made by Her Majesty under the Parliamentary Constituencies Act 1986, following a report of the Electoral Commission into parliamentary constituencies. Schedule 1 to the Act makes detailed provision in relation to the procedures for proposals for such alterations.

General Elections

Section 3: Ordinary general elections

44. This section provides that Assembly ordinary general elections are to take place every four years, on the first Thursday in May, subject to a power under which the Secretary of State may change the date of an ordinary general election by order under section 4.
45. In advance of an ordinary general election the Assembly is to be dissolved a specified number of days before that Thursday. This number of days (“the minimum period”) will either be specified in an Order made by the Secretary of State under section 13, or calculated in accordance with rules set out in the Order. This is the minimum period to which subsection (3) refers.
46. The section also provides that the Assembly must meet within seven days after the day of the poll (excluding certain days such as Saturdays, Sundays and Bank Holidays).

Section 4: Power to vary date of ordinary general election

47. This section allows the Secretary of State, by Order, to vary the date of an ordinary general election (i.e. one that is scheduled to occur on the first Thursday in May, every four years) by up to one month either way, if, for example, holding the general election on the first Thursday in May would mean it would coincide with some other important event. Such an Order must also make provision as to when the Assembly is to be dissolved in advance of the varied date of the election and for it to meet within seven days after the day of the poll, again excluding certain days from the calculation. The Order may also apply the Representation of the People Acts, or other legislation that applies to the election of Assembly Members, with any modifications that are necessary because of the change of the date of the general election.
48. Before making an Order under this section, the Secretary of State must first consult the Welsh Ministers and an Order must be laid before Parliament and is subject to being annulled by resolution of either House of Parliament.

Section 5: Extraordinary general elections

49. **Section 5** provides a mechanism for an *extraordinary* general election to take place before the next scheduled ordinary general election in certain circumstances.
50. If the Assembly resolves that it should be dissolved (provided Assembly Members representing at least two-thirds of Assembly seats, i.e. 40 Assembly Members voted for the resolution), or if the Assembly fails to nominate an Assembly Member to be

the First Minister within the period laid down by section 47 (usually 28 days), then the Secretary of State must propose a date for the holding of an extraordinary general election. Arrangements for the holding of the extraordinary general election are then to be made by Order in Council.

51. If an extraordinary general election is held less than six months before the date on which an ordinary general election would normally be held, that ordinary general election is not to be held. The date of subsequent ordinary general elections would not however be affected, i.e. they would still normally take place on the first Thursday in May at intervals of four years after that in which the ordinary general election which did not take place was due to have been held

Section 6: Voting at general elections

52. This section provides that persons voting in Assembly general elections can cast two votes. One vote (“the constituency vote”) may be cast for a named candidate to be the Assembly constituency member. The other (“the electoral region vote”) is for a registered political party which has put forward a list of candidates or for an individual candidate and, in either case, is for the purpose of electing the Assembly regional members for the region.

Section 7: Candidates at general elections

53. This section lays down rules in relation to entitlement to be a candidate for Assembly constituencies and electoral regions at a general election.
54. For example, a person may not be a candidate for more than one constituency. A person may not be included by a registered political party in its list of candidates for more than one electoral region. Nor may a person who is a candidate for any constituency be included in any of a party’s regional lists. Similarly, a person may not be an individual candidate for an electoral region if that person is also a candidate for any constituency or on any list of candidates submitted by any registered political party for any electoral region.

Sections 8 and 9: Calculation of Electoral Region Figures and Allocation of seats to electoral region members

55. These sections set out the method for determining the allocation of the four electoral region seats for each electoral region, using a “d’Hondt” calculation.
56. The starting point is the calculation, for each electoral region, of the initial “electoral region figure” for each registered political party and individual candidate. Section 8 explains how this is to be calculated.
57. In each Assembly region, the successful Assembly constituency members are to be identified before the electoral region figures are calculated. The electoral region figure is then calculated in *each* electoral region, for *each* registered political party that has submitted a list of candidates to be elected as the Assembly regional members in that region, by the following formula:

$$X = A / (B + 1)$$

where:

- A = the total number of electoral region votes cast for that party across all the constituencies in that electoral region;
- B = the total number of constituency seats won by that party in that electoral region; and
- X = the electoral region figure.

58. For an individual electoral region candidate the electoral region figure is the total number of votes cast for that candidate.

59. The electoral region figures of all parties and of any individual regional candidates are compared. The first electoral region seat is allocated to the political party or individual regional candidate with the highest electoral region figure. The candidate elected is the one at the top of that party's list.
60. If a seat is allocated to a party, its electoral region figure must be re-calculated by adding the seat allocated to figure B and dividing figure A by (new figure B + 1). This re-calculated electoral region figure then replaces that party's initial electoral region figure.
61. The electoral region figures of all parties and of any individual regional candidates (other than an individual candidate to whom a seat has already been allocated) are then compared again and the next electoral region seat is allocated to the party or individual candidate with the highest electoral figure. In the case of a party the candidate elected is the one at the top of that party's list, disregarding any candidate already elected. If a seat is allocated to a party, the electoral figure of that party is again re-calculated by adding a further seat to figure B, and re-applying the formula $X = A/(B + 1)$.
62. The process is repeated until all four regional seats have been allocated.
63. If all the candidates on a political party's regional list have been elected before all four regional seats have been filled, that party is disregarded in subsequently assessing which party or individual has the highest electoral region figure.
64. Provision is made for situations in which, at any comparison of electoral figures, the highest electoral figure is shared by two or more parties or individual candidates. If the number of unallocated seats is equal to or greater than the number of parties or individual candidates sharing the highest electoral figure then a seat is allocated to each. If not, the tie is to be broken, if possible, by increasing figure A by 1 and comparing the electoral figures again. If there are still two parties or individual candidates with equal electoral figures and not enough unallocated seats for all of them, the regional returning officer is to decide the matter by the drawing of lots.

Vacancies

Section 10: Constituency Vacancies

65. **Section 10** provides for the filling of a constituency seat which becomes vacant (for example, because of the resignation or death of the Assembly constituency member). A by-election must be held, on a date fixed by the Assembly's Presiding Officer, which must be within 3 months of the vacancy arising, unless it appears to the Presiding Officer that the latest day on which the poll could be held would be within 3 months of the date when the next ordinary general election is due to take place (in which case the seat will remain vacant until the general election.)
66. At a by-election, electors cast only one vote, for a named constituency candidate, (as opposed to the two votes at a general election, when electors are electing both a constituency member and regional members).

Section 11: Electoral Region Vacancies

67. **Section 11** provides the machinery for filling a regional seat which becomes vacant (for example, because of the resignation or death of the Assembly regional member). If the seat which has fallen vacant was held by a candidate drawn from the list which a party had submitted at the previous general election, the vacancy is filled by the next candidate on that list, provided that person still wishes to be elected, and, in the case of a person who has ceased to be a member of the party, the party has not given notice that it does not wish that person to fill the vacancy.
68. A person who has, since that general election, been a candidate in a constituency by-election, is barred from taking up a regional vacancy as is a person who has previously

been allocated a regional seat (and has, for example, ceased to hold that seat by reason of having resigned).

69. If, for any reason, the vacant seat cannot be filled from a party's list (for example because all the candidates on the list have been exhausted or the only candidates who are left are barred from filling the vacancy) then the seat remains vacant until the next ordinary or extraordinary general election.
70. If the Assembly regional member whose seat has become vacant was elected as an individual candidate, as opposed to being drawn from a party list, there is no procedure for filling the seat and it remains vacant until the next ordinary or extraordinary general election.

The Franchise and conduct of elections

Section 12: Entitlement to Vote

71. This section provides that the persons entitled to vote in any Assembly general or by-election in a constituency are those entitled to vote in a local government election in an electoral area included in the constituency. Electors may not cast more than one constituency vote or more than one regional vote at a general election or more than one vote at a by-election.

Section 13: Power to make provision about elections etc

72. This section empowers the Secretary of State to make provision by secondary legislation in relation to Assembly elections. This includes provision:
 - a) about the registration of electors;
 - b) for disregarding alterations in registers of electors;
 - c) about limitations on election expenses;
 - d) to allow Assembly elections and other elections, such as local government elections, to be held on the same day; and
 - e) to allow sections 6 and 8(2) of the Act to operate differently if an election for an Assembly constituency member at a general election is abandoned.
73. The need to be able to modify the effect of the Act where an election in a particular constituency is abandoned (for example because of the death of a candidate) arises because normally no regional members can be elected until all constituency seats in the region have been filled.
74. Subsection (6) provides that the only method by which the return of an Assembly Member may be challenged (for example, on the ground that the election was not conducted lawfully) is by election petition under Part 3 of the Representation of the People Act 1983 as applied or incorporated by an Order under this section.
75. The Secretary of State must lay a draft of an Order under this section before each House of Parliament and may not make the Order unless approved by resolution of each House.

Duration of membership

Section 14: Term of office of Assembly members

76. This section provides that the term of office of an Assembly member begins when the member is declared to be returned and ends with the dissolution of the Assembly.

Section 15: Resignation of members

77. An Assembly member may resign by giving notice in writing to the Presiding Officer.

Disqualification

Section 16: Disqualification from being Assembly member

78. This section specifies the persons who are disqualified from becoming or continuing to be a member of the Assembly, including:

- a) those disqualified from being a member of the House of Commons under section 1(1)(a) to (e) of the House of Commons Disqualification Act 1975 (judges, civil servants, members of the armed forces, members of police forces, members of foreign legislatures);
- b) holders of offices designated by Order in Council (which must be laid before and approved by the Assembly);
- c) the Auditor General for Wales and the Public Services Ombudsman for Wales;
- d) members of the staff of the Assembly.

79. In addition, those disqualified from membership of the House of Commons, other than under the House of Commons Disqualification Act 1975, are also disqualified from membership of the Assembly. This covers common law and other statutory disqualifications and has the effect of excluding from membership:

- a) persons under the age of 21 who are disqualified by the Parliamentary Elections Act 1695, section 7;
- b) aliens who are disqualified at common law and by virtue of the Act of Settlement 1700, section 3, as amended by the British Nationality Act 1981, Schedule 7. Irish or Commonwealth citizens are not regarded as aliens for this purpose. Section 17(2) also excepts EU citizens who are resident in the UK;
- c) local authority employees in politically restricted posts, who are disqualified from candidature for election to the House of Commons by the [Local Government Officers \(Political Restrictions\) \(Amendment\) Regulations 1998 \(SI 1998/3116\)](#), Schedule 1 para 1(a);
- d) persons who are mentally ill and who are disqualified at common law. The procedure for the vacation of their seats is specified in section 141 of the Mental Health Act 1983;
- e) persons in respect of whom a bankruptcy restrictions order has effect are disqualified under section 426A of the Insolvency Act 1986;
- f) persons guilty of corrupt or illegal practices at Parliamentary elections are disqualified under the Representation of the People Act 1983;
- g) convicted prisoners serving a sentence of more than one year's detention (or an indefinite sentence) in the UK or Ireland, who are disqualified by the Representation of the People Act 1981; Section 16(3) extends this disqualification to prisoners serving a sentence of more than one year's detention in any EU member State.

80. Members of the House of Lords are disqualified from being members of the House of Commons, but section 17(1) lifts these disqualifications in relation to membership of the Assembly.

81. Anyone who holds office as a Lord Lieutenant, Lieutenant or High Sheriff for any area in Wales is disqualified from membership but only for any constituency or electoral region wholly or partly included in that area.

Section 17: Exceptions and relief from disqualification

82. **Section 17** provides for certain persons to be exempt from certain of the provisions in section 16 disqualifying certain persons from membership of the Assembly.
83. A citizen of the European Union resident in the UK is not disqualified from membership of the Assembly under section 3 of the Act of Settlement 1700. Such persons would otherwise be disqualified under section 16(2).
84. Subsection (3) permits the Assembly, by resolution, to disregard the disqualification (or alleged disqualification) of a person on any ground falling within section 16(1) or section 16(4). To do so it must consider that the grounds for disqualification have been removed and that it is proper to disregard the disqualification.
85. Any Assembly resolution to disregard a disqualification under subsection (3) is not to affect any proceedings under Part 3 of the Representation of the People Act 1983, as applied by an Order under section 13. Nor can such a resolution enable the Assembly to disregard any disqualification established in proceedings under section 19 (which permits an action to be raised in the High Court seeking a declaration that a person who has been returned as an Assembly member is disqualified).

Section 18: Effect of disqualification

86. This section sets out the consequences of disqualification in relation both to persons who are disqualified before they are returned as Assembly members, and to members who become disqualified during their term of office
87. If a person is returned as an Assembly member and that person is disqualified from being an Assembly member, either generally or in relation to the particular constituency or region, that return is void and the seat is vacant. A seat also becomes vacant where a person has been validly returned, but then becomes disqualified. These provisions are subject to the power of the Assembly to give relief from disqualification under section 17.
88. Subsections (5), (6) and (7) make special provision as to Assembly members who are detained in mental institutions or are declared bankrupt.
89. Subsections (6) and (7) provide that where the provisions in subsection (5) apply, the disqualified member's seat will not be vacated immediately and therefore, they do not cease to be a member of the Assembly until the seat is vacant. However, in the meantime, the member cannot participate in any proceedings of the Assembly, and the Assembly may resolve to withdraw other rights and privileges.
90. Subsection (8) protects the validity of any Assembly proceedings where a member is or becomes disqualified.

Section 19: Judicial proceedings as to disqualification

91. This section provides for a procedure before the High Court for establishing whether an Assembly member is disqualified or has been disqualified from membership. It is similar to the procedure before the Judicial Committee of the Privy Council provided in relation to disqualification from membership of the House of Commons by section 7 of the House of Commons Disqualification Act 1975, and to the procedure before the Court of Session in relation to disqualification from the Scottish Parliament under section 18 of the Scotland Act 1998.

92. Subsection (1) provides that a person who claims that a member of the Assembly is, or has (since being elected) been, disqualified may apply to the High Court for a declaration to that effect (i.e. a court order which establishes and declares that to be the case). No declaration may be made, however, on grounds which subsisted at the time of the election if an election petition is pending or has been tried in which the disqualification on those grounds is or was an issue or if a resolution has already been passed by the Assembly under section 17(3) to the effect that the disqualification is to be disregarded.
93. An applicant to the court under this section must such give security for the costs of the proceedings as the court directs, up to a maximum sum of £5000 (the same maximum sum that an election court may order in relation to a Parliamentary election petition under Part 3 of the Representation of the People Act 1983). The maximum sum may be varied by order made by the Welsh Ministers (and which would be subject to annulment in pursuance of a resolution of the Assembly).

Remuneration, oaths etc.

Section 20: Remuneration of Assembly members

94. This section provides for the payment of salaries and allowances to current Assembly members, and for the payment of pensions, gratuities and allowances to former members and office-holders.
95. Subsection (1) imposes a duty on the Assembly to provide for the payment of salaries to Assembly members. The Assembly is free to determine the amount of any salary.
96. Subsection (2) permits the Assembly to provide for the payment of allowances to Assembly members. It is for the Assembly to decide what allowances are payable.
97. Subsection (3) allows the Assembly to make provision for the payment of pensions, gratuities or allowances to former Assembly members, and to the former holders of certain offices (such as the Presiding Officer and Deputy Presiding Officer) even though they may still remain Assembly members.
98. Subsection (4) permits the Assembly to include in any provision under subsection (3) provision for contributions or payments towards pensions, gratuities and allowances. The Assembly can also make arrangements for the establishment and administration of one or more pension schemes. It can do this through the Assembly Commission or by such other means as the Assembly decides.
99. Payments of salaries, allowances and pensions, etc. to current and past Presiding and Deputy Presiding Officers are to be charged on the Welsh Consolidated Fund (so that payment will not need to be authorised annually by the Assembly).
100. Provision for payments under this section may be made either by the Assembly's standing orders or by Assembly resolution and may also be the subject of an Assembly Measure under Part 3 of the Act. Functions may be conferred on the Assembly Commission.
101. [Paragraph 12](#) of Schedule 11 provides for pay etc, determinations made under sections 16 and 18 of the Government of Wales Act 1998 to continue in force post-repeal of those section as if they had been made under this section.

Section 21: Limit on salaries of members

102. This section requires the Assembly to reduce the salary of any Assembly member who also receives a salary as a Member of Parliament or a Member of the European Parliament. The amount by which the salary is reduced is a matter for the Assembly. Expenses paid to Members of the House of Lords do not give rise to a reduction since they are not a salary. The reduction must be either of a particular proportion of the

Assembly member's salary, or the whole, or a proportion of the other salary or some other amount.

103. Provision for the reduction may be made either by the Assembly's standing orders or by Assembly resolution and may also be the subject of an Assembly Measure under Part 3 of the Act. Functions may be conferred on the Assembly Commission.

Section 22: Remuneration: Supplementary

104. This section makes supplementary provisions about the remuneration of Assembly members. These include requiring the Assembly to publish annually information on the total amount paid, and the amounts paid to individual members, by way of salary and allowances, and also requiring the Assembly Commission, if it has had conferred on it the function of determining the levels of salaries, allowances, pensions and gratuities, to publish any determinations it makes as soon as is reasonably practicable.

Section 23: Oath or affirmation of allegiance

105. Every Assembly member is required by this section to take an oath of allegiance or to make a corresponding affirmation. Standing orders must specify the person before whom the oath is to be taken or the affirmation made. If an Assembly member has already, since being returned as a member at the last election, taken the oath of allegiance (or affirmed) in the capacity of a Welsh Minister or Counsel General (see section 55) then the oath or affirmation need not be repeated.
106. Until a member has taken the oath (or affirmed) that member may not take part in any proceedings of the Assembly other than those at which the oath is taken (or affirmation made) or earlier proceedings to elect a Presiding Officer or Deputy Presiding Officer. Neither may any salary, allowances, pension or gratuity be paid to the member.

Section 24: Assistance to groups of Assembly members

107. This section requires the Assembly Commission to make payments to (or in respect of) political groups, where the Assembly has so determined, in order to assist Assembly members belonging to those groups to perform their functions as Assembly members. Corresponding provision is made in section 34A of the Government of Wales Act 1998 (as inserted by section 158(1) of the Political Parties, Elections and Referendums Act 2000).
108. Any determination by the Assembly that political groups should receive such payments, and fixing the amount which each is to receive, must, in order to have effect, be supported by at least two-thirds of the Assembly members voting.
109. Standing orders must provide the means of determining to which group, if any, a member belongs. They can require a political group to have a minimum number of Assembly Members belonging to it before it is recognised as such.
110. Standing Orders must provide for publication of every determination under this section and of information about sums paid to political groups during each financial year.

Presiding Officer and administration

Section 25: Presiding Officer etc.

111. This section provides for the election by the Assembly, at its first meeting after each general election, of a Presiding Officer and a Deputy Presiding Officer. Unless the Assembly by a two-thirds majority of those voting resolves otherwise, the Presiding Officer and the Deputy Presiding Officer must not both belong to the same political group nor must they both be members of political groups with an executive role (i.e. groups to which Ministers belong).

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

112. The Presiding Officer's functions under this Act include:

Section 10(4)		Fixing the date of an election in the event of a constituency vacancy.
Section 11(2)		Receiving notification of the filling of a regional member vacancy.
Section 15		Receiving notification of a member's resignation.
Section 24(5)		Deciding questions arising under the standing orders about the political group (if any) to which a member belongs.
Section 27(2)(a)		Membership of the National Assembly for Wales Commission ("the Assembly Commission").
Section 29(10)		Deciding questions arising under provision made in compliance with section 29 regarding the composition of committees.
Section 38(5)(a)		Receiving notification of the issue of a direction by a Welsh Minister or the Counsel General to a current or former member of staff of the Welsh Assembly Government (or person with an equivalent status) that the person need not give evidence or produce documents to the Assembly, its committees or sub-committees.
Section 40(1)		Administering the oath or affirmation to anyone giving evidence in Assembly proceedings.
Section 46(5)		Designating a person to act as First Minister (on the recommendation of the Welsh Ministers) if the First Minister's office is vacant, the First Minister is unable to act or the First Minister has ceased to be an Assembly Member.
Section 47(4)		Recommending to Her Majesty the Assembly's choice as First Minister.
Section 97(3)		Stating whether the provisions of a proposed Assembly measure are, in the view of the Presiding Officer, within the Assembly's legislative competence.
Section 110(3)		Stating whether the provisions of an Assembly Bill are, in the view of the Presiding Officer, within the Assembly's legislative competence.
Schedule Paragraph 1(1)	2,	Membership of the Assembly Commission.
Schedule Paragraph 7(a)	2,	Such functions as the Assembly Commission delegates to the Presiding Officer.
Schedule Paragraph 11(2)	2,	Presiding at meetings of the Assembly Commission.
Schedule Paragraph 8(4)(a)	8,	Certifying to the Assembly that the Auditor General is unable to certify or report on accounts (or statements) in person.

113. The Presiding Officer holds office until a new Presiding Officer is elected under subsection (1). The effect is that the Presiding Officer does not cease to hold office merely because of the dissolution of the Assembly before a Welsh general election. The Deputy Presiding Officer, on the other hand, holds office only until dissolution of the Assembly. Either may, however, resign, and each would also cease to hold office upon ceasing to be an Assembly member otherwise than by virtue of a dissolution (e.g. by

resignation as an Assembly member) or by being removed from office by resolution of the Assembly.

114. The Presiding Officer's functions may be exercised by the Deputy Presiding Officer if the Presiding Officer's office is vacant, or if the Presiding Officer is for any reason unable to act and the Presiding Officer may, subject to standing orders, authorise the Deputy Presiding Officer to exercise functions of the Presiding Officer. However, the requirement in paragraph 11 of Schedule 2 that the Presiding Officer presides over meetings of the Assembly Commission may not be delegated. If there is no Presiding Officer in post, or if the Presiding Officer is unable to act, then it is for the Assembly Commission to appoint another of its members to preside over its meetings.
115. Under subsection (12) the Assembly may include in its standing orders provision for another person to exercise the Presiding Officer's functions in the event that both the Presiding Officer and Deputy Presiding Officer have either vacated their offices or are unable to act, but again this provision does not extend to the function of presiding over Assembly Commission meetings, which is governed by paragraph 11 of Schedule 2 (as set out above). Standing orders are to determine how such a person is to be chosen.
116. Standing orders may regulate the participation in Assembly proceedings of the Presiding Officer and the Deputy Presiding Officer (and anyone exercising the functions of the Presiding Officer by virtue of provision made under subsection (12)).
117. No defect in the appointment of a person as Presiding Officer or Deputy Presiding Officer (or under provision made under subsection (12)), is to affect the validity of any act of that person in that capacity.

Section 26: Clerk of the Assembly

118. This section requires the Assembly Commission to appoint a person to be Clerk of the Assembly. The Commission may authorise any other member of the Assembly staff can act in place of the Clerk if the Clerk's office is vacant or if the Clerk is for any reason unable to act. The Clerk can also authorise any other member of the staff of the Assembly to exercise functions on behalf of the Clerk.
119. The Clerk's functions under this Act include:

Section 31(8)	Responsibility for publishing standing orders.
Section 38(1)	Giving notice to persons who are by virtue of Section 37 required to attend the Assembly, its committees or sub-committees or to produce documents.
Section 99(3)	Receiving notification from the Counsel General or from the Attorney General that a proposed Measure is not to be referred to the Supreme Court.
Section 100(2)(a)	Notifying the Counsel General and the Attorney General that the Assembly has resolved to reconsider a proposed Measure which has been referred to the Supreme Court and in relation to which the Supreme Court has made a reference to the European Court of Justice.
Section 101(5)	Receiving notification from the Secretary of State that no order is to be made prohibiting the Clerk from submitting a proposed Measure for approval by Her Majesty in Council.
Section 102(1)	Submission of proposed Assembly Measures which have been passed by the Assembly for approval by Her Majesty in Council.

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

Section 102(5)	Recording the date of the approval by Her Majesty in Council of an Assembly Measure on the text of the Measure.
Section 102(6)	Publishing the Order in Council by which an Assembly Measure is approved.
Section 112(3)	Receiving notification from the Counsel General or from the Attorney General that an Assembly Bill is not to be referred to the Supreme Court.
Section 113(2)(a)	Notifying the Counsel General and the Attorney General that the Assembly has resolved to reconsider an Assembly Bill which has been referred to the Supreme Court and in relation to which the Supreme Court has made a reference to the European Court of Justice.
Section 114(5)	Receiving notification from the Secretary of State that no order is to be made prohibiting the Clerk from submitting an Assembly Bill for Royal Assent.
Section 115(1)	Submitting Assembly Bills for Royal Assent, receiving notification of Royal Assent
Section 115(5)	Recording the date of Royal Assent on the text of Acts of the Assembly.
Section 115(6)	Notifying the Assembly of the date of Royal Assent to an Act of the Assembly.
Section 138	Principal accounting officer for the Assembly Commission.
Schedule Paragraph 7(b)	2, Such functions as the Assembly Commission delegates to the Clerk.

Section 27: Assembly Commission

120. This section provides for the establishment, membership and functions of the National Assembly for Wales Commission (“the Assembly Commission”) which provides the Assembly (or arranges for the Assembly to be provided) with the staff, property and services required for the Assembly’s purposes, and which, by virtue of section 41(1) represents the Assembly in legal proceedings.
121. The Assembly Commission follows the pattern of arrangements in place at Westminster and in Scotland. The Assembly itself is not a body corporate and the establishment of the Assembly Commission, which is, enables administrative and legal arrangements to be made for employing staff, holding property, purchasing services, and generally entering into contracts for the benefit of the Assembly. It will be required to comply with any directions given by the Assembly.
122. The Commission will consist of the Presiding Officer and four other members, who must all be Assembly members. Standing orders must make provision about the appointment of the four other members and these provisions must, so far as it is reasonably practicable to do so, secure that none of those members belong to the same political group. Detailed arrangements for the Assembly Commission are set out in Schedule 2.
123. The Assembly will have power to pass Assembly Measures under Part 3 of the Act conferring further functions on the Assembly Commission in order to facilitate the exercise of the Assembly’s own functions.
124. [Part 5](#) of the Act deals with how the Assembly Commission is to be financed.

Committees, etc.

Section 28: Committees and sub-committees

125. This section allows the Assembly by its standing orders, to make provision for the establishment of committees, and for such committees to establish sub-committees. Only Assembly members may be members of committees or sub-committees.
126. Standing orders must make provision about the membership, chairing and procedure of committees and sub-committees and may make provision for excluding an Assembly member from the proceedings of a committee or sub-committee if the Assembly member is not a member of the committee or sub-committee.
127. Subsection (5) provides that the validity of any proceedings of a committee or sub-committee is not affected by vacancies in membership, defects in appointment, or non-compliance with standing orders relating to procedure.

Section 29: Composition of committees

128. **Section 28(3)** provides that standing orders must, among other things, contain provision about the membership of committees. Such provision must meet the requirements of section 29.
129. **Section 29(2)** requires the provision in standing orders to secure that appointments to the places on each committee are, if possible, to be determined by a resolution of the Assembly which secures that the membership of that committee reflects, so far as is reasonably practical, the overall representation of political groups in the Assembly. The standing orders must also secure that, if such a resolution is passed on a vote, it will only have effect if two – thirds or more of the Assembly members voting support it.
130. **Section 29(3)** requires the provision in standing orders to secure that, in the event that the membership of a committee is not determined by a resolution of the Assembly which meets the criteria in section 29(2) (a) and (b), then appointments to each committee are made in accordance with the provisions of sub-sections (3) to (7), which are designed to ensure that places on each committee are allocated to political groups to reflect their overall representation in the Assembly
131. Under those provisions, the allocation of places on committees between different political groups must be made according to the d’Hondt formula, (another example of which is that used in section 9 in order to determine the allocation of electoral region seats in the Assembly for each region). The d’Hondt formula is also used in section 29 of the Northern Ireland Act 1998 to allocate committee chairs and deputy chairs. The formula is set out below.
132. No requirements (other than to make provision in standing orders) are imposed in relation to the composition of sub-committees, the chairing or the procedure of committees or sub-committees. Standing orders may make whatever provision is appropriate in relation to these matters.
133. The political group (if any) to which each Assembly member belongs is a matter to be determined by standing orders (section 24(5)) and questions arising as to the application of standing orders made in pursuance of this section are to be decided by the Presiding Officer (subsection (10)).
134. The first place on each committee is allocated to the political group with the largest number of Assembly members.
135. The second place is then allocated by comparing the figure X produced in relation to each political group by the formula:
$$X = A / (B + 1)$$

where:

- A = the number of seats in the Assembly currently held by members of the political group; and
- B = the number of places on the committee that are already allocated to members of that political group.

136. After the first place is allocated to the largest political group X will be equal to $A/2$ for that group and will be equal to A for all the others. The second place on the committee is to be allocated to the political group which has the highest value for X at this stage.
137. B is then adjusted for the party to which the second place has been allocated and X is re-calculated for each political group and the revised value of X for each group is compared. Once more the political group with the highest value of X is allocated the next place on the committee.
138. The process is repeated until all the places on the committee have been filled. (The size of committees is not regulated by this section and is a matter to be decided in accordance with standing orders.)
139. Subsection (8) requires standing orders to specify how ties (i.e. cases where the calculation produces the same figure for X for two or more political groups) are to be resolved.
140. Provision must, under subsection (9), be made in the standing orders for securing, so far as is reasonably practicable having regard to the total number of committee places available, that a place on at least one committee is available for every Assembly member who does not belong to a political group, and that the total number of committee places allocated to each political group is at least equal to the number of Assembly members belonging to that group.

Section 30: Audit Committee

141. While generally it will be for the Assembly to decide what committees it wishes to establish, this section requires the Assembly to have an Audit Committee (or Pwyllgor Archwilio) in order to discharge certain statutory functions under this Act (such as taking evidence from any of the persons mentioned in section 143(3) if requested to do so by the House of Commons Committee of Public Accounts) and other legislation (such as the Public Audit (Wales) Act 2004). The section allows the Assembly to rename the Audit Committee and provides that, in the event that the Assembly does so, references to the Audit Committee in enactments, instruments or documents are to be read as if they referred to the renamed committee.
142. This section requires standing orders to specify how many members the Audit Committee is to have. Provision made in standing orders in accordance with section 29, to aim to secure that the political composition of committees reflects the political composition of the Assembly, will apply to the Audit Committee. Seats on the Audit Committee may not be allocated to the First Minister (or anyone acting as such), any Welsh Minister or Deputy Welsh Minister or to the Counsel General (or anyone acting as such), and it may not be chaired by an Assembly member belonging to the largest government party.

Proceedings etc.

Section 31: Standing orders

143. This section requires Assembly proceedings (which include the proceedings of committees and sub-committees) to be regulated by standing orders.

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

144. Amongst matters for which standing orders must, under provisions of the Act other than this section itself, expressly make provision are the following:

Section 10(8)	Determining the date on which a constituency vacancy is treated as occurring.
Section 23(2)	Specifying the person before whom Assembly members are to take the oath or make the affirmation of allegiance.
Section 27(3)	Appointment of the four members (other than the Presiding Officer, who is appointed automatically) of the Assembly Commission.
Section 28(3)	Provision about the membership, chairing and procedure of the Assembly's committees and their sub-committees – note that such provision must, in relation to committees, meet the requirements of section 29.
Section 36	Provisions in relation to registration and declaration of members' interests, prohibition of paid advocacy and for defining (or providing for the definition by code or protocol) the respective roles and modes of description of constituency and regional Assembly members.
Section 98	Procedures for scrutinising proposed Assembly Measures.
Section 111	Procedures for scrutinising Assembly Bills.

145. The Act also empowers (but does not oblige) standing orders to be made covering, amongst others, the following matters:

Section 20(6)(a)	Provisions for remuneration of Assembly members (including provisions conferring functions on the Assembly Commission).
Section 21(3)(a)	Provisions for limiting the salaries of Assembly members (including provisions conferring functions on the Assembly Commission).
Section 25	Provisions for the exercise of the Presiding Officer's functions by the Deputy Presiding Officer, or by any other person where both the Presiding Officer and Deputy Presiding Officer are unable to act or their offices are vacant; and participation by the Presiding Officer and Deputy Presiding Officer in Assembly proceedings.
Section 28(1)	Provision for the appointment of committees to the Assembly, and for those committees to have the power to appoint sub-committees.
Section 28(4)	Exclusion from the proceedings of Assembly committees and their sub-committees of Assembly members who are not members of those committees and sub-committees.
Section 31	Exclusion of members from Assembly proceedings, and withdrawal of members' rights and privileges.
Section 34	Participation of the Counsel General (if not an Assembly member) in Assembly proceedings.
Section 37(7)(b)	Power of committees or sub-committees to call for witnesses and documents.
Section 40(1)	Administration of the oath or affirmation to witnesses in Assembly proceedings.
Section 40(4)	Payment of allowances and expenses to witnesses in Assembly proceedings and those producing documents for Assembly proceedings.

Section (a)	53(7)	Remuneration of Welsh Ministers, Deputy Welsh Ministers and the Counsel General (including provisions conferring functions on the Assembly Commission).
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146. Because of the change in the structure and functions of the Assembly the standing orders relating to the Assembly constituted under GoWA will not be suitable for use in relation to the Assembly constituted under this Act. Consequently, new standing orders will need to be provided in readiness for use by the Assembly at its first meeting after the May 2007 election.
147. [Paragraph 20](#) of Schedule 11 sets out how the new standing orders are to be made. In summary, the new standing orders must be made by the Secretary of State by no later than 31st March 2007. In making the standing orders, the Secretary of State must give effect to proposals submitted to the Secretary of State by the Assembly (as currently established) no later than 28th February 2007, provided that those proposals have been approved by a two-thirds voting majority in the Assembly. As a minimum, the standing orders have to include the mandatory provisions required by the Act. Both the standing orders made by the Secretary of State, and the Assembly's proposals as to what provisions they should include, must be made in both English and Welsh.
148. The standing orders are to have effect as the standing orders for the reconstituted Assembly at and from its first meeting after the ordinary election in May 2007, unless and until they are remade or revised by the Assembly in accordance with section 31(7), which requires any changes to the standing orders to be approved by a two-thirds voting majority in the Assembly.
149. Standing orders must make provision for preserving order in Assembly proceedings, including provision for preventing conduct that could constitute a criminal offence or contempt of court and provision for a *sub judice* rule to prevent matters which are the subject of ongoing court proceedings to be raised in questions or debate.
150. Standing orders may include provision for excluding Assembly members from proceedings and for withdrawing from an Assembly member rights and privileges of membership.
151. Standing orders must make provision for Assembly proceedings normally to be held in public, but allows standing orders to specify circumstances where committee proceedings may be in private. They may set out conditions with which members of the public who are attending Assembly proceedings must comply, and can provide for the exclusion of a member of the public who does not comply with those conditions.
152. Standing orders must provide for those Assembly proceedings that are held in public to be reported, and for reports to be published as soon as practicable.
153. The Assembly may, by resolution supported by at least two-thirds of the members voting, remake or revise the standing orders. The Clerk of the Assembly must publish standing orders from time to time.

Section 32: Participation by UK Ministers etc.

154. This section entitles the Secretary of State for Wales to participate, but not to vote, in proceedings of the Assembly, and to have access to documents relevant to those proceedings. Standing orders may make provision for the participation of other Ministers of the Crown and of civil servants in proceedings, and for them to have access to documents and information relevant to their participation. Again there is to be no entitlement to vote.

Section 33: Consultation about UK Government's legislative programme

155. This section requires the Secretary of State for Wales, as soon as is reasonably practicable after the beginning of each Parliamentary session, to consult the Assembly about the UK Government's legislative programme, except to the extent that it appears to the Secretary of State that consultation on a particular Bill is inappropriate. As part of such consultation, the Secretary of State must participate in a plenary session of the Assembly at least once in the session. The Secretary of State can participate by actually attending the plenary session, or by video link. Where, after the beginning of the session, it is decided that a Bill should be introduced into Parliament and that Bill has not been included in the Secretary of State's initial consultation with the Assembly, then the Secretary of State must consult the Assembly about it (unless it appears to the Secretary of State to be inappropriate to do so).

Section 34: Participation by Counsel General

156. **Section 49** makes provision about the appointment of the Counsel General to the Welsh Assembly Government. It does not require the Counsel General to be an Assembly member. This section makes provision about the participation of the Counsel General, if not an Assembly member, in the proceedings of the Assembly, including committees and sub-committees.
157. The section also allows the Counsel General to decline to answer questions or produce documents about the operation of the criminal prosecution system in any particular case, if the Counsel General considers that to do so might prejudice criminal proceedings in the case or otherwise be contrary to the public interest.

Section 35: Equality of treatment

158. This section requires the Assembly, in the conduct of its proceedings, to give effect, so far as is both appropriate in the circumstances and is reasonably practicable, to the principle that the English and Welsh languages should be treated on a basis of equality.
159. It also requires the Assembly to make appropriate arrangements with a view to securing that Assembly proceedings are conducted with due regard to the principle that there should be equality of opportunity for all people.

Section 36: Integrity

160. This section requires standing orders to make various kinds of provision to safeguard standards of integrity in relation to Assembly proceedings, namely:
- a) for Assembly members to be required to register certain interests defined by standing orders in a compulsory public register of Assembly members' interests;
 - b) for an Assembly member who has a financial or other interest, as defined in standing orders, in a matter to which Assembly proceedings relate, to declare that interest before taking part in those proceedings;
 - c) for preventing or restricting the participation in proceedings of an Assembly member who has an interest (as defined in standing orders) in the matter to which those proceedings relate;
 - d) prohibiting Assembly members, from advocating or initiating any cause or matter, or urging another member to do so, in return for a payment or benefit in kind.
161. A failure to comply with these provisions of standing orders constitutes a criminal offence which can be punished, on summary conviction, with a fine not exceeding level 5 on the standard scale (at present up to £5,000). Consent of the Director of Public Prosecutions is required before a prosecution can be brought.

162. The provisions of standing orders under this section are to apply to the Counsel General even if not an Assembly member.
163. The Assembly will be able to pass Assembly Measures under Part 3 of the Act on matters relating to registration of members' interests.
164. Subsection (6) requires standing orders to make provision, either directly or by a code or protocol, about the different roles and responsibilities of Assembly constituency and regional members.
165. Assembly regional members are to be prohibited from describing themselves in a way which suggests that they are Assembly constituency members, and vice versa.

Witnesses and documents

Section 37: Power to call

166. This section, together with the associated sections 38, 39 and 40, provides the Assembly with powers to require witnesses to appear to give evidence before, or to produce documents to the Assembly, its committees or their sub-committees.
167. The Assembly may, under subsection (1), require any person to attend Assembly proceedings to give evidence, or to produce documents which are in that person's possession or control, concerning any matter relevant to the exercise by the Welsh Ministers of any of their functions and provided the person in question is involved in the exercise of functions or the carrying on of activities in relation to Wales. It is anticipated that persons will almost always attend or produce documents to the Assembly voluntarily, and that this power will only need to be used very rarely.
168. "Assembly proceedings" includes any proceedings of the Assembly, its committees, or sub-committees.
169. "Document" is defined by section 40(6) as anything in which information is recorded in any form. It would therefore include, e.g., a video recording, a computer hard drive, a floppy disk, or CD-Rom. Section 40(6) also provides that a person is taken to comply with a requirement to produce a document on production of a copy of, or an extract of the relevant part of, the document. The information recorded in the document must be produced in a visible and legible form.
170. "Person" is intended to have the same meaning as in the Interpretation Act 1978, i.e. it applies to public bodies and officers, as well as to private bodies such as companies, trusts etc..
171. The Assembly cannot impose a requirement under subsection (1) on a current or former Minister of the Crown, or on anyone serving, or who has served, in a Minister of the Crown's department, in relation to the exercise of the functions of a Minister of the Crown.
172. Under subsection (4) current full-time judges are immune from being required to give evidence or produce a document under subsection (1). Other current and former members of courts (e.g. lay magistrates and Recorders), and current or former members of tribunals, are immune only in relation to the exercise of their functions as such.
173. Subsections (5) and (6) make special provision in relation to persons who are current or former members of staff of the Welsh Assembly Government, or are current or former secondees. Where such a person is required to give evidence or produce documents under subsection (1), then any of the Welsh Ministers, the First Minister or the Counsel General can issue a direction that the person summoned need not comply, and that a specified replacement is to comply instead. This means that it is for the Welsh Ministers to decide which of their staff should appear before the Assembly or its committees. Welsh Ministers will ultimately be answerable to the Assembly for their decisions to

direct that a different member of staff from the one identified by the Assembly is to appear.

174. The power under subsection (1) may be exercised by the Audit Committee or, with the authority of the Assembly, by any other committee or sub-committee.
175. No-one is obliged by this section to answer any question or produce any document which they would be entitled to refuse to answer or produce in court proceedings in England and Wales, for example under the privilege against self-incrimination or on grounds of legal privilege.
176. Subsection (9) entitles prosecutors to decline to answer questions or produce documents about particular criminal prosecutions if authorised by the appropriate officer on the grounds that to do so might prejudice criminal proceedings in that case, or would be contrary to the public interest. The appropriate officer for the purpose of subsection (9) is the Counsel General in cases where the criminal proceedings were instituted by or on behalf of the Welsh Ministers, the First Minister or the Counsel General and in all other cases is the Attorney General.

Section 38: Notice

177. This section sets out the procedure by which the Assembly exercises its power under section 37(1) to require persons to attend and give evidence at proceedings, or produce documents.
178. Subsections (1) and (2) require the Clerk of the Assembly to give written notice to those who are made subject to a requirement under section 37(1), specifying the following matters:
 - a) in all cases, whether they are being required to attend to give evidence or produce documents to the Assembly itself, or to a specified committee or sub-committee;
 - b) in cases of witnesses required to give evidence, the time and place at which they must attend, and the subjects about which they are required to give evidence;
 - c) in cases of people required to produce documents, the documents which they need to produce, the deadline for producing them, the person to whom they are to produce them and the subject concerning which the documents are required.
179. Notice is to be sent by registered or recorded delivery post. In the case of an individual, it is to be sent to that person's usual or last known address or to an address for service, where one has been given. In any other case (e.g. a limited company, a health board or another public body) the notice is to be sent to the person's registered or principal office.
180. Subsection (5) provides that where the Welsh Ministers, the First Minister, or the Counsel General issue a direction under section 37(6) that a particular person is not to attend or produce documents in response to a requirement under section 37(1), then the person issuing the direction must give notice of having done so. Where the requirement to give evidence or produce documents was imposed for the purposes of the Assembly, notice of a direction under section 37(6) must be given to the Presiding Officer. In other cases, notice of the direction must be given to the chair of the committee or sub-committee for the purposes of which the requirement was imposed.

Section 39: Offences

181. Subsection (1) of this section makes it a criminal offence for a person to whom a notice under section 38(1) has been given to:
 - a) refuse, or fail, without reasonable excuse, to attend proceedings as required by the notice;

- b) refuse, or fail, without reasonable excuse, to answer any question concerning the subjects specified in the notice;
 - c) refuse, or fail, without reasonable excuse, to produce a document which the notice required to be produced; or
 - d) intentionally alter, suppress, conceal or destroy any such document.
182. Subsection (1) is subject to the various grounds on which a person may decline to answer a question or produce a document (sections 34(3) and 37(5), (6), (8) and (9)).
183. If a person charged with an offence under subsection (1)(a), (b) or (c) can adduce evidence of a reasonable excuse for the refusal or failure, then it is for the prosecution to prove that the person did not have such an excuse.
184. The penalty in the case of a person found guilty of an offence under subsection (1) is a fine not exceeding level 5 on the standard scale (currently £5,000) or of imprisonment for up to 51 weeks, or both. (Under transitional provisions in paragraph 21 of Schedule 11 the maximum term of imprisonment will be three months until section 281(5) of the Criminal Justice Act 2003 is brought into force.) Offences are triable summarily.
185. Certain senior officers of a body corporate (e.g. a company) are personally liable (in addition to the body corporate itself) to prosecution where they have consented to or connived at the commission of an offence or the offence is attributable to their neglect.

Section 40: General

186. Under this section the Presiding Officer, or any other person authorised by standing orders, may require anyone giving evidence in Assembly proceedings to take an oath (or make an affirmation), and to administer such an oath or affirmation. This section applies both to a person who has been required to attend and to a person who attends by invitation.
187. Subsection (2) creates an offence where a person who has been required by notice under section 38(1) to attend to give evidence in Assembly proceedings refuses to take the oath or make an affirmation when required to do so. Anyone found guilty of such an offence will be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale (currently £5,000) or up to 51 weeks' imprisonment (again, subject to a transitional provision limiting the term to three months until section 281(5) of the Criminal Justice Act 2003 comes into force) or both.
188. Standing orders may provide for the payment of expenses and allowances to people who attend to give evidence to, or produce documents to, the Assembly, its committees and their sub-committees, whether or not they were required to do so by a notice under section 38(1). Standing orders can confer functions in relation to these matters on the Assembly Commission.

Legal issues

Section 41: Proceedings by or against Assembly etc.

189. This section makes provision in relation to legal proceedings by and against the Assembly.
190. Where proceedings are brought by or against the Assembly these are to be instituted by or against the Assembly Commission. Proceedings by or against the Presiding Officer, the Deputy Presiding Officer or any member of the staff of the Assembly are to be brought by or against the Assembly Commission on their behalf.

191. Where proceedings are brought against the Assembly the court may not grant a mandatory, prohibiting or quashing order or an injunction or make an order for specific performance. It may instead make a declaration.
192. A similar restriction applies to such remedies in legal proceedings against any Assembly member, the Presiding Officer or Deputy Presiding Officers, members of the staff of the Assembly or the Assembly Commission, if the effect of granting such a remedy would be to give relief against the Assembly which could not be given against the Assembly itself. This is intended to prevent the protection for the Assembly being circumvented by taking action instead against individual members or office-holders. The approach is similar to that taken in section 21(2) of the Crown Proceedings Act 1947.
193. The protection would not extend to proceedings taken against Assembly members arising for example out of their constituency work, since remedies granted in such proceedings would not be equivalent to remedies granted against the Assembly itself.
194. The effect of the equivalent provision in Scotland (section 40(4) of the Scotland Act 1998) was considered by the Scottish Court of Session in *Whaley v Lord Watson of Invergowrie* 2000 SLT 475 where it was held that it did not prevent an interdict (equivalent to an injunction) being granted against a MSP from introducing a Bill on the grounds that he would thereby be breaching some provision of the [Scotland Act 1998 \(Transitory and Transitional Provisions\) \(Members' Interests\) Order 1999 \(SI 1999/1350\)](#). As the Lord President stated at page 482:

“... the subsection does not bar a remedy against a member simply because it may have some consequential effects on the working of the Parliament: the bar applies only where the interdict against the member would have the effect of granting relief, i.e. a legal remedy, against the Parliament.”
195. Subsection (5) provides that the prohibition on certain remedies is not limited to final orders. So, for example, it would prohibit the granting of an interim injunction against the Assembly (or the Assembly Commission, in so far as it is acting on the Assembly's behalf).

Section 42: Defamation

196. This section replicates the provisions in section 41 of the Scotland Act 1998, rather than the more detailed provisions in section 77 of the Government of Wales Act 1998, which reflected the fact that the Assembly as a unitary corporate body had both legislative and executive functions. The protection afforded to the newly constituted Assembly by this section is intended to be the same as that afforded to the legislative and scrutinising arm of the current Assembly by the 1998 Act.
197. This section confers absolute privilege for the purposes of the law of defamation on any statement made in Assembly proceedings and on the publication of any statement under the authority of the Assembly.
198. The provision is intended to ensure that Assembly members are free to debate and the Assembly is free to report on matters of public interest without fear of an action for defamation being raised.
199. The privilege of freedom of speech is part of the law and custom of the UK Parliament. It is also reflected in Article 9 of the Bill of Rights 1688-9 which confers on “proceedings in Parliament” protection from being “impeached or questioned” in any court. No similar general privilege is conferred upon proceedings in the Assembly. However, this section and section 43 protect statements made in such proceedings and their publication against proceedings for defamation and contempt of court.
200. The regulation-making power in section 42(2) allows the Welsh Ministers to specify how it may be proved conclusively in legal proceedings that a statement was made in Assembly proceedings or published under the authority of the Assembly, and

therefore attracts absolute privilege – for example, by the Clerk of the Assembly providing certification of the fact. The making of the regulations is subject to Assembly affirmative procedure.

201. The Act contains other provisions which make provision in relation to defamation.
202. The amendments made to the Defamation Act 1952 and the Defamation Act (Northern Ireland) 1955 by paragraphs 5 and 6 of Schedule 10 limit privilege in relation to defamation at elections of Assembly members.
203. [Paragraph 40](#) of Schedule 10 amends paragraph 11(1)(c) of Schedule 1 to the Defamation Act 1996 to provide that the reports and statements of any commission, tribunal, committee or person appointed for the purposes of any inquiry by a Welsh Ministers or by the Counsel General attract qualified privilege subject to explanation or contradiction.
204. [Paragraph 19](#) of Schedule 10 amends section 26(1) of the Public Order Act 1986 to protect reports of Assembly proceedings against offence under Part 3 of the 1986 Act relating to racial hatred.

Section 43: Contempt of court

205. Assembly proceedings, unlike those of the UK Parliament, are subject to the law of contempt of court. No express provision is needed to make them so, because the law of contempt of court and particularly the strict liability rule in the Contempt of Court Act 1981 will apply automatically unless expressly disapplied.
206. This section disapplies the rule of strict liability for contempt of court in relation to publications made in or for the purposes of Assembly proceedings, or in certain reports of Assembly proceedings.
207. The strict liability rule is defined by section 1 of the Contempt of Court Act 1981 as that whereby conduct may be treated as a contempt of court regardless of intent to interfere with the course of justice in particular legal proceedings. In terms of section 2 of that Act the rule only applies to a publication which creates a substantial risk that the course of justice in active legal proceedings will be seriously impeded or prejudiced. Section 5 of the Act provides that the rule does not apply to publications made during a discussion in good faith of public affairs if the risk of impediment or prejudice to particular legal proceedings is merely incidental to the discussion.
208. This section is intended to ensure that the Assembly is not prevented from legislating on any matter merely because anything said or done in proceedings to consider an Assembly Measure, an Assembly Bill or subordinate legislation might be treated as a contempt of court under the “strict liability rule”. However, unlike section 42 of the Scotland Act 1998, the protection afforded by this section applies not just to proceedings relating to legislation, but to all proceedings of the Assembly, as currently does section 78 of the Government of Wales Act 1998. Section 31(2) requires standing orders to include provision “for preventing conduct which would constitute ... a contempt of court” and a *sub judice* rule.

Section 44: Corrupt practice

209. The effect of the section is to make members and staff of both the Assembly and the Assembly Commission subject to liability for criminal offences under the Prevention of Corruption Acts 1889 to 1916. It does so by making both the Assembly and the Assembly Commission (by whom staff of the Assembly are employed) public bodies for the purposes of those Acts.
210. The Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916 are known together as the Prevention of Corruption Acts 1889 to 1916. The Acts create certain offences related to bribery and

corruption of and by members, officers or servants of local authorities, government departments and other public bodies in connection with those bodies' business.

211. The Welsh Ministers, Deputy Welsh Ministers, the Counsel General and their staff will also be covered by the Prevention of Corruption Acts 1889 to 1916 to the extent that Ministers of the Crown and Crown servants are covered.

Part 2: Welsh Assembly Government

Overview of Part 2

212. **Part 2** of the Act makes provision establishing the Welsh Assembly Government as a distinct entity in its own right, authorises Ministers to exercise statutory powers and places certain statutory duties on them. Ministers will discharge their responsibilities on behalf of the Crown.

Ministers etc

213. **Sections 45-51** set out in detail the membership and appointment procedures of the Welsh Assembly Government. The members are the First Minister, who is appointed by Her Majesty on the nomination of the Assembly; the (other) Welsh Ministers and Deputy Ministers, who are appointed by the First Minister with Her Majesty's approval; and the Counsel General, who is appointed by Her Majesty on the recommendation of the First Minister, with the agreement of the Assembly. Ministers and Deputy Ministers (of whom together there may not be more than twelve) may be removed from office by the First Minister (or may resign) at any time. The First Minister may with the agreement of the Assembly recommend to Her Majesty at any time the removal of the Counsel General; the Counsel General may tender resignation to Her Majesty at any time. Sections 53-55 provide procedures for determining all these office-holders' remuneration, and for their taking an oath (or making an affirmation) on assuming office.
214. The Act makes detailed provision to cover circumstances:
- a) following a vote of no confidence in the Welsh Ministers (the First Minister remains in office until a successor is appointed, which must happen within the specified period of 28 days, but the other Welsh Ministers and Deputy Ministers are required to resign forthwith; the Counsel General remains in office until a new First Minister is nominated); or
 - b) where the First Minister's office becomes vacant, the First Minister becomes unable to act or has ceased to be an Assembly Member (the Presiding Officer, acting on the recommendation of the other Welsh Ministers, designates another Assembly Member to exercise the functions of the office).
215. The Assembly Government will be supported by staff who (unlike the staff supporting the National Assembly itself) are civil servants (section 52).

Exercise of Functions

216. Under the Act, Ministers will exercise functions in their own right, rather than as delegates of the Assembly, and statutory functions will in future be expressed to be exercisable by the "Welsh Ministers", rather than conferred on the Assembly and then delegated. Any function conferred on the "Welsh Ministers" will be exercisable by the First Minister or any of the other Welsh Ministers individually (but not generally by the Counsel General, who will not have "portfolio" responsibilities); they will be assisted in the discharge of their responsibilities by the Deputy Ministers. Paragraphs 30-42 of Schedule 11 make detailed provision transferring the Assembly's existing (executive) set of functions, together with the associated property, rights and liabilities, to the Welsh Ministers, although Orders in Council may make alternative provision, for

example transferring specific functions to the First Minister, the Counsel General, or the Assembly Commission, or leaving the function (particularly if it is of a predominantly legislative character) with the Assembly. Once the new arrangements are in place following the May 2007 elections, Welsh Ministers may acquire further powers:

- a) by specific provision in future Acts of Parliament;
 - b) by Transfer of Functions Orders (section 58 and Schedule 3 to the Act effectively re-enact s.22 and Schedule 3 of the 1998 Act, under which Transfer of Functions Orders have been made hitherto, and section 88 and Schedule 4 transfer the associated property, rights and liabilities attached to any such transferred function);
 - c) by designation under s.2 of the European Communities Act 1972, in order to implement requirements of European law; or
 - d) by specific provision in future Assembly Measures.
217. [Sections 60-65, 69, 70-71 and 83 and 84](#) provide additional or supplementary powers enabling the Welsh Ministers to discharge their functions effectively. Most of these provisions derive from similar provisions in the 1998 Act, with the exception of section 60. Section 60 empowers the Welsh Ministers to do anything which they consider is likely to achieve the promotion or improvement of the economic, social or environmental well-being of Wales. This does not reflect any specific provision of the 1998 Act although local authorities have similar powers under section 2 of the Local Government Act 2000 as does the Greater London Authority (in a slightly different form) under section 30 of the Greater London Authority Act 1999.

Duties placed on Ministers

218. Under the 1998 Act, the Assembly is required to establish a Partnership Council with Welsh local government, and establish close working or consultative relations with the voluntary sector and the business community respectively. Each of these duties will transfer to the Welsh Ministers under sections 72-75 of the Act, requiring the Assembly Government to establish stakeholder management relationships with these respective interests. In the same way, the 1998 Act places duties on the Assembly both to make arrangements with a view to securing that its functions are exercised with due regard to equality of opportunity, and to make a scheme setting out how it will promote sustainable development in the exercise of its functions. Sections 77 and 79 place analogous obligations on the Welsh Ministers, while section 78 places obligations on the Welsh Ministers in relation to the Welsh Language.
219. [Sections 80, 81 and 82](#) set out limitations on the Welsh Ministers' powers deriving from international relations in the fields of Community Law, Human rights, and International Obligations. These carry forward the provisions of ss.106-108 of the 1998 Act, which place equivalent limitations on the Assembly.