

GOVERNMENT OF WALES ACT 2006

EXPLANATORY NOTES

DETAILED COMMENTARY ON SECTIONS IN PART 3

Procedure

Section 97: Introduction of proposed Assembly Measures

348. This section imposes certain requirements in relation to the introduction into the Assembly of proposed Assembly Measures.
349. A proposed Assembly Measure may, subject to provisions of standing orders, be introduced by the First Minister, any of the Welsh Ministers, any Deputy Welsh Minister, the Counsel General or any Assembly Member. Standing orders might restrict the ability of some of these persons to introduce a proposed Measure.
350. The person in charge of a proposed Assembly Measure must, on or before the proposed Measure's introduction, make a statement expressing their view that the provisions in the proposed Measure are within the Assembly's legislative competence.
351. The Presiding Officer of the Assembly must on or before introduction of a proposed Measure, decide whether or not it is within the Assembly's legislative competence and state that decision.

Section 98: Proceedings on proposed Assembly Measures

352. This section requires the Assembly's standing orders to contain certain provisions in relation to the consideration and passing (or approval, in the case of Measures which are reconsidered and amended) of proposed Measures by the Assembly.
353. Standing orders must ensure that, generally, Measures must pass through three stages.
354. There must firstly be an opportunity for a general debate about the proposed Measure by the Assembly, and for Assembly Members to vote on its general principles. This stage mirrors the Second Reading stage of Bills in the UK Parliament.
355. There must then be a stage involving consideration of, and an opportunity for Assembly members to vote on, the details of the proposed Measure, corresponding to the committee stage of a Bill at Westminster.
356. Finally there must be a stage at which members can vote on whether to pass the proposed Measure in its final form. This is equivalent to the Third Reading of a Parliamentary Bill.
357. Standing orders may allow a different procedure in the case of proposed Measures which fall within certain categories, namely those which restate the law, those which repeal or revoke spent enactments and "private" proposed Assembly Measures. In the case of the first two, standing orders may permit a streamlined procedure whilst in the case of "private" proposed Measures procedures they are likely to include an

opportunity for individuals affected to make representations to the Assembly, as in the case of private Parliamentary Bills.

358. Standing orders must include provision for securing that, except in specified circumstances (which are left to standing orders to define) a proposed Assembly Measure can only be passed if the text of the proposed Measure is in both English and Welsh.
359. Standing orders must provide for a proposed Measure which has been passed by the Assembly to be reconsidered in certain circumstances. These are:
- a) where the Supreme Court has decided that the proposed Measure is outside the Assembly's legislative competence, following the Counsel General or the Attorney General referring that issue to the Supreme Court under section 99;
 - b) where the Counsel General or the Attorney General has referred the issue of whether the proposed Measure is within the Assembly's legislative competence to the Supreme Court under section 99, the Supreme Court has then referred an issue arising out of it to the European Court of Justice for a preliminary ruling, but the reference to the Supreme Court has been withdrawn following a decision by the Assembly that it wishes to reconsider the proposed Measure; or
 - c) where the Secretary of State has made an Order under section 101 prohibiting the Clerk of the Assembly from submitting a proposed Measure for approval by Her Majesty.
360. If a proposed Assembly Measure is, upon reconsideration, amended by the Assembly, then there must be a further final stage at which the amended proposed Assembly Measure can be approved or rejected by the Assembly.

Section 99: Scrutiny of Proposed Assembly Measures by Supreme Court

361. This section provides a mechanism through which either the Counsel General or the Attorney-General can obtain a decision by the Supreme Court as to whether proposed Assembly Measures or particular provisions of proposed Assembly Measures are within the Assembly's legislative competence. This may only be done within the four week period starting with the date the Measure was passed by the Assembly or, in the case of a Measure which has been reconsidered and approved by the Assembly, starting with the date the Measure was approved by the Assembly.
362. If the Counsel General or the Attorney General formally notifies the Clerk that he or she is not going to make such a reference then he or she is afterwards barred from doing so (unless the proposed Measure has subsequently been reconsidered and approved).

Section 100: ECJ references

363. Where the Counsel General or the Attorney General has referred a proposed Assembly Measure to the Supreme Court, and the Supreme Court has referred a question in connection with the matter to the European Court of Justice for a preliminary ruling then, provided neither of these references has been decided or otherwise disposed of, the Assembly may opt to reconsider the proposed Measure under provision made under section 98(6). If it does so the person who referred the proposed Measure to the Supreme Court (i.e. Counsel General or the Attorney General, as the case may be), must request the withdrawal of the reference. If, following reconsideration, the proposed Measure were to be approved, in an amended form, and the Counsel General or Attorney General are not satisfied that the amendment has removed the cause for referring the proposed Measure to the Supreme Court, a fresh reference may be made, within four weeks of that approval.

Section 101: Power to intervene in certain cases

364. This section enables the Secretary of State to intervene and, by order which would be subject to annulment in pursuance of a resolution of either House of Parliament, prohibit the Clerk from submitting a proposed Measure for approval by Her Majesty in Council if the Secretary of State has reasonable grounds to believe that its provisions:
- a) would have an adverse effect on matters which are not within the legislative competence of the Assembly;
 - b) might have a serious adverse impact on water resources in England, water supply in England or the quality of water in England;
 - c) would have an adverse effect on the operation of the law as it applies in England;
or
 - d) would be incompatible with any international obligation or the interests of defence or national security.
365. The first ground set out above on which the Secretary of State may make an order, appears in the Act in the form “would have an adverse effect on any matter which is *not specified* in Part 1 of Schedule 5”. Matters which are not specified (i.e., as ones in respect of which the Assembly has legislative competence) include those which are excepted from a matter that is specified.
366. Such an order may be made within four weeks of the passing of the proposed Measure, or of the approval of the proposed Measure following reconsideration under provision made under section 98(6) or, if a reference to the Supreme Court has been made under section 99, within four weeks of the reference being decided or otherwise disposed of. If the Secretary of State has formally notified the Clerk that no order is going to be made in relation to the proposed Measure such an order is barred in relation to it, unless the proposed Measure is reconsidered and approved by the Assembly under provision made under section 98(6) after that notification was given.

Section 102: Approval of proposed Assembly Measures

367. Once a proposed Measure has been passed (or approved upon reconsideration) by the Assembly, it is for the Clerk to submit it for approval by Her Majesty in Council
368. However, the Clerk may not do so:
- a) if the Counsel General or the Attorney General is still entitled to refer to the Supreme Court under section 99 the issue of whether a provision in the proposed Measure is within the Assembly’s legislative competence (i.e. if the four week period for doing so has not expired and they are not both barred from making a reference as a result of having notified the Clerk that they do not intend to do so);
 - b) if the Counsel General or the Attorney General has made a reference to the Supreme Court under section 99 which has not yet been decided or disposed of;
 - c) if the Secretary of State is still entitled to make an order under section 101 (see the notes to that section) prohibiting the Clerk from submitting the proposed Measure for approval.
369. The Clerk may not submit a proposed Measure for approval by Her Majesty in its unamended form if:
- a) the Supreme Court has ruled, on a reference under section 99, that the proposed Measure, or any provision of it, would not be within the Assembly’s legislative competence; or
 - b) such a reference has been withdrawn as a result of a decision by the Assembly that it wishes to reconsider the proposed Measure.

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

370. Once Her Majesty in Council has approved a proposed Measure the Clerk must write the date of that approval on the text of the Measure, must publish the instrument by which Her Majesty approved the Measure and must, in accordance with standing orders, notify the Assembly of the date of that approval.