

GOVERNMENT OF WALES ACT 2006

EXPLANATORY NOTES

DETAILED COMMENTARY ON SECTIONS IN PART 6

Tribunal proceedings

Part 5

General

Schedule 11: Transitional Provisions

Paragraph 33: Functions transferred by Order in Council under s.22 GoWA 1998: Parliamentary and Assembly procedures

828. Ministerial functions of making subordinate legislation conferred by Act of Parliament are, with some exceptions, subject to Parliamentary procedures. These
- may either be affirmative (requiring specific Parliamentary endorsement) or negative (subject to annulment if a Parliamentary motion requires this).
829. Subject to limited exceptions, the old Assembly, where such functions were transferred to it by Order in Council under section 22 of GoWA, is required to give specific approval to subordinate legislation made in its name. Under this Act, these functions of making subordinate legislation under Act of Parliament will transfer to the Welsh Ministers. The Act therefore needs to make provision for imposing on such functions equivalent Assembly procedures (affirmative or negative) or to make it clear that no such procedure at all is to apply (for example in relation to certain local or temporary orders). This is the function of this paragraph.
830. Generally, an equivalent procedure is to apply - the Assembly equivalent of the Parliamentary procedures which applied immediately before the function was transferred to the old Assembly - to the making of subordinate legislation by a Minister of the Crown. So, if a Minister of the Crown is required by the Act of Parliament in question to obtain approval of Parliament before making subordinate legislation under a particular provision of that Act, the Welsh Ministers are to be required to obtain Assembly approval instead.
831. In some cases Parliamentary procedures will still apply, as is the case under GoWA, to certain legislation made by the Welsh Ministers, in addition to any relevant Assembly procedures. So, where an instrument contains legislation relating to an English border area or to a cross border body (if, in the latter case, the legislation relates to functions other than solely in relation to Wales) Parliamentary procedures apply. Additionally, if an Order in Council transferred a legislation making function to the old Assembly and expressly made it subject to special Parliamentary procedure or to a requirement that the order be confirmed by Act of Parliament, the exercise of that function by the Welsh Ministers etc. will continue to be subject to that procedure.