

GOVERNMENT OF WALES ACT 2006

EXPLANATORY NOTES

DETAILED COMMENTARY ON SECTIONS IN PART 6

Tribunal proceedings

Part 5

General

783. [Paragraph 30](#) enables the Attorney General or the Counsel General to refer any devolution issue, which is not being litigated to the Supreme Court.
784. The Attorney General must notify the Counsel General that such a reference has been made where it concerns the proposed exercise of a function by the Welsh Assembly Government, who must then refrain from exercising the function as proposed until the reference has been decided or disposed of.
785. [Paragraph 31](#) provides that in awarding costs to litigants, courts and tribunals can take into account any additional expenses incurred as a result of joining into proceedings the Attorney General, the Counsel General, or the Advocates General for Scotland or Northern Ireland.
786. [Paragraph 32](#) allows general court procedure rules and practice directions to make further provision about the procedure on devolution issues.

Schedule 10: Minor and Consequential Amendments

787. This Schedule contains the minor and consequential amendments to other enactments necessitated by the provisions of this Act .

Schedule 11: Transitional Provisions

788. This Schedule contains detailed provisions dealing with the arrangements necessary to ensure an effective transition from the exercise of functions by the National Assembly for Wales constituted by the Government of Wales Act 1998 (for the purposes of this Schedule, “the old Assembly”) to the new National Assembly constituted by this Act and to the Welsh Ministers.

Paragraph 1: Alteration of Assembly electoral regions

789. [Schedule 1](#) deals with the making of alterations to the Assembly electoral regions and to the numbers of seats allocated to those regions, as a consequence of changes to the parliamentary constituencies in Wales. The Schedule places requirements on the Electoral Commission and the Boundary Committee for Wales (both of which are established under the Political Parties, Elections and Referendums Act 2000 (PPERA)) in relation to the consideration of the issue of whether any alteration would be required in the Assembly electoral regions, or in the allocation of seats to those regions, as a

consequence of alterations to any parliamentary constituencies in Wales which may be made (referred to in Schedule 1 as “the Assembly electoral region issue”).

790. **Paragraph 1** of Schedule 11 provides that Schedule 1 is to have effect with certain modifications, until such time as the functions of the Boundary Commission for Wales are transferred to the Electoral Commission, and functions are conferred on the Boundary Committee for Wales, by the coming into force of section 16 (1) of PPERA for those purposes. As applied with the modifications, Schedule 1 will not contain provisions which relate to functions of the Electoral Commission and Boundary Committee for Wales which are not in force, and will impose requirements in relation to the Assembly electoral region issue on the Boundary Commission for Wales.

Paragraph 2: 2007 election to be election to Assembly constituted under this Act

791. Most of the provisions of the Act are to come into force immediately after the Welsh general election to be held in May 2007. This paragraph, (together with those which follow it), enable that election, although generally held under the existing Government of Wales Act 1998, to be an election to the Assembly as newly constituted and to take account of the changes to electoral arrangements, and other associated reforms, for which this Act provides.

Paragraph 3: First meeting after 2007 ordinary election

792. This paragraph provides for the date of the first meeting of this Assembly to be set by order made by the ‘old Assembly’ but that date must be within seven days of the Welsh general election.

Paragraph 4: Date of 2011 election

793. This paragraph provides for the date of the first ordinary Welsh general held after 2007 to be calculated by reference to the 2007 election. That is, that general election will be held in 2011.

Paragraphs 5 and 6: No dual constituency and regional candidacy

794. These paragraphs amend GoWA to prevent dual candidacy (see section 7(5) and (6) of this Act), ensuring that candidates for election to the Assembly in the 2007 election cannot stand for election both as a member for a constituency and as a member for an electoral region. An individual will only be able to be a candidate to be elected to the Assembly to represent either a constituency or a region.

Paragraph 7: Electoral region vacancies before first general election

795. This paragraph provides that, for the period after the 2007 ordinary Welsh general election but before the ordinary Welsh general election to be held in 2011, section 11 (which deals with electoral region vacancies) is to be read as making reference to members elected at the ordinary election of 2007 and to that election.

Paragraph 8: Election orders

796. This paragraph provides for an order made under section 11 of GoWA, which is in force immediately before the repeal of that section, to continue to have effect until it is replaced by an order made under this Act .

Paragraph 9: Term of office of Assembly members

797. This paragraph provides that, for the period after the 2007 ordinary Welsh general election and until the ordinary Welsh general election to be held in 2011, section 14 (which deals with term of office of Assembly members) is to be read as making reference to members elected at the ordinary election of 2007 and to that election.

Paragraph 10: Disqualification orders

798. This paragraph provides that an Order in Council made under section 12(1)(b) GoWA (designating offices which disqualify persons from being Assembly members) which is in force immediately before the repeal of that section, will continue to have effect in relation to this Assembly until it is replaced by an order made under this Act .

Paragraph 11: Disqualification of Lords of Appeal in Ordinary

799. This paragraph disqualifies a Lord of Appeal in Ordinary from being an Assembly member, thereby applying to those disqualified from election in 2007 a minor adjustment made by the Act .

Paragraphs 12 and 13: Remuneration of Assembly members

800. **Paragraph 12** provides that determinations made under section 16 GoWA, which have effect as to salaries and allowances payable to the Assembly First Secretary, other Assembly Secretaries, the Presiding Officer and Deputy Presiding Officer, the leader of the largest political party not represented in the executive committee and other Assembly members, which are in force immediately before the repeal of that section, continue to have effect until replaced by a determination under this Act and apply, respectively, to the First Minister, the Welsh Ministers, to the Presiding Officer and Deputy Presiding Officer, to the leader of the largest political group not represented in the Welsh Assembly Government and to other Assembly members.
801. **Paragraph 13** provides that an order made under section 17 of GoWA providing for the reduction of salary payable to an Assembly member (to take into account any salary that member may receive as a Member of the UK or European Parliaments) continues to have effect in relation to this Assembly until replaced by provision made under section 21 of this Act.

Paragraph 14: Publication of information about remuneration of Assembly members

802. This paragraph ensures that the Assembly (as constituted under the Act) is to have responsibility for publication of information about remuneration of Assembly members relation to the financial year 2006-07 (i.e. relating to the last year of the “old Assembly” and its members). The extent of the duty is limited to that to which the “old Assembly” was under as opposed to the wider duty of publication under this Act .

Paragraph 15: Assistance to groups of Assembly members

803. This paragraph ensures that a determination made under section 34A GoWA, which is in force immediately before the repeal of that section, will continue to have effect in relation to the Assembly until replaced by provision made under this Act.

Paragraph 16: First Presiding Officer

804. This paragraph ensures that the holding of the 2007 election triggers the duty of the Assembly to elect a Presiding Officer and Deputy Presiding Officer.

Paragraph 17: First Clerk

805. This paragraph provides that the person who is the Clerk to the old Assembly (a post defined by the old Assembly’s standing orders rather than GoWA itself) is to be the Clerk of the Assembly for the purpose of functions under this Act until the Assembly’s first Clerk is appointed by the Assembly Commission.

Paragraph 18: Promotion of awareness of election system and devolved government

806. This paragraph provides that paragraphs 5 and 6 of Schedule 2 (which authorise the Assembly Commission to promote awareness of the election system and devolved government either directly or by financial support for the Electoral Commission) have effect until the appointment of a First Minister under this Act) as if the reference to the Commission were a reference to the old Assembly.

Paragraph 19: Crown status of Assembly Commission

807. This effect of this paragraph is that if, before the first appointment of a First Minister under section 46, Her Majesty makes an Order in Council under paragraph 12 (1) of Schedule 2 providing for the Assembly Commission to be treated as a Crown body for the purposes of an enactment, the statutory instrument containing the Order may be annulled only by either House of Parliament. Where an Order is made after the first appointment under section 46, the statutory instrument in which it is contained may also be annulled by the Assembly.

Paragraph 20: Standing Orders

808. This paragraph places a duty on the Secretary of State to make and publish, in English and Welsh, standing orders which are to govern the proceedings of the Assembly constituted under this Act and to do so before the ordinary Welsh general election is held in 2007 (i.e. by 31st March 2007 at the latest).
809. These standing orders will be needed in order to ensure that the Assembly constituted under this Act will, from the very beginning, have a set of standing orders which will enable it to operate the new arrangements made by this Act and which comply with its various mandatory requirements.
810. The aim of the Secretary of State is, however, to ensure that the old Assembly has the greatest practicable role in the process of formulating the standing orders in question and the Act therefore provides that the Secretary of State must give effect to any proposals made by the old Assembly which have been approved by two thirds of the Assembly members voting on the proposal in question and which have reached the Secretary of State no later than 28 February 2007.
811. Once made, the standing orders will be capable of being revised or re-made by the Assembly in accordance with section 31, i.e. with the support of at least two-thirds of Assembly members.

Paragraph 21: Witnesses and documents: penalties

812. Sections 39(4) and 40(3)(b) fix the maximum terms of imprisonment which can be imposed for offences under sections 39(1) and 40(2), respectively. These are framed by reference to provisions relating to sentencing which are contained in section 281(5) of the Criminal Justice Act 2003. Since that section is not yet in force, provision has to be made for fixing these maximum terms by reference to the present law, with the effect that until section 281(5) of the 2003 Act comes into force, the maximum is to be 3 months rather than 51 weeks. (The provisions of the 2003 Act mean that the effect of a term of imprisonment of 51 weeks will not, once section 281(5) of that Act is in force, be directly comparable to a term of equal nominal length under the existing law.)

Paragraphs 22 to 25: Exercise of functions before appointment of first First Minister

813. These paragraphs ensure that governmental functions of the old Assembly can continue to be exercised during “the initial period”, that is, the period beginning at the start of polling day 2007 (when all members of the existing Assembly, including Assembly

Ministers, would normally cease to be able to exercise those functions) and ending with the appointment of a First Minister.

814. This is done by ensuring that membership of the old Assembly does not, in relation to certain office-holders, cease until the end of the initial period. These office-holders are the Assembly First Secretary, the Assembly Secretaries (i.e. members of the “Assembly Government”) and also the Presiding Officer, provided these persons are candidates for election to the Assembly as constituted under this Act .
815. These persons will however cease to be treated as members of the Assembly if they are not re-elected or if they are disqualified from being members of the Assembly as re-constituted.
816. [Paragraph 23](#) provides that during the initial period, functions of the Assembly constituted under GoWA (other than those which are the subject of paragraph 24) will be exercisable by the person who was First Secretary immediately before the beginning of the initial period, provided he or she is still an Assembly member. If that person is no longer a member of the Assembly, or the office of First Secretary was vacant immediately before the beginning of the initial period, the functions are exercisable by a person who was an Assembly Secretary at that time, is an Assembly member and who has been designated to exercise the functions by the other Secretaries. The First Secretary (or the other Secretary designated to act as such) will be able to delegate functions exercisable to one of the other Secretaries or to staff and functions delegated to Secretaries will be able to be further delegated by them to staff.
817. Where functions are delegated to staff, the head of the Assembly staff (the Permanent Secretary) makes the arrangements for the exercise of those functions. Any condition, restriction or limitation which applied to the exercise of a function before the beginning of election day 2007 applies equally to the exercise of that function during the initial period.
818. [Paragraph 24](#) maintains the distinction between the parliamentary and executive sides of the existing Assembly. It provides that functions of the Assembly constituted under GoWA which were delegated to its House Committee are to be exercisable during the initial period by the person who was the presiding officer immediately before election day or, if that person does not qualify to be treated as continuing in office, or ceases to be so qualified, by the person who was the Clerk of the old Assembly. The presiding officer (or the clerk) will be able to delegate functions to staff of the Assembly. Where functions are delegated to staff, the person who was the Clerk of the Assembly immediately before the beginning of the initial period is to make the arrangements for the exercise of the functions. Any condition, restriction or limitation which applied to the exercise of a function before the beginning of election day applies to the exercise of that function during the initial period.
819. [Paragraph 25](#) provides that subordinate legislation is to be made, confirmed or approved during the initial period by being signed by the person exercising the relevant function. Any such legislation is not subject to the normal Assembly procedures but the Clerk will be required to lay it before the Assembly as soon as reasonably practicable after the end of the initial period.

Paragraphs 26 to 28: Saving for existing instruments conferring or imposing functions

820. These paragraphs ensure that transfers of functions to the old Assembly under the provisions of GoWA, and various miscellaneous provisions in relation to those functions, continue in force so as to enable subordinate legislation made under them to be amended or revoked, and other kinds of action to be taken in relation to the exercise of those functions, even though the provisions of GoWA under which the functions in question were conferred on the old Assembly have been repealed by this Act.

Paragraph 29: First nomination of First Minister

821. This paragraph ensures that the Assembly's duty to nominate a person for appointment as First Minister under section 47(2)(a) is triggered by the holding of the Welsh general election in 2007.

Paragraphs 30 to 32: Transfer of Assembly functions

Paragraph 30

822. Sub-paragraph (1) provides that, subject to the important exceptions provided for under paragraph 31, all the functions of the old Assembly are to transfer to the Welsh Ministers at the end of the initial period (i.e. upon appointment of a First Minister).
823. Sub-paragraph (2) provides that the functions which will transfer are functions which were exercisable by the old Assembly by virtue of an Order in Council made under section 22 of GoWA, or as a result of a designation under section 2(2) of the European Communities Act 1972 (by virtue of section 29(1) GoWA), and which were so exercisable immediately before the first appointment of a First Minister. If there are further functions conferred or imposed on the old Assembly which were exercisable by it immediately before the first appointment of a First Minister, these will also be transferred to the Welsh Ministers. For the purposes of this paragraph, a function is "exercisable" even if the statutory provision which transferred the function to, or conferred or imposed it on, the old Assembly has not yet come into force.

Paragraph 31

824. Sub-paragraph (1) provides for functions of the old Assembly to be excepted from the general transfer made by paragraph 30. The mechanism for achieving this is for Her Majesty to make the necessary provision by Order in Council. The kind of provision which can be made includes transfer any of the above functions specifically to the First Minister or the Counsel General instead of to "the Welsh Ministers". Functions may also be transferred to the Assembly Commission or to the Assembly itself but these may not involve functions of making, confirming or approving subordinate legislation. Such an Order in Council can also provide for functions transferred to be exercisable concurrently with another of these persons or bodies or subject to agreement of or after consultation with the Assembly Commission.
825. Where a function is one of making, confirming or approving subordinate legislation then, although it cannot be left with the Assembly (since "delegated" legislation is the province of the Welsh Ministers), an Order in Council under paragraph 31(2) and (4) can, instead, amend Schedule 5 to the Act so as to enable the Assembly to legislate on the matter by Measure instead. This will enable the subject-matter of any framework powers conferred or imposed on the Assembly in other Acts passed in the same session as this Act to be "converted" into legislative competence so that the Assembly can legislate by way of Measure about the matter. In exercising the power in paragraph 31(2) and (4) to "convert" such powers into legislative competence, the scheme of Part 3 of this Act be an important factor to take into consideration when determining under paragraph 29(2) what modifications are to be made to the power in the "conversion" process.
826. The paragraph makes detailed provisions for the consents and approvals which must be obtained before an Order in Council under it can be made. For example, an Order "converting" a function of the Assembly constituted under GoWA to make secondary legislation, into a power of the Assembly to pass Measures on the matter, would require the approval of the Assembly constituted under GoWA, and would also have to be laid before Parliament and be subject to annulment in pursuance of a resolution of either House.

Paragraph 32

827. This paragraph provides that references in enactments, prerogative instruments and other documents to the Assembly constituted under GoWA, are to be construed as references to the Welsh Ministers, First Minister, the Counsel General, the Assembly Commission or the Assembly constituted under this Act, as appropriate, to the extent necessary for the purpose or in consequence of the exercise by those persons of a function which they have as a result of paragraph 30 or 31 of this Schedule.

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.

Paragraphs 34 and 35: Functions conferred or imposed by pre-commencement enactment: Parliamentary and Assembly procedures

832. These paragraphs deal with the different situation of functions of making subordinate legislation which were directly conferred (or imposed) on the 'old Assembly' by an enactment (usually an Act of Parliament) before the commencement of this Act, and which are now to be exercisable by the Welsh Ministers, the First Minister or the Counsel General. They cover two distinct kinds of situations: firstly those where a Minister of the Crown has a corresponding function in relation to England to that which will be exercisable by the Welsh Ministers in relation to Wales and secondly where this is not the case, i.e. the function is unique to Wales.
833. If there is a particular Parliamentary procedure which applies to subordinate legislation made by a Minister of the Crown in relation to England, and a corresponding function is exercisable in relation to Wales by the Welsh Ministers, then the equivalent Assembly

procedure to that Parliamentary procedure (affirmative or negative as the case may be or, sometimes, the equivalent under Assembly procedures of “special Parliamentary procedure”) is to apply.

834. If Parliamentary procedures applied to a legislation making function of a Minister of the Crown and to the exercise of the corresponding function by the Welsh Ministers, the First Minister and the Counsel General, both the Parliamentary procedure and an equivalent Assembly procedure will apply when the Welsh Ministers, the First Minister or the Counsel General exercise the function.
835. [Paragraph 35](#) provides for the procedures applying to a function of making subordinate legislation which falls into the other category of those directly conferred (or imposed) on the ‘old Assembly’ namely those where no Minister of the Crown has a corresponding function in relation to England.
836. The paragraph specifies what Assembly procedures are to apply in such a case.
837. Unless a procedure is specified in relation to such function, none is to apply.
838. If subordinate legislation is to be made by virtue of a function listed in Table 1, it is subject to being laid before and approved by a resolution of the Assembly before it is made.
839. If subordinate legislation is made by virtue of a function listed in Table 2, it must be laid before the Assembly and can be annulled in pursuance of a resolution of the Assembly.
840. However, the provisions made in paragraphs 34 and 35 do not apply where functions of making subordinate legislation have been transferred to the Welsh Ministers, which were formerly functions of the Assembly constituted under GoWA as the result of a designation made under section 2 (2) of the European Communities Act 1972. In those circumstances, section 59 of this Act determines Assembly procedure in relation to the making of subordinate legislation.

Paragraphs 36 and 37: Transfers of Assembly functions: laying of reports and statements

841. [Paragraphs 36 and 37](#) apply in relation to former Assembly functions of making or receiving reports or statements which are now exercisable by the Welsh Ministers, the First Minister, the Counsel General or the Assembly Commission, because those functions have been transferred to one of the latter group by paragraph 30 of this Schedule, or by an Order in Council under paragraph 31. Where such functions are ones which were made exercisable by the old Assembly by an Order in Council under section 22 of GoWA and, prior to that, were subject to a statutory requirement to lay the report or statement before Parliament, then that requirement applies to the Welsh Ministers etc as if the reference to Parliament was a reference to the Assembly constituted under this Act.
842. Where such functions are ones which were conferred or imposed on the old Assembly by legislation which was passed or made prior to the first appointment of a First Minister under this Act, and that legislation required the old Assembly to publish the report or statement, then a copy of the report or statement must be laid before the Assembly.

Paragraph 38 to 42: Transfers of Assembly functions: property, rights and liabilities

843. These paragraphs make provision for the transfer of property, rights and liabilities of the old Assembly in connection with those functions which transfer to (or are conferred or imposed on) the Welsh Ministers, the First Minister, the Counsel General or the Assembly Commission.

844. Generally, property, rights and liabilities in connection with a function vest in the person or body in whom the relevant function is vested. This includes any instruments, contracts or legal proceedings (made or commenced before the transfer) in relation to a function or to property, rights and liabilities in connection with a function, except rights and liabilities under a contract of employment of a member of staff of the old Assembly.
845. [Paragraph 40](#) makes provision for Her Majesty, by Order in Council, to provide for the general rule above not to apply in relation to some cases, or to apply only in some cases or to apply with modifications. No recommendation can be made to Her Majesty to make such an order unless a draft of the order has been laid before and approved by a resolution of each House of Parliament and the Assembly.
846. [Paragraph 41](#) makes provision for the Secretary of State, by order, to provide for the transfer of specified property, rights or liabilities of the 'old Assembly' (but not property, rights or liabilities under a contract of employment of a member of staff of that Assembly) to the Welsh Ministers etc. or to the Assembly Commission. Either House of Parliament can, by resolution, annul an order made under this paragraph.
847. [Paragraph 42](#) provides that a certificate of the Secretary of State that any property has been transferred by paragraph 39 or 41 is conclusive evidence of the transfer.
848. The paragraph further provides that transfers under paragraphs 39 and 41 have effect in relation to property, rights or liabilities to which they apply despite any provision which would otherwise prevent, penalise or restrict the transfer of the property or liabilities and that a right of pre-emption, right of return or other similar right is not to operate or become exercisable as a result of any such transfer of property or rights. Further, any such right has effect in the case of any such transfer as if the transferee were the same person in law as the transferor and as if no transfer of property had taken place.
849. Additionally, paragraph 42 provides for just compensation to be paid to any person in respect of a right which would have operated in favour of (or be exercisable by) that person but which in consequence of paragraph 40(3) cannot subsequently operate in the person's favour (or be exercisable by the person). Any compensation payable is to be paid by the transferor, transferee or both.
850. The Secretary of State can, by order, provide for the determination of any disputes as to whether, to whom or by whom such compensation is to be paid, and how much that compensation should be. Any such order can be annulled by a resolution of either House of Parliament.

Paragraph 43: Staff of the Assembly

851. This paragraph provides that from the beginning of the day after the appointment of a First Minister, staff of the old Assembly are to be deemed to have been appointed as members of staff of the Welsh Assembly Government. This is subject to a power of the Secretary of State, by order, to make a scheme for the transfer of staff to the Assembly, by transferring to the Assembly Commission the rights and liabilities of listed employees under their contracts of employment.
852. Any such transfer does not break the relevant employee's employment and the transfer scheme must provide for the terms and conditions of the employee's employment with the Commission to be no less favourable to the employee than they were immediately before the transfer.
853. If an employee listed in the scheme objects to becoming employed by the Assembly Commission, there will be no transfer of that employee but the employee's contract will be terminated at the beginning of the day after a First Minister is appointed. However, the employee will not be treated for any purpose as having been dismissed.

854. Before making an order under this paragraph, the Secretary of State must consult the old Assembly and such an order can be annulled by a resolution of either House of Parliament.

Paragraph 44: Powers to lend money

855. This paragraph deals with a power to lend money which was transferred to the old Assembly by an Order in Council under s. 22 GoWA and which is transferred to the Welsh Ministers under paragraph 30 of this Schedule.
856. The paragraph provides that any sums which would be required for the purpose of, or as a result of, the exercise of such a power to be issued by the Treasury out of, or to be paid into, the National Loans Fund are to be instead charged on the Welsh Consolidated Fund (WCF) or to be paid into that Fund.
857. Where a power was exercised by a Minister of the Crown before its transfer to the old Assembly, or was exercised by the old Assembly after transfer and the sums required were issued by the Treasury out of the National Loans Fund, the paragraph further provides that repayment of a loan is to be paid to the Welsh Ministers and by them into the WCF. However, amounts received by the Welsh Ministers in repayment of principal are treated (on the date of transfer of the power to them) as loans made to the Welsh Ministers by the Secretary of State and have to be repaid to the Secretary of State at such rates and times as the Treasury may determine. The amounts paid are to be charged on the WCF and corresponding receipts by the Secretary of State are to be paid into the National Loans Fund.
858. There is a power for Her Majesty, by Order in Council, to disapply this paragraph in relation to any power to lend money but no recommendation to Her Majesty to make an order can be made unless a copy of the statutory instrument has been laid and approved by a resolution of each House of Parliament.

Paragraph 45: Local Government scheme

859. This paragraph provides for the local government scheme made by the old Assembly under section 113(1) of GoWA to continue to have effect (with appropriate modifications) as if made under this Act .

Paragraph 46: Voluntary sector scheme

860. This paragraph provides for the voluntary sector scheme made by the old Assembly under section 114(1) of GoWA to continue to have effect (with appropriate modifications) as if made under this Act.

Paragraph 47: Equality of opportunity arrangements

861. This paragraph provides for equality of opportunity arrangements made by the old Assembly under section 120(1) of GoWA to continue to have effect (with appropriate modifications) as if made under this Act.

Paragraph 48: Welsh Language Strategy and Scheme

862. **Section 78(1)** requires the Welsh Ministers to adopt a Welsh Language strategy, which must set out how the Welsh Ministers propose to promote and facilitate the use of the Welsh language. Paragraph 48 provides that when section 78 comes into force (which will be immediately after the first appointment of a First Minister under section 46), then the National Action Plan for a Bilingual Wales (or Iaith Pawb), in whatever form it exists at that time, is to operate with appropriate modifications from then on as if it were a Welsh Language strategy adopted under section 78(1). In addition, any Welsh language scheme which the Assembly constituted under GoWA has adopted under section 21 of the Welsh Language Act 1993 and which is in force when section 78

comes into force, is to operate with appropriate modifications from then on as if it were a Welsh language scheme adopted under section 78(2).

863. The effect of paragraph 48(3) is that the Welsh Ministers are not required to re-publish the National Action Plan for a Bilingual Wales, nor any Welsh language scheme, which is operating as if made under section 78. The effect of paragraph 48(4) is that the Welsh Ministers are not required to publish a report under section 78(8) in relation to the financial year ending 31 March 2007.

Paragraph 49: Sustainable development scheme

864. This paragraph provides for the sustainable development scheme made by the old Assembly under section 121(1) of GoWA to continue to have effect (with appropriate modifications) as if made under this Act.

Paragraph 50 and 51: Orders in Council amending Schedule 5

865. These paragraphs provide for sections 95 and 96 to have effect with modifications until the beginning of the day after the day in which a First Minister is appointed. Sections 95 and 96 come into force on Royal Assent, in order to allow Schedule 5 (and therefore the Assembly's legislative competence to pass Assembly Measures) to be modified between Royal Assent and the Act coming fully into effect in May 2007. The modifications which this paragraph applies are necessary to allow sections 95 and 96 to operate in advance of May 2007.

Paragraph 52: Assembly Measures: criminal penalties

866. This paragraph provides that, until the coming into force of sections 281(5) and 154(1) of the Criminal Justice Act 2003, the maximum term of imprisonment which can be imposed on conviction of an offence (whether summary or triable either way) under an Assembly Measure is six months (again making provision for the different rules in relation to sentencing which apply until those provisions of the 2003 Act come into force).

Paragraph 53: Welsh Consolidated Fund

867. This paragraph imposes a duty on the old Assembly to pay, on 2 April 2007, all monies standing to its credit immediately before that day into the Welsh Consolidated Fund.

Paragraph 54: Grants

868. This paragraph ensures that section 118(2), that is, the power of Ministers of the Crown to make payments to the Welsh Ministers, has effect as a power to make payments to the old Assembly (including that Assembly as it continues in existence by virtue of Schedule 11, paragraph 22) until the first First Minister is appointed under the Act.

Paragraph 55: Statement of estimated payments

869. This paragraph provides that in relation to the financial year beginning on 1 April 2007, section 119 has effect also in relation to the old Assembly, so that the Secretary of State is required to lay a written statement of estimated payments before that Assembly, and to include, in that statement, estimated payments destined for the old Assembly.

Paragraph 56: Destination of receipts

870. This paragraph provides that section 120 (which governs which sums need to be paid into the Welsh Consolidated Fund and which do not) has effect, until the first First Minister is appointed under the Act, as if references to the Welsh Ministers etc. and to the Assembly Commission were references to the old Assembly. It also allows the

old Assembly to make the initial decision as to which receipts can be retained, rather than paid into the Welsh Consolidated Fund.

Paragraph 57: Borrowing

871. This paragraph provides that section 121 has effect, until the first First Minister is appointed under the Act, as if the references to the Welsh Ministers were references to the old Assembly. This allows the old Assembly to continue to borrow from the Secretary of State, if necessary, until it completely ceases to exist. It further makes provision for relevant amounts outstanding immediately before 1 April 2007 to be treated as outstanding (and therefore counting towards the maximum that can be borrowed from the Secretary of State) as if borrowed under the section.

Paragraphs 58 and 59: Payments out of the Welsh Consolidated Fund

872. Paragraph 58 provides that section 124 has effect, until the first First Minister is appointed under the Act, as if the reference to the Welsh Ministers etc. or the Assembly Commission were references to the old Assembly. This gives a legal basis for sums to be paid out of the Welsh Consolidated Fund to meet expenditure of the old Assembly.
873. Paragraph 59 makes transitional provision in respect of certain minor amendments made to other Acts, in Schedule 10 of the Act. Those amendments come into force on 1st April 2007. They provide that, where the Welsh Ministers are guaranteeing certain loans, the sums required for fulfilling the guarantee will be charged on the Welsh Consolidated Fund, rather than on the UK Consolidated Fund, and that sums required by the Welsh Ministers for the making of payments under Part 3 (Non-Domestic Rating: Distribution) of Schedule 8 to the Local Government Finance Act 1988 will be charged on the Welsh Consolidated Fund. Paragraph 59 operates so that, until the Welsh Ministers come into existence at the end of the initial period, sums required for fulfilling guarantees given by the old Assembly under the provisions in question, or for making payments which that Assembly is required to make under Part 3 of Schedule 8 to the Local Government Finance Act 1988 will also be charged on the Welsh Consolidated Fund.

Paragraph 60: Annual Budget motions

874. This paragraph provides that the requirement that a Budget resolution of the Assembly be passed before sums can be paid out of the Welsh Consolidated Fund etc. can be satisfied by a resolution of the old Assembly so far as section 125 has effect in relation to the financial year beginning on 1 April 2007.

Paragraph 61: Supplementary Budget motions

875. This paragraph ensures that in so far as section 126 has effect in relation to the financial year beginning on 1 April 2007, supplementary Budget motions can be moved in the old Assembly (except as it continues in existence during the initial period). Where a supplementary Budget motion under the Act is moved in the old Assembly, references to the First Minister or a Welsh Minister are to members of the “executive committee” under GoWA.

Paragraph 62: Contingencies

876. This paragraph provides that the power to use resources or to have cash paid out of the Welsh Consolidated Fund for an emergency situation (any such amounts not having been approved under a Budget resolution), applies to the old Assembly until the first First Minister is appointed under the Act. Paragraph 62 limits to £50 million the total amount that can be used during that period. The overall ceiling for the financial year, set down in section 128, still applies.

Paragraph 63: Approvals to draw

877. This paragraph provides that the provisions in section 129, requiring the approval of the Auditor General before payments can be made out of the Welsh Consolidated Fund, apply to the old Assembly until the first First Minister is appointed under the Act.

Paragraph 64: Auditor General

878. This paragraph provides that the person who immediately before the repeal of section 90 GoWA is the Auditor General for Wales, is to be taken, after such repeal, to have been appointed under paragraph 1 of Schedule 8.

Paragraph 65: Advocate General for Northern Ireland

879. This paragraph makes provision necessary for the period before the coming into force of section 27 (1) the Justice (Northern Ireland) Act 2002.

Paragraphs 66 and 67: The Supreme Court

880. These paragraphs make provision necessary for the period before the coming into force of section 23(1) of the Constitutional Reform Act 2005.

Schedule 12: Repeals and Revocations

881. This Schedule makes the usual provision for repeals and revocations of other enactments consequent upon this Act.