

SCHEDULES

SCHEDULE 3

Section 58

TRANSFER ETC. OF FUNCTIONS: FURTHER PROVISIONS

PART 1

FUNCTIONS TRANSFERABLE ETC.

Existing and future functions

- 1 (1) Subject to sub-paragraph (2), an Order in Council under section 58 may make provision about any function of a Minister of the Crown (including a function conferred or imposed after the passing of this Act).
- (2) Such an Order in Council may not make provision about any function conferred or imposed by any provision of this Act except section 4.

Functions relating to culture

- 2 If and to the extent that any function is exercisable by a Minister of the Crown in relation to the Welsh language or any other aspect of Welsh culture it is to be regarded for the purposes of section 58 as exercisable by the Minister of the Crown in relation to Wales.

Cross-border functions

- 3 (1) The power conferred by section 58 to make an Order in Council about a function so far as exercisable by a Minister of the Crown in relation to Wales includes power to make provision about a function so far as exercisable by a Minister of the Crown in relation to—
 - (a) a cross-border body, or
 - (b) subject to sub-paragraph (2), an English border area.
- (2) An Order in Council under section 58 may only include provision about a function so far as exercisable by a Minister of the Crown in relation to an English border area if—
 - (a) the function relates to water resources management, water supply, rivers or other watercourses, control of pollution of water resources, sewerage or land drainage, and
 - (b) the Order in Council makes (or another such Order in Council has made) corresponding provision about the function so far as so exercisable in relation to a part of Wales adjoining England or the whole of Wales.
- (3) This paragraph does not affect the power conferred by section 58 to make an Order in Council about a function so far as exercisable by a Minister of the Crown in relation to the whole or any part of Wales.

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Functions exercisable beyond the territorial sea

- 4 (1) The power conferred by section 58(1)(c) includes power to direct that any function under—
- (a) Part 2 of the Food and Environment Protection Act 1985 (c. 48) (deposits in the sea), or
 - (b) Part 4 of the Petroleum Act 1998 (c. 17) (abandonment of offshore installations),
- so far as exercisable by a Minister of the Crown in relation to Welsh controlled waters is to be exercisable by the Minister of the Crown only after consultation with the Welsh Ministers.
- (2) In this paragraph “Welsh controlled waters” means so much of the sea beyond the seaward boundary of the territorial sea as is adjacent to Wales.
- (3) The power conferred by section 58(3) includes (in particular) power to determine, or make provision for determining, for the purposes of the definition of “Welsh controlled waters” any boundary between—
- (a) the parts of the sea which are to be treated as adjacent to Wales, and
 - (b) those which are not,
- including power to make different determinations or provision for different purposes; and an order under section 158(3) may include any provision that by virtue of this sub-paragraph may be included in an Order in Council under section 58.

PART 2

EXERCISE OF TRANSFERRED FUNCTIONS

Community obligations

- 5 Any power of a Minister of the Crown to make subordinate legislation which has been transferred by an Order in Council under section 58 continues to be exercisable by the Minister of the Crown (as it would be had it not been transferred) for the purpose of—
- (a) implementing any Community obligation of the United Kingdom,
 - (b) enabling any such obligation to be implemented,
 - (c) enabling any rights enjoyed or to be enjoyed by the United Kingdom under or by virtue of the Community Treaties to be exercised, or
 - (d) dealing with matters arising out of or related to any such obligation or rights or the operation of section 2(1) of the European Communities Act 1972 (c. 68).

Agreement or consultation: Ministers and Parliament

- 6 An Order in Council under section 58 which includes provision—
- (a) transferring to the Welsh Ministers, the First Minister or the Counsel General any function so far as exercisable by a Minister of the Crown in relation to a cross-border body or an English border area, or
 - (b) directing that any function is to be exercisable by the Welsh Ministers, the First Minister or the Counsel General in relation to a cross-border body

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or an English border area concurrently with the Minister of the Crown by whom it is exercisable,

may provide that (either generally or to such extent as may be specified in the Order in Council) the function may be exercised by the Welsh Ministers, the First Minister or the Counsel General only with the agreement of, or after consultation with, a Minister of the Crown.

- 7 (1) This paragraph applies where a function is exercisable by a Minister of the Crown—
- (a) only with the agreement of, or after consultation with, another Minister of the Crown, or
 - (b) only with the authorisation of Parliament or either House of Parliament.
- (2) If an Order in Council under section 58 includes provision transferring the function to the Welsh Ministers, the First Minister or the Counsel General it is to be exercisable free from that requirement unless the Order in Council provides otherwise.
- (3) If an Order in Council under that section includes provision directing that the function is to be exercisable by the Welsh Ministers, the First Minister or the Counsel General concurrently with the Minister of the Crown by whom it is exercisable, the Order in Council may provide that is to be exercisable free from that requirement.

Agreement or consultation etc.: Assembly and Assembly Commission

- 8 (1) An Order in Council under section 58 may make provision for a function to be exercisable by the Welsh Ministers, the First Minister or the Counsel General only with the authorisation of, or after consultation with, the Assembly or the Assembly Commission.
- (2) An Order in Council under section 58 making provision for a function to be exercisable by the Welsh Ministers, the First Minister or the Counsel General may, by virtue of subsection (3) of that section, require the Welsh Ministers, the First Minister or the Counsel General—
- (a) to lay a report before the Assembly, or
 - (b) to send documents to the Clerk,
- in connection with the exercise of the function.

Parliamentary and Assembly procedure

- 9 (1) This paragraph applies where a function to make subordinate legislation (including a function conferred or imposed by or by virtue of this Act or an Act passed after this Act) is transferred to, or made exercisable by, the Welsh Ministers, the First Minister or the Counsel General by an Order in Council under section 58.
- (2) If, immediately before the coming into force of the provisions of the Order in Council relating to the function, a provision of any of the descriptions specified in sub-paragraph (3) applied to its exercise by a Minister of the Crown—
- (a) that provision does not apply to its exercise by the Welsh Ministers, the First Minister or the Counsel General unless the case is one to which sub-paragraph (6) applies, but
 - (b) (whether or not the case is one to which that sub-paragraph applies) that provision has effect in relation to its exercise by the Welsh Ministers, the First Minister or the Counsel General as if any reference in it to Parliament or

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either House of Parliament were (or, if it is such a case, included) a reference to the Assembly.

- (3) The descriptions of provision referred to in sub-paragraph (2) are—
- (a) provision requiring any instrument made in the exercise of the function, or a draft of any such instrument, to be laid before Parliament or either House of Parliament,
 - (b) provision for the annulment or approval of any such instrument or draft by or in pursuance of a resolution of either House of Parliament or of both Houses, and
 - (c) provision prohibiting the making of any such instrument without such approval.
- (4) If, immediately before the coming into force of the provisions of the Order in Council relating to the function, a provision of either of the descriptions specified in sub-paragraph (5) applied to its exercise by a Minister of the Crown—
- (a) that provision does not apply to its exercise by the Welsh Ministers, the First Minister or the Counsel General unless the case is one to which sub-paragraph (6) or (7) applies, but
 - (b) (whether or not the case is one to which either of those sub-paragraphs applies) any instrument made in the exercise of the function by the Welsh Ministers, the First Minister or the Counsel General is (or, if it is such a case, is also) subject to the procedure in the Assembly specified by the standing orders.
- (5) The descriptions of provision referred to in sub-paragraph (4) are—
- (a) provision for any instrument made in the exercise of the function to be a provisional order (that is, an order which requires to be confirmed by Act of Parliament), and
 - (b) provision requiring any order (within the meaning of the Statutory Orders (Special Procedure) Act 1945 (9 & 10 Geo. 6 c. 18)) made in the exercise of the function to be subject to special parliamentary procedure.
- (6) This sub-paragraph applies in any case if the instrument made in the exercise of the function or (if provision specified in sub-paragraph (3)(a) or (b) applied to a draft of an instrument made in the exercise of the function) a draft of an instrument to be so made—
- (a) contains subordinate legislation made or to be made by a Minister of the Crown or government department (whether or not jointly with the Welsh Ministers, the First Minister or the Counsel General),
 - (b) contains (or confirms or approves) subordinate legislation relating to an English border area, or
 - (c) contains (or confirms or approves) subordinate legislation relating to a cross-border body (and not relating only to the exercise of functions, or the carrying on of activities, by the body in or with respect to Wales or a part of Wales).
- (7) This sub-paragraph applies in any case if, immediately before the coming into force of the provisions of the Order in Council relating to the function, a provision of the description specified in sub-paragraph (5)(b) applied to an instrument made in exercise of the function by a Minister of the Crown and the Order in Council provided that—
- (a) any order made by the Welsh Ministers, the First Minister or the Counsel General in the exercise of the function, or

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(b) any order so made in circumstances including those of the case, is to be subject to special parliamentary procedure.

(8) In this paragraph “make” includes confirm or approve and related expressions (except “made exercisable”) are to be construed accordingly; but an instrument (or draft) does not fall within sub-paragraph (6)(a) just because it contains subordinate legislation made (or to be made) by the Welsh Ministers, the First Minister or the Counsel General with the agreement of a Minister of the Crown or government department.

Laying of reports and statements

- 10 (1) This paragraph applies where—
- (a) a function to make or receive a report or statement (including a function conferred or imposed by or by virtue of an Act passed after this Act) is transferred to, or made exercisable by, the Welsh Ministers, the First Minister or the Counsel General by an Order in Council under section 58, and
 - (b) immediately before the coming into force of the provisions of the Order in Council relating to the function, any enactment made provision (“provision for Parliamentary laying”) for a report or statement made or received in the exercise of the function to be laid before Parliament or either House of Parliament by the person making or receiving it.
- (2) The provision for Parliamentary laying applies to the exercise of the function by the Welsh Ministers, the First Minister or the Counsel General as if it required the report or statement to be laid before the Assembly instead of before Parliament or either House of Parliament.
- (3) In this paragraph references to a report or statement include any other document (except one containing subordinate legislation).

Powers to lend money

- 11 (1) This paragraph applies where a power to lend money (including a power conferred by or by virtue of an Act passed after this Act) is transferred to the Welsh Ministers by an Order in Council under section 58; but subject to any provision to the contrary in the Order in Council.
- (2) Sub-paragraph (3) applies to any sums which, for the purpose or as a result of the exercise of the power, would be required (apart from that sub-paragraph)—
- (a) to be issued by the Treasury out of the National Loans Fund, or
 - (b) to be paid into that Fund.
- (3) Those sums are instead—
- (a) to be charged on the Welsh Consolidated Fund, or
 - (b) to be paid into that Fund.
- (4) The following provisions apply where—
- (a) the power was exercised by a Minister of the Crown before the transfer, and
 - (b) the sums required for the exercise of the power were issued by the Treasury out of the National Loans Fund.

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- (5) Any amount payable by way of repayment of, or of interest on, the loan is to be paid to the Welsh Ministers and into the Welsh Consolidated Fund (instead of to the Minister of the Crown and into the National Loans Fund).
- (6) Amounts equal to those which are to be received by the Welsh Ministers in repayment of principal are to be treated as being loans made to the Welsh Ministers by the Secretary of State on the date of the transfer.
- (7) Such loans are to be repaid to the Secretary of State at such times and by such methods, and interest is to be paid to the Secretary of State at such rates and at such times, as the Treasury may from time to time determine.
- (8) Sums required to be paid to the Secretary of State under sub-paragraph (7) are to be charged on the Welsh Consolidated Fund.
- (9) Sums received by the Secretary of State under sub-paragraph (7) are to be paid into the National Loans Fund.

PART 3

SUPPLEMENTARY

References to Minister of the Crown etc.

- 12 References in section 58 and this Schedule to a Minister of the Crown include references to—
- (a) two or more Ministers of the Crown acting jointly, and
 - (b) an officer of a Minister of the Crown or of a government department,
- and, in relation to functions of such an officer, the references in section 58(1) and this Schedule to the Welsh Ministers include references to a member of the staff of the Welsh Assembly Government.

Saving

- 13 An Order in Council under section 58 which includes provision—
- (a) transferring a function exercisable by a Minister of the Crown, or
 - (b) directing that a function is to be exercisable only with the agreement of, or after consultation with, any of the Welsh Ministers, the First Minister or the Counsel General,
- does not affect the validity of anything done by or in relation to the Minister of the Crown before the coming into force of the Order in Council.