

2009 No. 2958

CONSTITUTIONAL LAW

DEVOLUTION, WALES

**The Government of Wales Act 2006 (Consequential
Modifications, Transitional Provisions and Saving) Order 2009**

Made - - - -5th November 2009

Coming into force in accordance with article 1(2)

The Secretary of State makes the following Order in exercise of the powers conferred upon him by sections 157(2)(c), 160(2) and 162(2) of the Government of Wales Act 2006(a).

In accordance with section 160(3) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

INTRODUCTORY PROVISIONS

Citation, commencement and extent

1.—(1) This Order may be cited as the Government of Wales Act 2006 (Consequential Modifications, Transitional Provisions and Saving) Order 2009.

(2) This Order shall come into force on the day after the day on which it is made.

(3) The modifications(b) made by this Order shall have the same extent as the enactments(c) modified.

Interpretation

2. In this Order —

“1981 Act” means the British Nationality Act 1981(d); and

“2006 Order” means the British Citizenship (Designated Service) Order 2006(e).

(a) 2006 c. 32.

(b) For the meaning of “modifications” see section 158(1) of the Government of Wales Act 2006.

(c) For the meaning of “enactments” see the said section 158(1).

(d) 1981 c.61.

(e) S.I.2006/1390 as amended by S.I.2007/744 and 2008/135

PART 2

BRITISH NATIONALITY: MODIFICATIONS AND OTHER PROVISIONS

British Nationality Act 1981

3. In section 50(1) of the 1981 Act (interpretation), in the definition of “Crown service under the government of the United Kingdom”(a), after “the Scottish Administration” insert “or under the Welsh Assembly Government”.

The British Citizenship (Designated Service) Order 2006

4. In Schedule 2 to the 2006 Order, omit paragraph 15 (service under the Welsh Assembly Government)(b).

The British Citizenship (Designated Service) (Amendment) Order 2008

5. The British Citizenship (Designated Service) (Amendment) Order 2008(c) is revoked.

Persons born overseas after 25th May 2007 but before this Order comes into force

6.—(1) Paragraph (2) applies to a person (“A”)—

- (a) who was born after 25th May 2007 and before 14th February 2008,
- (b) whose father or mother was, at the time of A’s birth, a relevant Welsh Assembly Government civil servant, and
- (c) who became a British citizen at birth by virtue of section 2(1)(a) of the 1981 Act (father or mother a British citizen otherwise than by descent).

(2) For as long as A is a British citizen because of the citizenship A acquired at birth, A shall for all purposes be a British citizen by virtue of section 2(1)(b) of the 1981 Act (father or mother a British citizen in Crown service abroad under the United Kingdom government etc).

(3) Paragraph (4) applies to a person (“B”)—

- (a) who was born on or after 14th February 2008 and before this Order came into force,
- (b) whose father or mother was, at the time of B’s birth, a relevant Welsh Assembly Government civil servant, and
- (c) who became a British citizen at birth by virtue of section 2(1)(b) of the 1981 Act (in its application by virtue of paragraph 15 of Schedule 2 to the 2006 Order).

(4) For as long as B is a British citizen because of the citizenship B acquired at birth, B shall continue for all purposes to be a British citizen by virtue of section 2(1)(b) of the 1981 Act.

(5) In this article “relevant Welsh Assembly Government civil servant” means a British citizen serving outside the United Kingdom and the qualifying territories in Crown service under the Welsh Assembly Government whose recruitment for that service took place in the United Kingdom.

(6) Expressions used in this article and in the 1981 Act have the same meaning in this article as in that Act.

(a) The definition of “Crown service under the government of the United Kingdom” was amended by S.I. 1999/1042 (*see* Schedule 1 paragraph 10).

(b) Paragraph 15 was inserted by S.I.2008/135.

(c) S.I. 2008/135.

PART 3
OTHER MODIFICATIONS

Constitutional Reform Act 2005

7. In section 41(4)(a) of the Constitutional Reform Act 2005 (relation to other courts etc)(a), after “under” insert “section 96, 99 or 112 of the Government of Wales Act 2006,”.

Companies Act 2006

8. The Companies Act 2006(b) is amended as follows.

9. In section 54(1)(a) (names suggesting connection with government or public authority) after “any part of the Scottish Administration” insert “, the Welsh Assembly Government”.

10.—(1) Section 482(1) (non-profit-making companies subject to public sector audit) is amended as follows.

(2) For paragraph (a) substitute —

“(a) are subject to audit by the Comptroller and Auditor General by virtue of an order under section 25(6) of the Government Resources and Accounts Act 2000;

(ab) are subject to audit by the Auditor General for Wales by virtue of—

(i) an order under section 144 of the Government of Wales Act 1998, or

(ii) paragraph 18 of Schedule 8 to the Government of Wales Act 2006;” .

11. In section 1193(1)(a) (name suggesting connection with government or public authority) after “any part of the Scottish Administration” insert “, the Welsh Assembly Government”.

12.—(1) Section 1231 (reports by the Independent Supervisor) is amended as follows.

(2) In subsection (2) for paragraph (d) substitute—

“(d) The First Minister for Wales.”.

(3) After subsection (3) insert —

“**3A.** The First Minister for Wales must lay before the National Assembly for Wales a copy of each report received by him under subsection (2)(d).”.

(4) The amendment made to section 1231 by paragraph (3) does not apply to calendar years before 2010.

5th November 2009

Wayne David
Parliamentary Under Secretary of State
Wales Office

(a) 2005 c.4.
(b) 2006 c.46.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes modifications to enactments which are considered by the Secretary of State to be appropriate in consequence of the Government of Wales Act 2006 (c.32) (“GoWA 2006”).

Other modifications to enactments have been made by Schedule 10 to GoWA 2006 and by the Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I.2007/1388).

This Order also makes related transitional provisions and saving.

British nationality: modifications and other provisions

Article 3 amends the definition of “Crown service under the government of the United Kingdom” in section 50(1) of the British Nationality Act 1981 (“the 1981 Act”) to include service with the Welsh Assembly Government in addition to service under Her Majesty’s governments in the United Kingdom and in Northern Ireland and under the Scottish Administration .

For the purposes of this Order, Crown service under the government of the United Kingdom can be relevant in relation to the British citizenship of certain persons born overseas (see section 2 of the 1981 Act (acquisition of British citizenship by descent)) and also in relation to the requirements for naturalisation as a British citizen (see section 6 of and Schedule 1 to the 1981 Act).

Articles 4 and 5 revoke respectively the entry contained in paragraph 15 of Schedule 2 to the British Citizenship (Designated Service) Order 2006 designating (under section 2(3) of the 1981 Act) service under the Welsh Assembly Government; and the British Citizenship (Designated Service) (Amendment) Order 2008 (“the 2008 Order”) that had inserted that entry. That designation is no longer appropriate in view of the amendment made by article 3.

Article 6 makes transitional provision and a saving in relation to children born overseas to a member of staff of the Welsh Assembly Government serving overseas or to the spouse or partner of that member of staff:

- (a) after 25th May 2007, when the Crown in right of the Welsh Assembly Government came into being under GoWA 2006 (see section 161(4) and (5) GoWA 2006 and the appointment on 25th May 2007 of the first First Minister for Wales by Her Majesty under section 46 GoWA 2006) and before 14th February 2008, when the 2008 Order designating service under the Welsh Assembly Government came into force; or
- (b) between 14th February 2008 and the date this Order comes into force .

In the former case, the effect of paragraphs (1) and (2) of article 6 is that, from the date this Order comes into force, such a child is for all purposes a British citizen by virtue of section 2(1)(b) of the 1981 Act (parent a British citizen in Crown service abroad under the government of the United Kingdom etc.), that is, a British citizen “otherwise than by descent” rather than a British citizen by descent only.

In the latter case, the effect of paragraphs (3) and (4) of article 6 is that, from the date this Order comes into force, such a child continues for all purposes to be a British citizen by virtue of section 2(1)(b) of the 1981 Act, that is, a British citizen “otherwise than by descent” notwithstanding the revocation of the 2008 Order.

Paragraphs (5) and (6) of article 6 make related provision.

Other modifications

Constitutional Reform Act 2005 (c. 4)

Article 7 amends section 41(4)(a) of the Constitutional Reform Act 2005 (“the 2005 Act”).

Section 41 of the 2005 Act provides for the relationship of the new Supreme Court of the United Kingdom with other courts in the UK. Section 41(3) provides that decisions of the Supreme Court on devolution matters coming before it are not binding upon the Supreme Court itself but are otherwise binding in all legal proceedings.

“Devolution matter” is defined in section 41(4) by reference to certain proceedings under the Scotland Act 1998, the Northern Ireland Act 1998 and (as substituted by S.I. 2007/1388, Schedule 1 paragraph 111) under GoWA 2006.

Section 41(4)(a) refers to proceedings under the Scotland and Northern Ireland Acts involving questions whether a bill or provision of a bill of the Scottish Parliament or the Northern Ireland Assembly is within that body’s legislative competence. There was no reference to any such questions under the Government of Wales Act 1998 (c.38) as the National Assembly for Wales established by that Act did not have similar legislative competence to the Scottish Parliament and the Northern Ireland Assembly.

Given the legislative competence of the National Assembly for Wales established by GoWA 2006 (see Part 3 in relation to Assembly Measures and (subject to a referendum under section 103) Part 4 in relation to Acts of the Assembly), article 8 inserts into section 41(4)(a) reference to proceedings arising under the following provisions of GoWA 2006, namely section 96 (scrutiny by Supreme Court of proposed Orders in Council under section 95 conferring legislative competence on the Assembly), section 99 (scrutiny by Supreme Court of proposed Assembly Measures) and section 112 (scrutiny by Supreme Court of Assembly Bills).

Other amendments to the 2005 Act were made by S.I.2007/1388 at Schedule 1 paragraphs 110 and 111).

Companies Act 2006 (c. 46)

Articles 9 to 12 (introduced by article 8) make amendments to the Companies Act 2006 (“the 2006 Act”).

Section 54 of the 2006 Act places restrictions on companies being registered with names suggesting connection with government or public authorities.

Article 9 amends section 54(1)(a) to include reference to the Welsh Assembly Government.

Section 482 of the 2006 Act provides that the audit requirements on companies under Part 16 of the 2006 Act do not apply to non-profit-making companies that are subject to public sector audit. Subsection (1)(a)(ii) applies in relation to companies subject to audit by the Auditor General for Wales by virtue of section 96 of the Government of Wales Act 1998 or by an order under section 144 of that Act of 1998.

Article 10 amends section 482(1) by substituting for the existing paragraph (a) new paragraphs (a) and (ab). The new paragraph (a) replicates in relation to such audit by the Comptroller and Auditor General provision in sub-paragraph (i) of the existing paragraph (a). The new paragraph (ab) replicates in relation to such audit by the Auditor General for Wales provision in sub-paragraph(ii) of the existing paragraph (a) save that reference to section 96 of the Government of Wales Act 1998 is replaced with reference to paragraph 18 of Schedule 8 to GoWA 2006. Section 96 was repealed by Schedule 12 to GoWA 2006.

Section 1193 of the 2006 Act places restrictions on persons carrying on business in the United Kingdom under a name that would be likely to give the impression that the business is connected with government or public authorities.

Article 11 amends section 1193(1)(a) to include reference to the Welsh Assembly Government.

Section 1231 of the 2006 Act requires the Independent Supervisor, who supervises Auditors General, including the Auditor General for Wales, in the exercise of statutory audit functions, to prepare at least once in each calendar year a report on the discharge of its functions. The Independent Supervisor is required to give copies of each report to the Secretary of State and the “first” Ministers in the three devolved administrations.

Article 12 amends section 1231(2) by substituting a new subsection (2)(d) to refer to the First Minister for Wales (see section 46 of GoWA 2006).

Article 12 also inserts a new subsection (3A) into section 1231 to require the First Minister for Wales to lay a copy of each such report before the National Assembly for Wales. That requirement does not apply to calendar years before 2010.

Another amendment was made to the 2006 Act by S.I. 2007/1388 at Schedule 1 paragraph 142.

A full Impact Assessment has not been produced for this instrument as no additional impact on the private or voluntary sectors is foreseen.

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