

LEGISLATION (WALES) ACT 2019

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Interpretation and Operation of Welsh Legislation

Section 3 – Legislation to which this Part applies

37. **Section 3(1)** sets out the legislation to which Part 2 of the Act applies. Part 2 applies to the Act itself, to Assembly Acts that receive Royal Assent after Part 2 comes fully into force, and to Welsh subordinate instruments made after Part 2 comes fully into force. Part 2 will be brought fully into force by an order made by the Welsh Ministers under section 43(2).
38. A “Welsh subordinate instrument” is defined in section 3(2) as an instrument containing only one or both of the types of subordinate legislation described in paragraphs (a) and (b). An instrument which contains any subordinate legislation not falling within either of those paragraphs will not be a “Welsh subordinate instrument” (and will instead be subject to the 1978 Act).
39. The subordinate legislation within paragraph (a) is any subordinate legislation made under an Assembly Act or Assembly Measure, regardless of who makes it. This paragraph covers any subordinate legislation made under powers conferred by primary legislation passed by the National Assembly for Wales. It does not matter when the primary legislation was enacted.
40. Where subordinate legislation is made under an Assembly Act enacted after Part 2 of the Act comes into force, Part 2 will apply to both the parent Act and the subordinate legislation. But where subordinate legislation is made under an Assembly Measure or an Assembly Act enacted before Part 2 comes into force, the 1978 Act will continue to apply to that Measure or Act, while Part 2 of this Act will apply to the subordinate legislation. Nothing in Part 2 will change the meaning or effect of the Measure or Act under which the subordinate legislation is made.
41. The subordinate legislation within paragraph (b) of the definition of “Welsh subordinate instrument” is subordinate legislation that:
 - a. is made under an Act of the UK Parliament or retained direct EU legislation,
 - b. is made only by the Welsh Ministers or any other devolved Welsh authority, and
 - c. applies only in relation to Wales.
42. Where the subordinate legislation is made under an Act of the UK Parliament, the 1978 Act will continue to apply to the parent Act, but Part 2 of this Act will apply to the subordinate legislation. Nothing in Part 2 will change the meaning or effect of the Act of Parliament under which the subordinate legislation is made.
43. Similarly, Part 2 will apply to certain subordinate legislation that is made under “retained direct EU legislation” but not to the “retained direct EU legislation” itself.

*These notes refer to the Legislation (Wales) Act 2019
(c.4) which received Royal Assent on 10 September 2019*

Schedule 1 to the Act defines “retained direct EU legislation” by reference to the European Union (Withdrawal) Act 2018, which provides for certain EU legislation (including regulations and decisions) to be retained in domestic law on “exit day”. The 2018 Act also confers powers to amend that legislation so that it contains powers to make subordinate legislation.

44. The “devolved Welsh authorities” to which paragraph (b) refers are defined in section 157A of the Government of Wales Act 2006, and include all of the bodies listed in Schedule 9A to that Act. They include county and county borough councils, National Park authorities, Natural Resources Wales, and other devolved bodies that have powers to make orders, rules, schemes or byelaws.
45. An instrument will not be a “Welsh subordinate instrument” if it contains subordinate legislation made under an Act of the UK Parliament or retained direct EU legislation by a person or body that is not a devolved Welsh authority. Therefore “Welsh subordinate instruments” do not include instruments made jointly by the Welsh Ministers and a Secretary of State, or “composite” instruments in which the Welsh Ministers legislate for Wales and a Secretary of State legislates for England.
46. An instrument will not be a “Welsh subordinate instrument” if it contains subordinate legislation that is made under an Act of the UK Parliament or retained direct EU legislation and applies otherwise than in relation to Wales. It is possible that an Act of Parliament may confer functions on the Welsh Ministers in relation to an area that extends beyond the boundaries of Wales, such as the part of the Welsh zone that lies beyond the territorial sea. In addition, Part 1 of Schedule 3 to the Government of Wales Act 2006 provides that functions may be transferred to the Welsh Ministers in relation to English border areas and waters beyond the seaward boundary of the territorial sea.