



Government of Wales Act 1998

1998 CHAPTER 38

PART II

ASSEMBLY FUNCTIONS

Supplementary

42 Different exercise of functions by Assembly.

- (1) This section applies where—
 - (a) an enactment confers or imposes a function exercisable in relation to England and Wales, and
 - (b) the function is to any extent conferred or imposed on the Assembly by the enactment or transferred to, or made exercisable by, the Assembly by an Order in Council under section 22.
- (2) Subject to subsection (4), the enactment shall be taken to permit—
 - (a) the exercise of the function by the Assembly whether or not it is exercised otherwise than by the Assembly, and
 - (b) the exercise of the function differently by the Assembly (on the one hand) and otherwise than by the Assembly (on the other).
- (3) The reference in subsection (1)(a) to a function exercisable in relation to England and Wales includes a function exercisable in relation both to England and Wales and to another country or territory or other countries or territories.
- (4) Subsection (2) is subject to any provision made by—
 - (a) the enactment by which the function is conferred or imposed on the Assembly, or
 - (b) the Order in Council by which the function is transferred to, or made exercisable by, the Assembly.

Status: Point in time view as at 01/12/1998.

Changes to legislation: Government of Wales Act 1998, Cross Heading: Supplementary is up to date with all changes known to be in force on or before 06 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (5) Subsection (2) does not limit any power to exercise a function in relation to Wales whether or not it is exercised in relation to England, or to exercise a function differently in relation to Wales and England, where the function is not (to any extent)—
- (a) conferred or imposed on the Assembly by any enactment, or
 - (b) transferred to, or made exercisable by, the Assembly by an Order in Council under section 22.
- (6) In this section “enactment” includes an enactment—
- (a) contained in an Act passed after this Act, or
 - (b) made after the passing of this Act.

Modifications etc. (not altering text)

C1 S. 42 restricted (16.2.2000) by S.I. 2000/253, arts. 1(2), 9

43 Construction of references to Ministers and departments.

- (1) So far as may be necessary for the purpose or in consequence of the exercise by the Assembly of any of its functions, any reference in any enactment or other document to—
- (a) a Minister of the Crown, or
 - (b) a government department,
- (whether by name or in general terms) shall be construed as being or including a reference to the Assembly.
- (2) References in any enactment to property vested in or held for the purposes of a government department shall be construed as including references to property vested in or held for the purposes of the Assembly (and in relation to property so vested or held the Assembly shall be deemed to be a government department for the purposes of any enactment).
- (3) In this section “enactment” includes an enactment—
- (a) contained in an Act passed after this Act, or
 - (b) made after the passing of this Act.

44 Parliamentary procedures for subordinate legislation.

- (1) This section applies where a function to make subordinate legislation (including a function conferred or imposed by, or after the passing of, this Act) has been transferred to, or made exercisable by, the Assembly by an Order in Council under section 22.
- (2) Subject to subsections (4) and (5), any relevant Parliamentary procedural provision relating to the function shall not have effect in relation to the exercise of the function by the Assembly.
- (3) For the purposes of this Act “relevant Parliamentary procedural provision” means provision—
- (a) 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) 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,

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- (c) prohibiting the making of any such instrument without that approval,
 - (d) for any such instrument to be a provisional order (that is, an order which requires to be confirmed by Act of Parliament), or
 - (e) requiring any order (within the meaning of the ^{M1}Statutory Orders (Special Procedure) Act 1945) to be subject to special parliamentary procedure.
- (4) Subsection (2) does not apply in the case of any instrument made in the exercise of the function, or a draft of any such instrument, if it—
- (a) contains subordinate legislation made or to be made by a Minister of the Crown or government department (whether or not jointly with the Assembly),
 - (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).
- (5) Where a function transferred to, or made exercisable by, the Assembly by an Order in Council under section 22 is subject to a provision of the description specified in subsection (3)(e), the Order in Council may provide that—
- (a) any order made by the Assembly in the exercise of the function, or
 - (b) any order so made in circumstances specified in the Order in Council,
- is to be subject to special parliamentary procedure.
- (6) In this section “make” includes confirm or approve and related expressions (except “made exercisable”) shall be construed accordingly; but an instrument (or draft) does not fall within subsection (4)(a) just because it contains subordinate legislation made (or to be made) by the Assembly with the agreement of a Minister of the Crown or government department.

Modifications etc. (not altering text)

- C2** S. 44 modified (7.11.2002) by [Adoption and Children Act 2002 \(c. 38\), s. 145\(4\)](#) (with Sch. 4 paras. 6-8)
- C3** S. 44 applied (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\), ss. 5, 8\(2\), Sch. 3 para. 10\(6\)](#) (with Sch. 3)

Marginal Citations

- M1** 1945 c.18 (9 & 10 Geo.6).

45 Laying of reports and statements.

- (1) This section applies where—
- (a) any enactment makes provision (“provision for Parliamentary laying”) for any report or statement to be laid before Parliament or either House of Parliament, and
 - (b) the report or statement relates exclusively to matters with respect to which functions are exercised by the Assembly and no functions are exercised by a Minister of the Crown.

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- (2) The provision for Parliamentary laying shall be construed as provision for the report or statement to be laid before, and published by, the Assembly (instead of being laid before Parliament or either House of Parliament).
- (3) But if the report or statement is one which—
- (a) would (apart from provision made by or by virtue of this Act) be required to be made by or given to a Minister of the Crown or other person before being laid by him, but
 - (b) by or by virtue of this Act, is instead to be made by or given to the Assembly, the provision for Parliamentary laying shall not have effect but the Assembly shall publish the matter which is contained in the report or statement.
- (4) In this section—
- (a) references to a report or statement include any other document (except one containing subordinate legislation) in the case of which any enactment makes provision for laying before Parliament or either House of Parliament, and
 - (b) “enactment” includes an enactment contained in an Act passed after this Act or made after the passing of this Act.

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