



# Government of Wales Act 2006

## 2006 CHAPTER 32

### PART 4

#### ACTS OF THE ASSEMBLY

#### *Referendum*

#### **103 Referendum about commencement of Assembly Act provisions**

- (1) Her Majesty may by Order in Council cause a referendum to be held throughout Wales about whether the Assembly Act provisions should come into force.
- (2) If the majority of the voters in a referendum held by virtue of subsection (1) vote in favour of the Assembly Act provisions coming into force, the Assembly Act provisions are to come into force in accordance with section 105.
- (3) But if they do not, that does not prevent the making of a subsequent Order in Council under subsection (1).
- (4) No recommendation is to be made to Her Majesty in Council to make an Order in Council under subsection (1) unless a draft of the statutory instrument containing the Order in Council has been laid before, and approved by a resolution of, each House of Parliament and the Assembly.
- (5) But subsection (4) is not satisfied unless the resolution of the Assembly is passed on a vote in which the number of Assembly members voting in favour of it is not less than two-thirds of the total number of Assembly seats.
- (6) A draft of a statutory instrument containing an Order in Council under subsection (1) may not be laid before either House of Parliament, or the Assembly, until the Secretary of State has undertaken such consultation as the Secretary of State considers appropriate.
- (7) For further provision about referendums held by virtue of subsection (1) see Schedule 6.

- (8) In this Act “the Assembly Act provisions” means—
- (a) sections 107 and 108, and
  - (b) sections 110 to 115.

#### **104 Proposal for referendum by Assembly**

- (1) This section applies if—
- (a) the Assembly passes a resolution moved by the First Minister or a Welsh Minister appointed under section 48 that, in its opinion, a recommendation should be made to Her Majesty in Council to make an Order in Council under section 103(1), and
  - (b) the resolution of the Assembly is passed on a vote in which the number of Assembly members voting in favour of it is not less than two-thirds of the total number of Assembly seats.
- (2) The First Minister must, as soon as is reasonably practicable after the resolution is passed, ensure that notice in writing of the resolution is given to the Secretary of State.
- (3) The Secretary of State must, within the period of 120 days beginning immediately after the day on which it is received—
- (a) lay a draft of a statutory instrument containing an Order in Council under section 103(1) before each House of Parliament, or
  - (b) give notice in writing to the First Minister of the Secretary of State’s refusal to do so and the reasons for that refusal.
- (4) As soon as is reasonably practicable after the First Minister receives notice given under subsection (3)(b)—
- (a) the First Minister must lay a copy of the notice before the Assembly, and
  - (b) the Assembly must ensure that the notice is published.

#### **105 Commencement of Assembly Act provisions**

- (1) This section applies where the majority of the voters in a referendum held by virtue of section 103(1) are in favour of the Assembly Act provisions coming into force.
- (2) The Welsh Ministers may by order make provision for the Assembly Act provisions to come into force on the date specified in the order.
- (3) An order under subsection (2) may make such modifications of—
- (a) any enactment (including any enactment comprised in or made under this Act) or prerogative instrument, or
  - (b) any other instrument or document,
- as the Welsh Ministers consider appropriate in connection with the coming into force of the Assembly Act provisions.
- (4) No order is to be made under subsection (2) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Assembly.

#### **106 Effect on Measures of commencement of Assembly Act provisions**

- (1) Part 3 ceases to have effect on the day on which the Assembly Act provisions come into force.

- (2) But that does not affect the continuing operation on and after that day of any Assembly Measure enacted before that day.

### *Power*

#### **107 Acts of the Assembly**

- (1) The Assembly may make laws, to be known as Acts of the National Assembly for Wales or *Deddfau Cynulliad Cenedlaethol Cymru* (referred to in this Act as “Acts of the Assembly”).
- (2) Proposed Acts of the Assembly are to be known as Bills; and a Bill becomes an Act of the Assembly when it has been passed by the Assembly and has received Royal Assent.
- (3) The validity of an Act of the Assembly is not affected by any invalidity in the Assembly proceedings leading to its enactment.
- (4) Every Act of the Assembly is to be judicially noticed.
- (5) This Part does not affect the power of the Parliament of the United Kingdom to make laws for Wales.

#### **108 Legislative competence**

- (1) Subject to the provisions of this Part, an Act of the Assembly may make any provision that could be made by an Act of Parliament.
- (2) An Act of the Assembly is not law so far as any provision of the Act is outside the Assembly’s legislative competence.
- (3) A provision of an Act of the Assembly is within the Assembly’s legislative competence only if it falls within subsection (4) or (5).
- (4) A provision of an Act of the Assembly falls within this subsection if—
  - (a) it relates to one or more of the subjects listed under any of the headings in Part 1 of Schedule 7 and does not fall within any of the exceptions specified in that Part of that Schedule (whether or not under that heading or any of those headings), and
  - (b) it neither applies otherwise than in relation to Wales nor confers, imposes, modifies or removes (or gives power to confer, impose, modify or remove) functions exercisable otherwise than in relation to Wales.
- (5) A provision of an Act of the Assembly falls within this subsection if—
  - (a) it provides for the enforcement of a provision (of that or any other Act of the Assembly) which falls within subsection (4) or a provision of an Assembly Measure or it is otherwise appropriate for making such a provision effective, or
  - (b) it is otherwise incidental to, or consequential on, such a provision.
- (6) But a provision which falls within subsection (4) or (5) is outside the Assembly’s legislative competence if—

- (a) it breaches any of the restrictions in Part 2 of Schedule 7, having regard to any exception in Part 3 of that Schedule from those restrictions,
  - (b) it extends otherwise than only to England and Wales, or
  - (c) it is incompatible with the Convention rights or with Community law.
- (7) For the purposes of this section the question whether a provision of an Act of the Assembly relates to one or more of the subjects listed in Part 1 of Schedule 7 (or falls within any of the exceptions specified in that Part of that Schedule) is to be determined by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances.

### **109 Legislative competence: supplementary**

- (1) Her Majesty may by Order in Council amend Schedule 7.
- (2) An Order in Council under this section may make such modifications of—
  - (a) any enactment (including any enactment comprised in or made under this Act) or prerogative instrument, or
  - (b) any other instrument or document,
 as Her Majesty considers appropriate in connection with the provision made by the Order in Council.
- (3) An Order in Council under this section may make provision having retrospective effect.
- (4) No recommendation is to be made to Her Majesty in Council to make an Order in Council under this section unless a draft of the statutory instrument containing the Order in Council—
  - (a) has been laid before, and approved by a resolution of, each House of Parliament, and
  - (b) except where the Order in Council is the first of which a draft has been laid under paragraph (a), has been laid before, and approved by a resolution of, the Assembly.
- (5) The amendment of Schedule 7 by an Order in Council under this section does not affect—
  - (a) the validity of an Act of the Assembly passed before the amendment comes into force, or
  - (b) the previous or continuing operation of such an Act of the Assembly.

### *Procedure*

### **110 Introduction of Bills**

- (1) A Bill may, subject to the standing orders, be introduced in the Assembly—
  - (a) by the First Minister, any Welsh Minister appointed under section 48 any Deputy Welsh Minister or the Counsel General, or
  - (b) by any other Assembly member.
- (2) The person in charge of a Bill must, on or before the introduction of the Bill, state that, in that person's view, its provisions would be within the Assembly's legislative competence.

- (3) The Presiding Officer must, on or before the introduction of a Bill in the Assembly—
  - (a) decide whether or not, in the view of the Presiding Officer, the provisions of the Bill would be within the Assembly’s legislative competence, and
  - (b) state that decision.
- (4) A statement under this section must be made in both English and Welsh; but, subject to that, the form of the statement and the manner in which it is to be made are to be determined under the standing orders.
- (5) The standing orders—
  - (a) may provide for a statement under this section to be published, and
  - (b) if they do so, must provide for it to be published in both English and Welsh.

## **111 Proceedings on Bills**

- (1) The standing orders must include provision—
  - (a) for general debate on a Bill with an opportunity for Assembly members to vote on its general principles,
  - (b) for the consideration of, and an opportunity for Assembly members to vote on, the details of a Bill, and
  - (c) for a final stage at which a Bill can be passed or rejected.
- (2) Subsection (1) does not prevent the standing orders making provision to enable the Assembly to expedite proceedings in relation to a particular Bill.
- (3) The standing orders may make provision different from that required by subsection (1) for the procedure applicable to Bills of any of the following kinds—
  - (a) Bills which restate the law,
  - (b) Bills which repeal or revoke spent enactments, and
  - (c) private Bills.
- (4) The standing orders must include provision for securing that the Assembly may only pass a Bill containing provisions which would, if contained in a Bill for an Act of Parliament, require the consent of Her Majesty or the Duke of Cornwall if such consent has been signified in accordance with the standing orders.
- (5) The standing orders must include provision for securing that the Assembly may only pass a Bill if the text of the Bill is in both English and Welsh, unless the circumstances are such as are specified by the standing orders as any in which the text need not be in both languages.
- (6) The standing orders must provide for an opportunity for the reconsideration of a Bill after its passing if (and only if)—
  - (a) the Supreme Court decides on a reference made in relation to the Bill under section 112 that the Bill or any provision of it would not be within the Assembly’s legislative competence,
  - (b) a reference made in relation to the Bill under section 112 is withdrawn following a request for withdrawal of the reference under section 113(2)(b), or
  - (c) an order is made in relation to the Bill under section 114.
- (7) The standing orders must, in particular, ensure that any Bill amended on reconsideration is subject to a final stage at which it can be approved or rejected.

- (8) References in subsections (4), (5) and (6) of this section and sections 107(2), 109(5) and 116(3) to the passing of a Bill are, in the case of a Bill which has been amended on reconsideration, to be read as references to its approval.

## **112 Scrutiny of Bills by Supreme Court**

- (1) The Counsel General or the Attorney General may refer the question whether a Bill, or any provision of a Bill, would be within the Assembly’s legislative competence to the Supreme Court for decision.
- (2) Subject to subsection (3), the Counsel General or the Attorney General may make a reference in relation to a Bill at any time during—
- (a) the period of four weeks beginning with the passing of the Bill, and
  - (b) any period of four weeks beginning with any subsequent approval of the Bill in accordance with provision included in the standing orders in compliance with section 111(7).
- (3) No reference may be made in relation to a Bill—
- (a) by the Counsel General if the Counsel General has notified the Clerk that no reference is to be made in relation to it by the Counsel General, or
  - (b) by the Attorney General if the Attorney General has notified the Clerk that no reference is to be made in relation to it by the Attorney General.
- (4) But subsection (3) does not apply if the Bill has been approved as mentioned in subsection (2)(b) since the notification.

## **113 ECJ references**

- (1) This section applies where—
- (a) a reference has been made in relation to a Bill under section 112,
  - (b) a reference for a preliminary European Court ruling has been made by the Supreme Court in connection with that reference, and
  - (c) neither of those references has been decided or otherwise disposed of.
- (2) If the Assembly resolves that it wishes to reconsider the Bill—
- (a) the Clerk must notify the Counsel General and the Attorney General of that fact, and
  - (b) the person who made the reference in relation to the Bill under section 112 must request the withdrawal of the reference.
- (3) In this section “a reference for a preliminary European Court ruling” means a reference of a question to the European Court under Article 234 of the Treaty establishing the European Community, Article 41 of the Treaty establishing the European Coal and Steel Community or Article 150 of the Treaty establishing the European Atomic Energy Community.

## **114 Power to intervene in certain cases**

- (1) This section applies if a Bill contains provisions which the Secretary of State has reasonable grounds to believe—

- (a) would have an adverse effect on any matter which is not listed under any of the headings in Part 1 of Schedule 7 (or falls within any of the exceptions specified in that Part of that Schedule),
  - (b) might have a serious adverse impact on water resources in England, water supply in England or the quality of water in England,
  - (c) would have an adverse effect on the operation of the law as it applies in England, or
  - (d) would be incompatible with any international obligation or the interests of defence or national security.
- (2) The Secretary of State may make an order prohibiting the Clerk from submitting the Bill for Royal Assent.
- (3) The order must identify the Bill and the provisions in question and state the reasons for making the order.
- (4) The order may be made at any time during—
- (a) the period of four weeks beginning with the passing of the Bill,
  - (b) any period of four weeks beginning with any subsequent approval of the Bill in accordance with provision included in the standing orders in compliance with section 111(7), or
  - (c) if a reference is made in relation to the Bill under section 112, the period of four weeks beginning with the reference being decided or otherwise disposed of by the Supreme Court.
- (5) The Secretary of State must not make an order in relation to a Bill if the Secretary of State has notified the Clerk that no order is to be made in relation to the Bill.
- (6) Subsection (5) does not apply if the Bill has been approved as mentioned in subsection (4)(b) since the notification.
- (7) An order in force under this section at a time when such approval is given ceases to have effect.
- (8) A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

## **115 Royal Assent**

- (1) It is for the Clerk to submit Bills for Royal Assent.
- (2) The Clerk may not submit a Bill for Royal Assent at any time when—
- (a) the Attorney General or the Counsel General is entitled to make a reference in relation to the Bill under section 112,
  - (b) such a reference has been made but has not been decided or otherwise disposed of by the Supreme Court, or
  - (c) an order may be made in relation to the Bill under section 114.
- (3) The Clerk may not submit a Bill in its unamended form for Royal Assent if—
- (a) the Supreme Court has decided on a reference made in relation to the Bill under section 112 that the Bill or any provision of it would not be within the Assembly's legislative competence, or
  - (b) a reference made in relation to the Bill under section 112 has been withdrawn following a request for withdrawal of the reference under section 113(2)(b).

- (4) A Bill receives Royal Assent when Letters Patent under the Welsh Seal signed with Her Majesty's own hand signifying Her Assent are notified to the Clerk.
- (5) The date of Royal Assent is to be written on the Act of the Assembly by the Clerk, and forms part of the Act.
- (6) The standing orders must include provision for notification by the Clerk to the Assembly of the date of Royal Assent to an Act of the Assembly.
- (7) The validity of an Act of the Assembly is not affected by any failure to comply with provision made by or by virtue of subsection (4), (5) or (6).

## **116 Welsh Seal and Letters Patent**

- (1) There is to be a Welsh Seal.
- (2) The First Minister is to be the Keeper of the Welsh Seal.
- (3) Her Majesty may by Order in Council make provision as to—
  - (a) the form and manner of preparation, and
  - (b) the publication,of Letters Patent signed with Her Majesty's own hand signifying Her Assent to a Bill passed by the Assembly.
- (4) A statutory instrument containing an Order in Council under subsection (3) is subject to annulment in pursuance of a resolution of the Assembly.