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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes modifications, to enactments, which are considered to be appropriate in consequence of the Government of Wales Act 2006 (c.32) (“the Act”). The Order also makes transitional or transitory provisions which appear appropriate in consequence of, or otherwise in connection with, the Act.

Article 2 provides for the extent of the modifications made by the Order.

Article 3 provides for the modification of the enactments specified in Schedule 1 to the Order.

Article 4 provides for transitional provisions which are contained in Schedule 2 to the Order. These provisions modify Schedule 11 to the Act.

In this note references to “the Assembly” or “the National Assembly for Wales” mean the National Assembly for Wales constituted by the Government of Wales Act 2006

Where a reference is intended to refer to the National Assembly for Wales constituted by the Government of Wales Act 1998, “1998” will appear after the reference in brackets.

### ***Schedule 1***

#### ***European Communities Act 1972 (c.68)***

Paragraph 1 of Schedule 1 contains modifications of the European Communities Act 1972.

Paragraph 1A(2) of Schedule 2 to this Act is amended so that for the purposes of paragraph 1A(1) of that Schedule, the references to “subordinate legislation” include subordinate legislation made under a Measure or Act of the Assembly.

#### ***Sex Discrimination Act 1975 (c.65)***

Paragraphs 2 to 9 of Schedule 1 contain modifications of the Sex Discrimination Act 1975.

Section 10A(1)(b) is amended so that section 10B, which contains prohibitions against discrimination and harassment in relation to office-holders etc, applies to offices and posts to which appointments are made, recommended or approved by the Welsh Ministers, the First Minister for Wales (“the First Minister”) or the Counsel General to the Welsh Assembly Government (“the Counsel General”).

Section 10A(3) is amended so that the prohibitions in section 10B will not apply to the appointment of the First Minister, a Welsh Minister, the Counsel General, or a Deputy Welsh Minister.

Section 21A(9) is amended so that the Table of Exceptions from the prohibition against discrimination and harassment in section 21A(1) encompasses the types of legislation that may be within the legislative competence of the National Assembly for Wales, and that which may be made by the Welsh Ministers, the First Minister and the Counsel General. The Table also encompasses acts done in order to comply with that legislation.

Section 23A is amended so that the Welsh Ministers are subject to the prohibition against discrimination contained in that section, reflecting the transfer of functions from the National Assembly for Wales (1998) to the Welsh Ministers.

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Section 25A, which contains a non-discrimination duty in relation to the provision of educational facilities etc, is amended to reflect the transfer of functions from the National Assembly of Wales (1998) to the Welsh Ministers.

Section 76A is amended so that the general non-discrimination etc duty contained in that section does not apply to the National Assembly for Wales or to functions exercised in connection with proceedings in the National Assembly for Wales (though the duty will apply to the exercise of functions of the National Assembly for Wales Commission).

Section 76B(3) is amended to reflect the transfer to the Welsh Ministers of the functions of responding to consultation about, and giving consent to, a specific duty order proposed to be made by the Secretary of State under section 76B(1).

Section 76E(3) is amended to reflect the transfer to the Welsh Ministers of the functions of responding to consultation by the Secretary of State prior to his approval of a draft Code of Practice prepared under section 76E, and his making of an order bringing a Code of Practice into effect.

#### ***Race Relations Act 1976 (c.74)***

Paragraphs 10 to 16 of Schedule 1 contain modifications of the Race Relations Act 1976.

Section 19C(5) is amended so that the exception from the prohibitions against discrimination and harassment contained in section 19B encompasses instruments made by the Welsh Ministers, the First Minister and the Counsel General.

Section 71B is amended to reflect the transfer to the Welsh Ministers of the functions of responding to consultation about, and giving consent to, a specific duty order proposed to be made by the Secretary of State under section 71(2). The amendment to subsection (4) makes it clear that the National Assembly for Wales Commission, the Welsh Ministers, the First Minister and the Counsel General are all Welsh public authorities for the purposes of the section, and that the Secretary of State must obtain the consent of the Welsh Ministers before making a specific duty order in respect of any of them.

Section 71C is amended to reflect the transfer to the Welsh Ministers of the functions of responding to consultation by the Secretary of State prior to his approval of a draft Code of Practice prepared under this section, and his making of an order bringing a Code of Practice into effect.

Section 76 (15) (b) is amended so that prohibitions against discrimination and harassment contained in section 76 apply to appointments made etc by the Welsh Ministers, the First Minister or the Counsel General, as they apply to appointments made etc by Ministers of the Crown.

Section 76ZA(9) is amended so that the prohibitions against discrimination etc contained in section 76ZA will not apply to the appointment of the First Minister, a Welsh Minister, the Counsel General or a Deputy Welsh Minister.

Schedule 1A is amended to reflect the creation of the National Assembly for Wales Commission, the Welsh Ministers, the First Minister and the Counsel General. The general non-discrimination etc duty in section 71 is placed upon these persons and on subsidiaries of the Welsh Ministers.

#### ***Representation of the People Act 1983 (c.2)***

Paragraph 17 of Schedule 1 contains modifications of the Representation of the People Act 1983.

Section 7B(6)(b) of the Representation of the People Act 1983, which provides for declarations of local connection in connection with the residence of certain persons registering to vote, is amended to refer to elections to fill vacancies in Assembly constituencies held under section 10 of the Act.

### ***Mental Health Act 1983 (c.20)***

Paragraph 18 of Schedule 1 amends section 134(3) of the Mental Health Act 1983 to reflect the scheme of the Government of Wales Act 2006. The effect of the amendment is that the provisions in section 134(1) (allowing certain post sent by a patient detained in hospital under that Act, to be withheld from the postal service in certain circumstances) and section 134(2) (allowing post sent to a patient detained in a high security psychiatric hospital under that Act, to be withheld from him or her in certain circumstances) will not apply to post sent between the patient and any of the Welsh Ministers (which includes the First Minister), the Counsel General or a member of the National Assembly for Wales.

### ***Companies Act 1985 (c.6)***

Paragraph 19 of Schedule 1 amends section 26 of the Companies Act 1985 to insert reference to the Welsh Assembly Government. This is in order to ensure that companies are not registered under a name which would be likely to give the impression that the company is connected in any way with the Welsh Assembly Government.

### ***Business Names Act 1985 (c.7)***

Paragraph 20 of Schedule 1 amends section 2 of the Business Names Act 1985 to insert reference to the Welsh Assembly Government. This is so that persons cannot carry on business under a name which would be likely to give the impression that the business is connected in any way with the Welsh Assembly Government.

### ***Local Government Finance Act 1988 (c.41)***

Paragraphs 21 to 40 of Schedule 1 amend Part V of, and Schedules 7 and 8 to, the Local Government Finance Act 1988 (“the 1988 Act”). The Order makes changes to the way in which local government finance reports will be made in Wales. Previously finance reports were made on being published by the Assembly (1998). Subsequent to the split between the executive (the Welsh Ministers) and the legislative (the Assembly) under the Government of Wales Act 2006 the procedure for making such reports, as set out in Part V of the 1988 Act, is amended. The amendments to Part V provide that finance reports, and amending reports, shall be made by the Welsh Ministers and laid before the Assembly for approval. Amendments are also made to Schedules 7 and 8 to the 1988 Act to reflect the new procedure. In addition the Order inserts three new sections into Chapter 4 of Part V of the 1988 Act making specific provision in Wales for the payment of additional grant and special grants.

Section 76 is amended to include a definition of the Assembly. For the purposes of Part V of the 1988 Act the Assembly shall mean the National Assembly for Wales. This will be the Assembly constituted by the Government of Wales Act 2006.

References to the Assembly and the National Assembly for Wales in sections 84E, 84F, 84G, 84K, 84M, 84N, 84P are replaced with references to the Welsh Ministers.

Section 84G is amended to require finance reports to be laid before the Assembly. For sections 84H and 84J new sections are substituted to take account of the new procedure for making and approving finance reports. Thus once the finance report has been approved the Welsh Ministers will be under an obligation to pay the revenue support grant (section 84H) and to calculate the sum payable to each receiving authority (section 84J).

Section 84L is replaced with a new section which enables the Welsh Ministers to make an amending report and to lay the report before the Assembly for its approval. Amendments have also been made to section 84M to reflect this change.

Chapter 4 of Part V to the 1988 Act makes provision for the payment of other grants. A new section 84Q is inserted into this chapter immediately before section 85. This makes

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it clear where each provision of the Chapter applies, whether only in relation to England, only in relation to Wales or in relation to England and Wales.

The Order provides that sections 85 (Additional grant) and 86 (Effect of report's approval) shall apply only in relation to England. In relation to Wales it inserts a new section 86A and 86B. Section 86A enables the Welsh Ministers to make, and lay before the Assembly, a report proposing the payment of additional grant and section 86B deals with the effect of the approval of such a report. The Order also provides that section 88B (Special grants) shall apply only in relation to England and inserts in relation to Wales a new section 88C.

#### ***Local Government Finance Act 1992 (c.14)***

Paragraphs 41 to 44 of Schedule 1 to this Order amend Chapter IVA of Part 1 of the 1992 Act. The amendments to this Chapter are necessary as a result of amendments made by this Order to the Local Government Finance Act 1988.

In sections 52J(10)(a) and 52U(13)(a) references to section 85 of the 1988 Act are replaced with references to section 85 in relation to England and section 86A in relation to Wales.

The order also substitutes for 52Z a new section which reflects the changes made to the 1988 Act and the new procedure for the making and approval of local government finance reports.

#### ***Olympic Symbol etc (Protection) Act 1995 (c.32)***

Paragraph 45 of Schedule 1 amends section 4 of the Olympic Symbol etc (Protection) Act 1995 to insert reference to the National Assembly for Wales. This is to afford the same protection in respect of the use of the Olympic symbol and certain words in proceedings of the National Assembly for Wales as that afforded to the UK and Scottish Parliaments and the Northern Ireland Assembly.

#### ***Environment Act 1995 (c.25)***

Paragraph 46 of Schedule 1 repeals section 16A(6). That section is obsolete because it refers to "Assembly general subordinate legislation", which expression is defined in section 58(6) of the Government of Wales Act 1998. Section 58(6) is repealed by section 163 of and Schedule 12 to the Act.

#### ***Disability Discrimination Act 1995 (c.50)***

Paragraphs 47 to 63 of Schedule 1 contain modifications of the Disability Discrimination Act 1995.

Section 2(3) is amended to reflect the transfer of functions to the Welsh Ministers.

Section 4C(3)(b) is amended so that section 4D, which contains prohibitions against discrimination and harassment in relation to office-holders etc, and section 4E, which contains a duty to make reasonable adjustments to provisions, premises etc with discriminatory effects, will apply to offices and posts to which appointments are made, recommended or approved by the Welsh Ministers, the First Minister or the Counsel General.

Section 4C(5) is amended so that sections 4D and 4E will not apply to the appointment of the First Minister, a Welsh Minister, the Counsel General or a Deputy Welsh Minister.

Section 21C(2) is amended so that the exceptions from the prohibition against discrimination in section 21B encompass the types of legislation that may be within the legislative competence of the National Assembly for Wales, and that which may be made by the Welsh Ministers, the First Minister and the Counsel General.

Section 28D is amended to reflect the transfer of functions to the Welsh Ministers, including the function of making regulations which prescribe services which are, and which are not, to be regarded as education or an associated service.

Section 28E is amended to reflect the transfer to the Welsh Ministers of the functions of issuing guidance in relation to accessibility strategies, and requesting copies of accessibility strategies and plans.

Section 28J is amended to reflect the transfer to the Welsh Ministers of the functions of agreeing to regulations in relation to the Welsh Special Educational Needs and Disability Tribunal, and agreeing to the payment by the Secretary of State of allowances relating to attendance at that Tribunal.

Section 28M is amended to reflect the transfer of functions to the Welsh Ministers, including the functions of being an appropriate authority and a directing authority for the purposes of this section.

Section 28Q is amended to reflect the transfer of functions to the Welsh Ministers.

Section 31AF Chapter 2A is amended to reflect the transfer to the Welsh Ministers of the function of responding to consultation by the Secretary of State about regulations which he proposes to make under this section.

Section 49B(1)(b) is amended so that the National Assembly for Wales and persons exercising functions in connection with its proceedings (other than the National Assembly for Wales Commission) are not public authorities for the purpose of Part 5A of the Disability Discrimination Act 1995 . They are therefore not subject to the general duty in section 49A.

Section 49C (2) is amended so that the exceptions from the general duty in section 49A encompass legislation that may be within the legislative competence of the National Assembly for Wales.

Section 49D is amended to reflect the transfer to the Welsh Ministers of the functions of responding to consultation about, and giving consent to, specific duty regulations proposed to be made by the Secretary of State under section 49D(1) or (2). The amendment to the definition of “relevant Welsh authority” makes it clear that the National Assembly for Wales Commission, the Welsh Ministers, the First Minister and the Counsel General are all relevant Welsh authorities for the purpose of the section, and that the Secretary of State must obtain the consent of the Welsh Ministers before making specific duty regulations in respect of any of them.

Section 53A (4A) is amended to reflect the transfer to the Welsh Ministers of the function of responding to consultation by the Secretary of State, prior to his approval of a draft Code of Practice prepared under section 53A.

Section 53A(6A) is amended to reflect the transfer to the Welsh Ministers of the function of responding to consultation by the Secretary of State, prior to his making of an order under section 53A(6)(a) appointing a day for a Code of Practice prepared under section 53A to come into effect.

Section 59 is amended so that the Act will not render unlawful any act which is done in pursuance of an instrument made under an enactment by the National Assembly for Wales constituted by the Government of Wales Act 1998, the Welsh Ministers, the First Minister or the Counsel General, or which is done in order to comply with a condition or requirement imposed by any of those under an enactment.

Section 67 (1) is amended to reflect the transfer of functions to the Welsh Ministers. Subsection (4) (f) is amended so that if the Secretary of State makes specific duty regulations under section 49D (1) or (2) which, using the power in section 67(3)(a),

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amend or repeal an enactment contained in an Act or Measure of the National Assembly for Wales, then those regulations are subject to approval by both Houses of Parliament.

Schedule 3 is amended to reflect the transfer of functions to the Welsh Ministers and the potential for additional functions to be conferred on or transferred to the Welsh Ministers, the First Minister or the Counsel General. The amended paragraphs relate to section 59 of the Disability Discrimination Act 1995 which provides that that Act will not render unlawful an act which is done to comply with a condition or requirement imposed by, among others, the National Assembly for Wales constituted by the Government of Wales Act 1998, the Welsh Ministers, the First Minister or the Counsel General. The effect of the amendments is that in certain proceedings brought under the Disability Discrimination Act 1995 a certificate signed by the Welsh Ministers and certifying that the condition or requirement specified in the certificate was imposed by the National Assembly for Wales constituted by the Government of Wales Act 1998, the Welsh Ministers, the First Minister or the Counsel General and was in operation at a specified time shall be conclusive evidence of those facts.

#### ***School Standards and Framework Act 1998 (c.31)***

Paragraph 64 of Schedule 1 amends section 85(7) of the School Standards and Framework Act 1998 because of the transfer to the Welsh Ministers of the functions in sections 84 and 127 of issuing or revising codes. In exercising those functions, the Welsh Ministers are subject to the procedure in section 85 but, because of paragraph 33(2) of Schedule 11 to the Government of Wales Act 2006, the references in section 85 to Parliament are to be read as if they are references to the National Assembly for Wales. This amendment additionally converts the provision in subsection (7) that no account is to be taken of any period during which Parliament is dissolved etc, into a provision that no account is to be taken of any period during which the Assembly is dissolved or in recess for more than four days.

#### ***Food Standards Act 1999 (c.28)***

Paragraphs 65 to 68 of Schedule 1 contains modifications of the Food Standards Act 1999.

Section 22(2)(b)(ii) is amended to refer to the Welsh Assembly Government as one of the authorities with responsibility for food safety and consumer interests with whom the Food Standards Agency is required to promote links in its statement of general objectives and practices.

Sections 32(1)(b) and (2)(b) are amended to empower an Order in Council under that section to modify powers under that Act of the National Assembly for Wales. That places the Assembly in the same position as Parliament and the other devolved legislatures.

Schedule 4 of that Act deals with accounts of the Food Standards Agency. Paragraphs 2(2), 3(7) and 4(5) are amended to require the Welsh Ministers to present to the Assembly documents relating to accounts of the Agency which have been sent to the Welsh Ministers.

#### ***Care Standards Act 2000 (c.14)***

Paragraphs 69 to 75 of Schedule 1 contain modifications of Part V of, and Schedule 2 to, the Care Standards Act 2000.

Section 72B(1) is amended to reflect the transfer of functions to the Welsh Ministers and the potential for functions to be conferred upon the First Minister and the Counsel General. The effect of the amendment is that the Commissioner may review the exercise of functions of the Welsh Ministers, the First Minister or the Counsel General under section 72B(1).

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Section 72B(2) is amended to reflect the transfer to the Welsh Ministers of the functions of making an order under section 72B(2).

Section 72B(3) is amended to reflect the transfer of functions to the Welsh Ministers and the potential for functions to be conferred upon the First Minister and the Counsel General. This Order amends the conditions which must be met (unless the Secretary of State consents otherwise) in order for the Welsh Ministers to make an order under section 72B(2) adding a person to Schedule 2A (of the Care Standards Act 2000). The condition in section 72B(3)(a) is amended so that the person to be added must have functions in a field in which the Welsh Ministers, the First Minister or the Counsel General have functions. The condition in section 72B(3)(b) is amended so that the person to be added must have been established by a Minister of the Crown, a government department, the Welsh Ministers, the First Minister or the Counsel General. The condition in section 72B(3)(c) is amended so that at least half the person's expenditure on the discharge of its functions in relation to Wales must be met directly from payments made by the Welsh Ministers. Section 72B(6) is amended so that if the Welsh Ministers make an order under section 72B(2) adding a person to, or changing the description of a person in, Schedule 2A the effect of the order must not be to give the Commissioner the power to review the discharge of functions in a field in which the Welsh Ministers, the First Minister or the Counsel General have no functions.

Section 73 is amended to reflect the transfer of functions to the Welsh Ministers and the potential for functions to be conferred upon the First Minister and the Counsel General. Sections 73(2), (2C), (3) and (4) are amended so that the Commissioner may review arrangements made by the Welsh Ministers, the First Minister and the Counsel General.

Section 73(5A) is amended to reflect the transfer to the Welsh Ministers of the functions of making an order under section 73(5A). Section 73(5B) is amended to reflect the transfer of functions to the Welsh Ministers and the potential for functions to be conferred upon the First Minister and the Counsel General. This Order amends the conditions which must be met (unless the Secretary of State consents otherwise) in order for the Welsh Ministers to make an order under section 73(5A) adding a person to Schedule 2B (of the Care Standards Act 2000). The condition in section 73(5B)(b) is amended so that the person to be added must provide a service in a field in which the Welsh Ministers, the First Minister or the Counsel General have functions. The condition in section 73(5B)(c) is amended so that the person to be added must have been established by a Minister of the Crown, a government department, the Welsh Ministers, the First Minister or the Counsel General. The condition in section 73(5B)(d) is amended so that at least half the person's expenditure on the discharge of its functions in relation to Wales must be met directly from payments made by the Welsh Ministers. Section 73(5E) is amended so that if the Welsh Ministers make an order under section 73(5A) adding a person to, or changing the description of a person in, Schedule 2B the effect of the order must not be to give the Commissioner the power to review the exercise of functions in a field in which the Welsh Ministers, the First Minister or the Counsel General have no functions.

Section 75A is amended to reflect the creation of the Welsh Ministers, the First Minister and the Counsel General. The effect of the amendment is that the Commissioner can make representations under section 75A to the Welsh Ministers, the First Minister or the Counsel General.

Schedule 2 is amended to reflect the transfer of functions to the Welsh Ministers. Paragraph 3 is amended to reflect the transfer to the Welsh Ministers of the functions which it contains in relation to the payment of remuneration, allowances, pensions and gratuities.

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Paragraph 5 is amended to reflect the transfer to the Welsh Ministers of the functions of giving directions under the paragraph in relation to the general powers of the Commissioner. Paragraph 6 is amended so that the Commissioner must submit estimates of his income and expenses for each financial year to the Welsh Ministers and the Welsh Ministers must lay the estimate before the National Assembly for Wales with any modifications they think appropriate. Paragraph 7 is amended to reflect the transfer to the Welsh Ministers of the functions of giving directions under the paragraph in relation to the accounts of the Commissioner. Paragraph 8 is amended so that regulations made by the Welsh Ministers under the paragraph may provide for the making of reports by the Commissioner to the Welsh Ministers.

Paragraph 10 is amended so that the Treasury may specify under the paragraph responsibilities in relation to finances and accounts to be owed by the Commissioner to the National Assembly for Wales, its Audit Committee or the Welsh Ministers.

Paragraph 14 is amended to reflect the transfer to the Welsh Ministers of the function of making payments to the Commissioner.

Paragraph 17 is amended to reflect the transfer to the Welsh Ministers of the function of paying to the Minister for the Civil Service amounts in respect of increases in the sums payable out of money provided by Parliament under the Superannuation Act 1972 where that increase is attributable to the existence of the office of the Commissioner.

#### ***Regulation of Investigatory Powers Act 2000 (c.23)***

Paragraph 76 of Schedule 1 contains modifications of the Regulation of Investigatory Powers Act 2000 (RIPA).

Paragraph 76(2) amends the definition of “government department” in section 4(8) of RIPA to replace reference to the National Assembly for Wales (1998) with reference to the Welsh Assembly Government. Section 4 makes provision as to interception of communications.

Paragraph 76(3) amends Schedule 1 to RIPA (relevant public authorities) to replace reference to the National Assembly for Wales (1998) with reference to the Welsh Assembly Government. Schedule 1 specifies the relevant public authorities in which persons holding prescribed offices, ranks or positions can authorise directed surveillance or covert human intelligence sources.

#### ***Freedom of Information Act 2000 (c.36)***

Paragraphs 77 to 87 of Schedule 1 contain modifications of the Freedom of Information Act 2000 (“the FOI Act”).

Section 4(2)(b) is amended so that a body or office which is established by the Welsh Ministers, the First Minister or the Counsel General (‘the first condition’) can, by order made by the Secretary of State be added to Schedule 1 to the Act provided that the condition in section 4(3) (‘the second condition’) is also met in relation to that body or office.

Section 4(3) sets out the two alternative limbs of the second condition. Section 4(3)(a) is amended so that the second condition is fulfilled in this respect in relation to a body established by the Welsh Ministers, First Minister or Counsel General if the body is wholly or partly constituted by appointment made by any of them. Section 4(3)(b) is amended so that the second condition is fulfilled in this respect in relation to an office that is established by the Welsh Ministers, First Minister or Counsel General if appointments are made to that office by any of them.



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Section 4(7)(a) is amended so that before making an order under section 4(1) that adds a body or office whose functions are exercisable only or mainly in or as regards Wales to certain Parts of Schedule 1, the Secretary of State must consult the Welsh Ministers.

Section 7(1) deals with public authorities to which the FOI Act has limited application. Section 7(4) is amended so that before the Secretary of State makes an order under section 4(3) that has the effect of limiting the application of the FOI Act in relation to a particular public authority, the Secretary of State must consult:

- (a) the Presiding Officer of the National Assembly for Wales (“Presiding Officer”) if the order relates to the National Assembly (section 7(4)(a) as amended) or a Welsh public authority that is a subsidiary of the National Assembly for Wales Commission (new section 7(4)(ac)); and
- (b) the First Minister if the order relates to the Welsh Assembly Government (new section 7(4)(aa)) or a Welsh public authority other than a subsidiary of the National Assembly for Wales Commission (new section 7(4)(ab)).

Section 28(2)(d) is amended so that, for the purposes of that section (exemption relating to relations within the United Kingdom), the Welsh Assembly Government is an “administration in the United Kingdom”.

Section 35(1) (exemption in relation to the formulation of government policy etc.) is amended so that information that is held by the Welsh Assembly Government is exempt information if it relates to certain matters (e.g. the formulation or development of government policy) specified in that subsection.

Section 35(5) is amended so that the definition of:

- (a) “government policy” includes the policy of the Welsh Assembly Government;
- (b) “the Law Officers” includes the Counsel General;
- (c) “Ministerial communications” includes communications between members of the Welsh Assembly Government and proceedings of the Cabinet or any committee of the Cabinet of the Welsh Assembly Government;
- (d) “Ministerial private office” includes any part of the administration of the Welsh Assembly Government providing personal administrative support to members of the Welsh Assembly Government.

Section 36(1) (exemption in relation to prejudice to effective conduct of public affairs) is amended so that by virtue of section 36(1)(a) that section only applies to information that is held by the Welsh Assembly Government if it is not exempt information under section 35.

Section 36(2)(a)(iii) is substituted so that, where section 36 applies to information held by the Welsh Assembly Government, it can be exempt information if, in the reasonable opinion of the qualified person, disclosure would or would be likely to prejudice the work of the Cabinet of the Welsh Assembly Government.

Section 36(5) is amended so that the qualified person:

- (a) in relation to information held by the Welsh Assembly Government, means the Welsh Ministers (which by virtue of section 45(2) of the Act includes the First Minister) or the Counsel General;
- (b) in relation to information held by the National Assembly for Wales means the Presiding Officer;
- (c) in relation to information held by any Welsh public authority other than a subsidiary of the National Assembly for Wales Commission, the Auditor General for Wales or the Public Services Ombudsman for Wales, means the public authority or any

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officer or employee of the authority authorised by the Welsh Ministers or the Counsel General;

- (d) in relation to information held by a subsidiary of the National Assembly for Wales Commission, means the public authority or any officer or employee of the authority authorised by the Presiding Officer;
- (e) in relation to information held by the Public Services Ombudsman for Wales, means that Ombudsman.

Section 53(1)(a)(ii) is amended so that section 53 applies to a decision notice or enforcement notice served on the Welsh Assembly Government.

Section 53(3)(c) is amended so that where the accountable person gives a certificate to the Information Commissioner under section 53(2), the accountable person must lay a copy of it before the National Assembly for Wales if the certificate relates to a decision or enforcement notice served on the Welsh Assembly Government, the National Assembly for Wales or a Welsh public authority.

Section 53(5) is amended so that before making an order under section 53(1)(a)(iii) designating a public authority as one to which that section applies, the Secretary of State must consult the Welsh Ministers if the order relates to a Welsh public authority (including a National Assembly for Wales Commission subsidiary) (section 53(5)(a) as amended) and must consult the Presiding Officer if the order relates to the National Assembly for Wales (new section 53(5)(aa)).

Section 53(8)(b) is amended so that, for the purposes of section 53, the accountable person in relation to the Welsh Assembly Government, the National Assembly for Wales and any Welsh public authority, is the First Minister.

Section 81(3) is amended so as to put the Welsh Assembly Government and its staff into the same position as government departments as far as prosecution for offences under the FOI Act is concerned.

Section 81(4) is amended so as to put persons acting on behalf of the National Assembly for Wales in the same position as persons acting on behalf of either House of Parliament or the Northern Ireland Assembly in relation to prosecution for offences under the FOI Act.

Section 83(1)(b) is amended so that the definition of “Welsh public authority” includes any subsidiary of the Welsh Ministers or of the National Assembly for Wales Commission.

Section 84 is amended so that the definition of “government department” does not include the Welsh Assembly Government.

Part 1 of Schedule 1 to the FOI Act is amended so that, in addition to the National Assembly for Wales (which is already specified), the Welsh Assembly Government is specified as a public authority.

#### ***Transport Act 2000 (c.38)***

Paragraph 88 of Schedule 1 repeals section 109A (5) of the Transport Act 2000. That section is obsolete because it provides that the Assembly (1998) must not delegate certain functions that it has under section 109A. Those functions have transferred from the Assembly (1998) to the Welsh Ministers under paragraph 30 of Schedule 11 to the Act.

#### ***Political Parties, Elections and Referendums Act 2000 (c.41)***

Paragraphs 89 to 100 of Schedule 1 contain modifications of the Political Parties, Elections and Referendums Act 2000 (“PPERA”).

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Section 5 of PPERA 2000, which provides for the Electoral Commission to report on various elections and referendums, is amended to ensure that elections held under Part 1 of the Act and, if requested by the Welsh Ministers, polls held under section 64 of the Act are within the remit of the Commission.

Section 6 of PPERA, which provides for the Electoral Commission to review various electoral and political matters, is amended to exclude from its remit the funding of political parties by the National Assembly for Wales under section 24 of the Act; and polls held by Welsh Ministers under section 64 of the Act.

Section 6A of PPERA, which provides for representatives of the Electoral Commission to attend various elections as observers, is amended to ensure that this includes elections to vacancies in Assembly constituencies held under section 10 of the Act.

Section 7 of PPERA, which provides for the Electoral Commission to be consulted on changes to electoral law, is amended to ensure that the Commission is consulted on orders under section 13 of the Act (as to elections to the National Assembly for Wales) and section 64 of the Act (as to conduct of polls by Welsh Ministers).

Section 9A of PPERA, which provides for the Electoral Commission to set performance standards for registration and returning officers in conducting elections, is amended to ensure that elections for vacancies in Assembly constituencies under section 10 of the Act are included within the remit of the Commission.

Section 10 of PPERA, which provides for the Electoral Commission to give advice and assistance, is amended to ensure that the Commission can give advice and assistance to the Welsh Ministers in addition to the advice and assistance it can give to the National Assembly for Wales and the National Assembly for Wales Commission.

Section 101 of PPERA, which sets out the referendums to which Part 7 of PPERA applies, is amended to ensure that polls held by Welsh Ministers under section 64 of the Act are not referendums for this purpose.

Section 160 of PPERA which defines terms of general use in PPERA, is amended to include relevant references to the Welsh Consolidated Fund; Welsh Ministers; Welsh Assembly Government; and the National Assembly for Wales Commission.

Schedule 1 paragraph 14 to PPERA, which provides for the financing of the Electoral Commission, is amended to ensure that it includes reference to its funding by the Welsh Ministers, by the National Assembly for Wales Commission and transitionally by the Assembly constituted by the Government of Wales Act 1998.

Schedule 9 to PPERA, which provides for limits on campaign expenditure by registered political parties, is amended to ensure that extra ordinary, as well as ordinary, general elections held under Part 1 of the Act are covered.

Schedule 10 to PPERA, which sets controls on third party national election campaign expenditure, is similarly amended to ensure that extraordinary, as well as ordinary, general elections held under Part 1 of the Act are covered.

See Schedule 10 (paragraphs 58 to 61) and Schedule 12 to the Act for other modifications to PPERA

#### ***Income Tax (Earnings and Pensions) Act 2003 (c.1)***

Paragraphs 101 to 105 of Schedule 1 amend sections 291 and 293 to 295 of the Income Tax (Earnings and Pensions) Act 2003 by replacing references to provisions of the Government of Wales Act 1998 with references to corresponding provisions of the Act.

#### ***Finance Act 2004 (c.12)***

Paragraphs 106 to 108 of Schedule 1 amend the Finance Act 2004.

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Paragraph 107 amends section 59(1)(b) and (c) of the Finance Act 2004 to include reference respectively to the Welsh Assembly Government and the National Assembly for Wales Commission. This is in relation to deduction of income or corporation tax from payments on certain construction contracts.

Paragraph 108 amends section 150(4)(c) to include reference to the National Assembly for Wales Commission and the Welsh Ministers as relevant governmental or parliamentary persons/bodies for the purposes of approved public service pension schemes within the meaning of Part 4 of that Act.

#### ***Constitutional Reform Act 2005 (c. 4)***

Paragraphs 109 to 111 of Schedule 1 contain modifications of the Constitutional Reform Act 2005.

Amongst other things, the Constitutional Reform Act 2005 when fully commenced provides for a Supreme Court of the United Kingdom.

Sections 26 to 31 and Schedule 8 provide for candidates for appointment to that Court to be selected and recommended to Her Majesty for appointment. Section 27 is amended to ensure that a selection commission is required to consult the First Minister for Wales before it reports to the Lord Chancellor; and section 28 is amended to ensure that the Lord Chancellor is required to consult the First Minister on receipt of that report.

Section 54, which provides for the Chief Executive of the Supreme Court to prepare an annual report, is amended to require a copy of that report to go to the First Minister.

There is a minor consequential amendment in section 41 (relation of the Supreme Court to other courts) to replace references to devolution matters under Schedule 8 to the Government of Wales Act 1998 with devolution matters under Schedule 9 to the Act.

See Schedule 11 paragraphs 66 and 67 and Schedule 12 to the Act for other provision relating to the Constitutional Reform Act 2005

#### ***Equality Act 2006 (c.3)***

Paragraphs 112 to 120 of Schedule 1 contain modifications of the Equality Act 2006.

Section 11(3)(b)(ii) is amended so that the definition of “devolved government” reflects the scheme of the Act.

Section 14 (9) is amended to reflect the transfer to the Welsh Ministers of the functions of responding to consultation by the Secretary of State prior to his approval of a draft Code of Practice prepared under section 14, and his making of an order bringing a Code of Practice into effect.

Section 50(4)(e) is amended to reflect the transfer to the Welsh Ministers of the function of responding to consultation by the Secretary of State about an order which he proposes to make under section 50(3) amending etc exceptions from the prohibition on discrimination in section 49.

Section 52(4) is amended so that the exceptions from the general duty contained in section 52 encompass the making of an instrument by the Welsh Ministers, the First Minister and the Counsel General under an enactment.

Section 56 is amended so that the Equality Act will not render unlawful any act which is necessary for the purpose of complying with legislation that may be within the legislative competence of the National Assembly for Wales, that which was made by the National Assembly for Wales constituted by the Government of Wales Act 1998 or that which may be made by the Welsh Ministers, the First Minister or the Counsel General. The provision has the same effect in relation to an act which is necessary in order to comply with a condition or requirement which is imposed by the Welsh Ministers, the First Minister

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or the Counsel General after the end of the “initial period” under any of the types of legislation listed in section 56. The “initial period” is defined in section 161(5) of the Act as the period which begins with the day of the poll at the 2007 Assembly elections and ends with the first appointment of a First Minister under section 46 of the Act.

Section 78 is amended so that the definition of an act done on behalf of the Crown reflects the scheme of the Act. It includes an act done by or on behalf of the Welsh Ministers, the First Minister and the Counsel General.

Section 92 is amended so that the provision about Crown application reflects the scheme of the Act. Except as may be otherwise expressly provided, the Equality Act 2006 applies to the Welsh Ministers, the First Minister and the Counsel General.

Schedule 1 is amended to reflect the transfer to the Welsh Ministers of the function of giving consent to the appointment by the Secretary of State of one of the Commissioners for Equality and Human Rights under paragraph 1(1) of Schedule 1 to the Equality Act 2006.

#### ***Transport (Wales) Act 2006 (c.5)***

Paragraph 121 of Schedule 1 contains modifications of the Transport (Wales) Act 2006.

Section 2(6) and (7) are repealed because they are obsolete. Section 2(6) provides that any Strategy prepared by the Assembly (1998) under section 2, or any revision of such a Strategy, does not have effect until approved by the Assembly (1998). Section 2(7) provides that the Assembly (1998) must not delegate its function under section 2(6). Functions under section 2 have transferred from the Assembly (1998) to the Welsh Ministers under paragraph 30 of Schedule 11 to the Act.

Section 5(9) is repealed. That section is obsolete because it refers to “Assembly general subordinate legislation”, which expression is defined in section 58(6) of the Government of Wales Act 1998. Section 58(6) is repealed by section 163 of and Schedule 12 to the Act.

#### ***Electoral Administration Act 2006 (c. 22)***

Paragraph 122 of Schedule 1 contains a modification of the Electoral Administration Act 2006.

Sections 42 to 44 of the Electoral Administration Act 2006 make provision as to electoral registration officers to provide access to documents following various elections. Section 44 (7)(b) is amended to ensure that documents at elections to the National Assembly for Wales are covered by referring to the electoral areas comprising Assembly constituencies and Assembly electoral regions within the meaning of section 2 of the Act.

#### ***Health Act 2006 (c.28)***

Paragraph 123 of Schedule 1 substitutes reference to section 155(2) of the Government of Wales Act 1998 (which is repealed by the Act) with reference to section 158(3) and (4) of the Act.

#### ***Commissioner for Older People (Wales) Act 2006 (c.30)***

Paragraphs 124 to 141 of Schedule 1 contain modifications of the Commissioner for Older People (Wales) Act 2006.

Section 2(2) is amended to reflect the transfer of functions to the Welsh Ministers and the potential for functions to be conferred upon the First Minister and the Counsel General. The effect of the amendment is that the functions of the Commissioner in section 2(1) can only be exercised in relation to fields in which the either the Welsh Ministers, the First Minister or the Counsel General have functions.

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Section 2(3) is amended to reflect the creation of the Welsh Ministers, the First Minister and the Counsel General. The effect of the amendment is that the Commissioner can make representations under section 2(3) to the Welsh Ministers, the First Minister or the Counsel General.

Sections 3(1)(a) and (b) are amended to reflect the transfer of functions to the Welsh Ministers and the potential for functions to be conferred upon the First Minister and the Counsel General. The effect of the amendment is that the Commissioner may review under section 3(1) the effect of the discharge or the proposed discharge of a function of the Welsh Ministers, the First Minister or the Counsel General, or a failure by any of those to discharge a function.

Section 4(1) is amended to reflect the transfer to the Welsh Ministers of the functions of making an order under section 4(1).

Section 4(2) is amended to reflect the transfer of functions to the Welsh Ministers and the potential for functions to be conferred upon the First Minister and the Counsel General. This Order amends the conditions which must be met (unless the Secretary of State consents otherwise) in order for the Welsh Ministers to make an order under section 4(1) adding a person to Schedule 2 (to the Commissioner for Older People (Wales) Act 2006). The condition in section 4(2)(b) is amended so that the person to be added must have functions in a field in which the Welsh Ministers, the First Minister or the Counsel General have functions. The condition in section 4(2)(c) is amended so that the person to be added must have been established by a Minister of the Crown, a government department, the Welsh Ministers, the First Minister, the Counsel General or by another person who is mentioned in Schedule 2. The condition in section 4(2)(d) is amended so that at least half the person's expenditure on the discharge of its functions in relation to Wales must be met directly from payments made by the Welsh Ministers. Section 4(7) is amended so that if the Welsh Ministers make an order under section 4(1) adding a person to, or changing the description of a person in, Schedule 2, when they specify in the order (as they are required to do by section 4(5)) which of that person's functions are to be relevant functions for the purposes of section 3 (Commissioner's power to review the effect on older people of the discharge of, proposed discharge of or failure to discharge functions), then they can only specify a function if it is in a field in which the Welsh Ministers, the First Minister or the Counsel General have functions.

Section 6 is amended to reflect the transfer of functions to the Welsh Ministers and the potential for functions to be conferred upon the First Minister and the Counsel General. Section 6(3) is amended so that persons falling within it include the Welsh Ministers, the First Minister and the Counsel General. Section 6(4) is amended so that a relevant service includes a service provided by the Welsh Ministers, the First Minister or the Counsel General. The effect of amending sections 6(3) and (4) is that the Commissioner may review under section 5(1) complaints arrangements made by the Welsh Ministers, the First Minister or the Counsel General for dealing with complaints made by relevant older people in Wales in respect of services provided to them by the Welsh Ministers, the First Minister or the Counsel General.

Section 7 is amended to reflect the transfer of functions to the Welsh Ministers and the potential for functions to be conferred upon the First Minister and the Counsel General. This Order amends the conditions which must be met (unless the Secretary of State consents otherwise) in order for the Welsh Ministers to make an order under section 7(1) adding a person to Schedule 3 (to the Commissioner for Older People (Wales) Act 2006). The condition in section 7(2)(b) is amended so that the person to be added must provide a service in a field in which the Welsh Ministers, the First Minister or the Counsel General have functions. The condition in section 7(2)(c) is amended so that the person to be added must have been established by a Minister of the Crown, a government department, the

Welsh Ministers, the First Minister, the Counsel General or by another person who is mentioned in Schedule 3. The condition in section 7(2)(d) is amended so that at least half the person's expenditure on the discharge of its functions in relation to Wales must be met directly from payments made by the Welsh Ministers. Section 7(7) is amended so that if the Welsh Ministers make an order under section 7(1) adding a person to, or changing the description of a person in, Schedule 3, when they specify in the order (as they are required to do by section 7(5)) which of the services provided by that person are to be relevant services for the purposes of section 5 (Commissioner's power to review, among other things, arrangements for dealing with complaints from older persons in respect of relevant services provided to them), then they can only specify a service if it is provided in Wales and it is in a field in which the Welsh Ministers, the First Minister or the Counsel General have functions.

Section 8(1)(a) is amended so that regulations made by the Welsh Ministers under section 8(1) may confer on the Commissioner the power to give assistance to certain older persons in making complaints or representations to or in respect of the Welsh Ministers, the First Minister or the Counsel General.

Section 10(2) is amended so that the Welsh Ministers' power to make regulations giving the Commissioner power to examine the cases of particular older people in Wales in connection with his functions cannot be exercised in relation to certain of the Commissioner's functions. These are the functions of considering and making representations to the Welsh Ministers, the First Minister and the Counsel General (section 2(3)), and undertaking research and educational activities (section 9(1)), about matters in relation to a field in which neither the Welsh Ministers, the First Minister nor the Counsel General have functions.

Section 12(2)(a) is amended so that the Commissioner may issue guidance under section 12(1) (guidance on best practice in connection with matters relating to the interests of older people in Wales) to the Welsh Ministers, the First Minister or the Counsel General.

Section 14(2)(a) is amended so that where the Welsh Ministers' exercise their power under section 14(1) to make regulations conferring further functions on the Commissioner for purposes connected with functions which the Commissioner already has, they cannot confer further functions for purposes connected with the Commissioner's functions of considering and making representations to the Welsh Ministers, the First Minister and the Counsel General (section 2(3)) and undertaking research and educational activities (section 9(1)) about matters in relation to a field in which neither the Welsh Ministers, the First Minister nor the Counsel General have functions.

Section 15(2) is amended so that where the Welsh Ministers exercise their power under section 15(1) to make regulations about reports by the Commissioner following the discharge of any of his functions, they cannot make provision about reports by the Commissioner following the discharge of his functions of considering and making representations to the Welsh Ministers, the First Minister and the Counsel General (section 2(3)) and undertaking research and educational activities (section 9(1)) about matters in relation to a field in which neither the Welsh Ministers, the First Minister nor the Counsel General have functions.

Section 16(4) is amended to reflect the transfer to the Welsh Ministers of the power to make an order applying the joint working provisions in section 16 to other commissioners and ombudsmen with whom, in the future, there may be an overlap in functions. Section 16(5) is amended so that the Welsh Ministers must consult with the Commissioner and any other appropriate persons before making such an order.

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Section 17(8) is amended to reflect the transfer to the Welsh Ministers of the power to make an order applying the collaborative working provisions in section 17 to other commissioners and ombudsmen for whom, in the future, such arrangements may be appropriate. Section 17(9) is amended so that the Welsh Ministers must consult with the Commissioner and any other appropriate persons before making such an order.

Section 18(9) is amended to reflect the transfer of functions to the Welsh Ministers and the potential for functions to be conferred upon the First Minister and the Counsel General. The definition of a “permitted person” is amended to include the Welsh Ministers, the First Minister and the Counsel General, so that the Commissioner has the power, subject to other provisions in the section, to disclose information to the Welsh Ministers, the First Minister and the Counsel General.

Section 20(4) is amended to reflect the transfer to the Welsh Ministers of the function of responding to consultation by the Commissioner about his proposed procedures for the investigation of complaints about himself. Section 20(5) is amended to reflect the transfer to the Welsh Ministers of the function of receiving from the Commissioner his finalised procedures.

Section 27(1) is amended to reflect the Act. The definition of “Assembly Cabinet” is removed because the term has become obsolete as a result of the constitutional changes made by the Act. The definition of “regulations” is amended to reflect the transfer to the Welsh Ministers of the functions of making regulations under the Commissioner for Older People (Wales) Act 2006. The definition of “Welsh health service body” is amended to reflect the transfer to the Welsh Ministers of functions in relation to the National Health Service. Sections 27(2) and (3) are amended to reflect the transfer to the Welsh Ministers of the function of making an order amending the definitions of “family health service provider in Wales” and “independent provider in Wales”.

Sections 28(1) and (2) are amended to reflect the transfer to the Welsh Ministers of the functions of making orders and regulations under the Commissioner for Older People (Wales) Act 2006. Section 28(4) is amended so that if the Welsh Ministers are to make an order which confers functions on, or modifies the functions of, a person other than the Commissioner, and those functions relate to a matter in respect of which neither the Welsh Ministers, the First Minister nor the Counsel General have functions and which is not a “transferred matter” (defined in section 4(1) of the Northern Ireland Act 1998) the Welsh Ministers must obtain the consent of the Secretary of State. Section 28(6) (orders and regulations made under the Act to be regarded as Assembly general subordinate legislation) is removed because the provision defining that expression (section 58(6) of the Government of Wales Act 1998) is repealed by the Act (section 163 and Schedule 12).

Schedule 1 is amended to reflect the transfer of functions to the Welsh Ministers. Paragraph 3 is amended to reflect the transfer to the Welsh Ministers of the functions which it contains in relation to the payment of remuneration, allowances, pensions, gratuities and compensation. Paragraph 6 (2) is amended to reflect the transfer to the Welsh Ministers of the function of paying to the Minister for the Civil Service amounts in respect of increases in the sums payable out of money provided by Parliament under the Superannuation Act 1972 where that increase is attributable to the existence of the office of the Commissioner. Paragraph 7 is amended to reflect the transfer to the Welsh Ministers of the function of making payments to the Commissioner. Paragraph 8 is amended so that regulations made by the Welsh Ministers under the paragraph may make provision about reports by the Commissioner to the Welsh Ministers. Paragraph 9 is amended so that the Commissioner must submit estimates of his income and expenses for each financial year to the Welsh Ministers, and the Welsh Ministers must lay the estimate before the National Assembly for Wales with any modifications they think appropriate. Paragraph 10 is amended to reflect the transfer to the Welsh Ministers of



the functions of giving directions under the paragraph in relation to the accounts of the Commissioner. Paragraph 11 is amended so that the Treasury may specify under the paragraph responsibilities to be owed by the Commissioner to the National Assembly for Wales, to its Audit Committee or to the Welsh Ministers in relation to finances and accounts. Paragraph 19 is amended to reflect the transfer to the Welsh Ministers of the functions of giving directions under the paragraph in relation to the supplementary powers of the Commissioner.

***Companies Act 2006 (c.46)***

Paragraph 142 of Schedule 1 contains modifications of the Companies Act 2006.

Section 966(7) is amended to include shares in a company held by the Welsh Ministers which confer special rights on the Welsh Ministers. Section 966 of that Act empowers companies with shares to pass a special resolution to apply Article 11 of the Takeovers Directive to that company. However, a company can not pass such a resolution where shares conferring special rights are held by the UK Government or the devolved administrations.

***Legislative and Regulatory Reform Act 2006 (c.51)***

Paragraphs 143 to 149 of Schedule 1 contain modifications of the Legislative and Regulatory Reform Act 2006 (“the LRR Act”).

Section 1(6) is amended so that the definition of “legislation” for the purposes of section 1 includes a Measure and an Act of the Assembly and subordinate legislation made under a Measure or Act of the Assembly. This means that the power of a Minister of the Crown, by order, under section 1(1) to make provision to remove or reduce burdens (as defined) may be exercised in relation to burdens resulting directly or indirectly for any person from such legislation.

Section 4 is amended by the insertion of new subsections (3A) and (5A). These amendments mean that an order under Part 1 of the LRR Act may confer a function of legislating on the Welsh Ministers, the First Minister or the Counsel General only if the function is exercisable by statutory instrument and either the instrument is one to which section 5(1) of the Statutory Instruments Act 1946 (c.36) applies (instruments subject to annulment) or the instrument cannot be made unless a draft of it has been laid before and approved by a resolution of the Assembly.

Section 11 is replaced by a new section. New section 11(1) provides that, except with the agreement of the Assembly an order under Part 1 of the LRR Act may not make any provision if that provision would be within the legislative competence of the Assembly. The legislative competence of the Assembly, for these purposes, means the power under Part 3 of the Government of Wales Act 2006 (c.32) to enact Measures or the power to enact Acts of the Assembly under Part 4 of that Act (whichever Part is in force at the relevant time).

New section 11(2) provides that an order under Part 1 of the LRR Act may not make any provision conferring a function on, modifying or removing a function of, or restating any provision which confers a function on the Welsh Ministers, the First Minister or the Counsel General or make any provision that could be made by any of them in the exercise of any of their functions unless the agreement of the Welsh Ministers has been obtained to any such provision of the order.

New section 11(3) provides that the restriction in new section 11(1) and (2)(d) do not apply to any provision of an order under Part 1 of the LRR Act which is a provision falling within section 1(8) or Section 2(7) of the LRR Act (consequential, supplementary, incidental or transitional provision).

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Section 13(1)(c) is amended so that if a Minister proposes to make an order under Part 1 of the LRR Act, he or she must consult the Welsh Ministers on the proposals where the proposals, so far as applying in or as regards Wales, relate to any matter in relation to which the Welsh Ministers, the First Minister or the Counsel General exercise functions. This does not apply in cases where the agreement of the Welsh Ministers is required under the new section 11 of the LRR Act.

Section 24(4) of the LRR Act is amended so that the Welsh Ministers may make an order in accordance with section 24 specifying, as functions to which sections 21 and 22 apply, regulatory functions (as defined) that are exercisable only in or as regards Wales. By virtue of subsection (8) such an order must be made by statutory instrument. A new subsection (9A) is inserted so that the Welsh Ministers cannot make a statutory instrument containing an order under section 24(4) unless a draft of it has been laid before, and approved by a resolution of the Assembly.

Section 24(10) is amended so that the definition of “Wales” has the same meaning as in the Act.

Section 27(6)(c) is amended so that the Welsh Ministers can exercise the power to make orders or regulations under section 27(5) (power to amend certain enactments and subordinate legislation referring to regulations under section 2(2) of the European Communities Act 1972 (c.68) so that such references include references to orders, rules, or schemes under that subsection). The effect of the amendment to Section 27(6)(c) is that the power under section 27(5) is exercisable by the Welsh Ministers in relation to any matter that is within the legislative competence of the Assembly or any matter in respect of which functions are exercisable by the Welsh Ministers, the First Minister or the Counsel General.

Section 27(7)(a) is amended so that the power of the Welsh Ministers to make an order or regulations under section 27(5) is to be exercisable by statutory instrument.

Section 27(8) is amended so as to insert a new paragraph (d), the effect of which is that any statutory instrument made by the Welsh Ministers containing an order or regulations under Section 27(5) is subject to annulment in pursuance of a resolution of the Assembly.

***Employment Equality (Religion or Belief) Regulations 2003 (2003/1660)***

Paragraph 150 of Schedule 1 contains modifications of the Employment Equality (Religion or Belief) Regulations 2003.

Regulation 10(8)(b) is amended so that the prohibitions against discrimination and harassment in relation to office-holders etc contained in regulation 10 apply to offices and posts to which appointments are made, recommended or approved by the Welsh Ministers, the First Minister or the Counsel General.

Regulation 10(10)(b) is amended so that the prohibitions against discrimination and harassment in relation to office-holders etc contained in regulation 10 will not apply to the appointment of the First Minister, a Welsh Minister, the Counsel General or a Deputy Welsh Minister.

***Employment Equality (Sexual Orientation) Regulations 2003 (2003/1661)***

Paragraph 151 of Schedule 1 contains modifications of the Employment Equality (Sexual Orientation) Regulations 2003.

Regulation 10(8)(b) is amended so that the prohibitions against discrimination and harassment in relation to office-holders etc contained in regulation 10 apply to offices and posts to which appointments are made, recommended or approved by the Welsh Ministers, the First Minister or the Counsel General.

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Regulation 10(10)(b) is amended so that the prohibitions against discrimination and harassment in relation to office-holders etc contained in regulation 10 will not apply to the appointment of the First Minister, a Welsh Minister, the Counsel General or a Deputy Welsh Minister.

***The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2003 (2003/3171)***

Paragraph 152 of Schedule 1 modifies the Schedule to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order by replacing the existing entry in respect of the National Assembly for Wales (1998) with the entry for the Welsh Assembly Government. This specifies the officers within the Welsh Assembly Government who can authorise directed surveillance and the use and conduct of covert human intelligence sources.

***Employment Equality (Age) Regulations 2006 (2006/1031)***

Paragraphs 153 to 155 contain modifications of the Employment Equality (Age) Regulations 2006.

Regulation 12(8)(b) is amended so that the prohibitions against discrimination and harassment in relation to office-holders etc contained in regulation 12 apply to offices and posts to which appointments are made, recommended or approved by the Welsh Ministers, the First Minister or the Counsel General.

Regulation 12(10)(b) is amended so that the prohibitions against discrimination and harassment in relation to office-holders etc contained in regulation 12 will not apply to the appointment of the First Minister, a Welsh Minister, the Counsel General to the Welsh Assembly Government or a Deputy Welsh Minister.

Regulation 27(2) is amended so that Parts 2 and 3 of the Regulations will not render unlawful any act which is done in order to comply with a requirement of legislation that may be within the legislative competence of the National Assembly for Wales, or with a requirement of an instrument made by the Welsh Ministers, the First Minister or the Counsel General after the end of the “initial period” under an Act of Parliament or under an Act or Measure of the National Assembly for Wales. The “initial period” is defined in section 161(5) of the Act as the period which begins with the day of the poll at the 2007 Assembly elections and ends with the first appointment of a First Minister under section 46 of the Act.

***Schedule 2***

***Food Standards Act 1999 (c.28)***

Paragraph 1 of Schedule 2 makes provision in respect of section 37(5) of the Food Standards Act 1999. By virtue of it, the function of the National Assembly for Wales constituted by the Government of Wales Act 1998 of approving drafts of Orders in Council under sections 32 and 33 of that Act will transfer to the National Assembly for Wales constituted by the Government of Wales Act 2006 instead of to the Welsh Ministers.

Paragraph 2 of Schedule 2 makes provision in respect of paragraph 3(4) of Schedule 4 to the Food Standards Act 1999, under which the Comptroller and Auditor General examines accounts of the Food Standards Agency on behalf of the National Assembly for Wales (1998). This paragraph makes it clear that the Comptroller and Auditor General will in future be examining those accounts on behalf of the Assembly and not on behalf of the Welsh Ministers.

***Government of Wales Act 2006 (c.32)***

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Paragraph 3 of Schedule 2 modifies the application of paragraph 34(3) of Schedule 11 to the Act in respect of the making of subordinate legislation by the Welsh Ministers under section 1 of the Travel Concessions (Eligibility) Act 2002 and section 268 of the Enterprise Act 2002 so that the making of such legislation is subject to procedures in the Assembly but not in Parliament.

Paragraph 4 of Schedule 2 inserts various subordinate legislation making functions of the Welsh Ministers into Table 1 of Paragraph 35 to Schedule 11 to the Act in order to impose affirmative procedure in the Assembly to the making, by the Welsh Ministers, of legislation. Without these modifications, no procedure would apply to the exercise of the relevant functions by the Welsh Ministers.

Paragraph 5 of Schedule 2 inserts various subordinate legislation making functions of the Welsh Ministers into Table 2 of Paragraph 35 to Schedule 11 to the Act in order to impose negative procedure in the Assembly to the making, by the Welsh Ministers, of legislation. Without these modifications, no procedure would apply to the exercise of the relevant functions by the Welsh Ministers.