



Wales Office

**Memorandum to
Welsh Affairs Committee
Post-Legislative Assessment of the
Government of Wales Act 2006**



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*Presented to Parliament by the Secretary of State for Wales
by Command of Her Majesty*

January 2012

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MEMORANDUM TO THE WELSH AFFAIRS SELECT COMMITTEE

Post-legislative Assessment of the Government of Wales Act 2006

Introduction

1. This Memorandum has been prepared by the Wales Office in consultation with the Welsh Government for submission to the Welsh Affairs Select Committee and is published as part of the post-legislative scrutiny process set out in Cm 7320.

Summary of the objectives of the Act

2. In June 2005 the Secretary of State for Wales published a White Paper "Better Governance for Wales" (Cm 6582) setting out proposals for new legislation to:

- a) Effect a formal separation between the executive and the legislative branches of the Assembly;
- b) Reform existing electoral arrangements; and
- c) Enhance the legislative powers of the Assembly.

The Government of Wales Act 2006 ("the Act"), which received Royal Assent on 25 July 2006, gives effect to the White Paper proposals.

a) Formal separation between the executive and legislative branches of the Assembly

3. The White Paper proposals for giving effect to formal separation are summarised at paragraph 13 of the Explanatory Notes accompanying the Act. Some of the key proposals were:

- The establishment of the Welsh Assembly Government¹ as an entity separate from, but accountable to, the National Assembly for Wales;
- Provision for the First Minister to be appointed by Her Majesty on nomination of the Assembly, and for other Ministers and Deputy Ministers to be appointed by the First Minister with Her Majesty's approval; and for all Ministers to act on behalf of the Crown rather than as delegates of the Assembly (as had been the case under the 1998 Act);
- A new statutory office of Counsel General to provide legal advice to the Welsh Assembly Government;
- Most statutory functions exercised in the name of the Assembly to become the responsibility of Welsh Ministers, e.g., order-making powers and duties relating to sustainable development and promotion of equality of opportunity;

¹ The statutory name for the executive is the Welsh Assembly Government, although since May 2011 it has been known as the Welsh Government. Welsh Assembly Government is used in this memorandum as the statutory term where relevant or in relation to the period before May 2011.

- Ministers to be accountable to the Assembly for the exercise of their powers, and for use made of budgetary resources voted each year by the Assembly out of a new Welsh Consolidated Fund;
- The Assembly to have more freedom to determine its own “internal architecture” of committees;
- The Assembly, rather than Welsh Ministers, to make nominations to Her Majesty for appointments to the office of Auditor General for Wales and Public Services Ombudsman for Wales.

4. The White Paper proposals were given effect through the provisions in Parts 1, 2, 5 and 6 of the Act, and Schedules 1 to 4 and 8 to 12.

5. Part 1 establishes a new National Assembly for Wales, and makes related provision, including:

- The procedure for the election of Assembly Members;
- Provision for the remuneration of Assembly Members;
- Provision for the offices of Presiding Officer, Deputy Presiding Officer, and Clerk;
- The establishment of an Assembly Commission, to be responsible for providing the Assembly with staff and support services; and
- Provision for committees, and for the Assembly’s powers to summon witnesses and call for documents.

Part 1 also introduces Schedule 1, specifying a procedure for altering Assembly electoral regions, and Schedule 2, on the Assembly Commission.

6. Part 2 establishes the Welsh Assembly Government as an entity separate from, but accountable to, the National Assembly, and makes the following related provision:

- Provision for the appointment and remuneration of the First Minister and other Ministers and Deputy Ministers (“Welsh Ministers” and “Deputy Welsh Ministers”);
- The creation of the office of Counsel General to the Welsh Assembly Government and provision for appointment to it;
- Provision for appointment of staff (who are civil servants) to support the Welsh Assembly Government;
- Ministers to exercise statutory functions in their own right (rather than as delegates of the Assembly);
- Duties on Ministers in respect of carrying out regulatory impact assessments in connection with Welsh subordinate legislation, and separate duties in respect of equality of opportunity, sustainable development and the Welsh Language. The Welsh Ministers are also required to engage with stakeholders through consultation mechanisms with business, local government, and the voluntary sector.

Part 2 introduces Schedule 3, which deals with transfers of functions to the Welsh Ministers, and Schedule 4, which deals with transfers of property, rights and liabilities.

7. Part 5 deals with Finance. It provides for the creation of a Welsh Consolidated Fund, which receives payments from the Secretary of State out of moneys voted by Parliament. Payments out of the Fund to meet the costs of, for example, Welsh Assembly Government programmes, are authorised by annual and supplementary budget motions adopted by the Assembly. The Auditor General for Wales approves payments out, and needs to be satisfied that these are in line with an Assembly budget resolution (or otherwise lawful under the Act). Provision is made for preparation of the accounts of the Welsh Ministers, and of the Assembly Commission, and the Act appoints Accounting Officers to have personal responsibility for these accounts. Part 5 introduces Schedule 8, which re-enacts with modifications provisions relating to the office of the Auditor General for Wales; in particular, it provides for appointments to that office to be made by Her Majesty on the nomination of the Assembly.

8. Part 6 and Schedules 9 to 12 deal with Miscellaneous and Supplementary matters. The provisions in the 1998 Act dealing with Welsh public records are re-enacted to reflect the new circumstances created by the Act. Provision is also made for legal proceedings in relation to “Devolution Issues” and for various matters which may arise in connection with the exercise by the Assembly and the Welsh Ministers of their functions. Schedule 11 contains transitional provisions to cover the transfer in May 2007 (when the Assembly elections took place) from the regime created by the 1998 Act to that created by the Act (including the transfer of executive functions from the Assembly established by the 1998 Act to the Welsh Ministers under the 2006 Act).

b) Reforming the Assembly’s electoral arrangements

9. The White Paper contained three proposals for reforming Assembly electoral arrangements:

- i) Individuals should no longer be able to be candidates in constituency elections and at the same time be eligible for election as regional members from party lists;
- ii) While there should be no change to the requirement that Assemblies are elected for fixed four-year terms, new provision (equivalent to that made for the Scottish Parliament) should be made for extraordinary elections within a four-year term, to apply in exceptional circumstances; and
- iii) The Assembly should have a new power to allow it to arrange for public information campaigns to promote participation in its elections.

10. Proposals (i) and (ii) above are dealt with in sections 7 and 5 of Part 1 respectively, whilst the power to promote public awareness is provided for in paragraphs 5 and 6 of Schedule 2.

c) Enhanced legislative powers for the Assembly

11. The White Paper proposed enhancing the Assembly's legislative powers in three ways:

i) As a first stage, by making it the Government's policy to confer wider subordinate legislation-making powers on Welsh Ministers by way of provision in parliamentary Acts. The White Paper noted that this proposal could be effected under existing legislation (and so there is no provision relating to this in the Act);

ii) Secondly, by providing that the Assembly should be able to pass its own legislation within the scope of powers delegated to it by Parliament. The Assembly's powers to pass legislation would relate to specified matters within devolved fields (i.e. fields in which Welsh Ministers have or are about to obtain executive competence), and would be conferred on the Assembly through an Order in Council mechanism;

iii) Thirdly, and following a referendum, by authorising the Assembly to make law in relation to all the subject matters within its devolved fields of competence without further recourse to Parliament.² A referendum could only be triggered with the approval of both Houses of Parliament and of two-thirds of all Assembly Members. In the event of a vote in favour of "primary legislative powers", Parliament would nonetheless continue to be able to legislate for Wales, and procedures would therefore need to be put in place to deal with situations where Parliament might propose to legislate in devolved areas.

12. Proposals for the Assembly to be able to pass its own legislation within the scope of powers delegated to it by Parliament were taken forward in Part 3 and Schedule 5. These introduced a new mechanism by which legislative competence would be conferred on the Assembly, with Parliament's approval, in respect of specified matters set out in Schedule 5 as amended by Orders in Council. The Assembly's legislation in exercise of these powers is known as Assembly Measures. (The provisions of Part 3 have now fallen away, on Part 4 coming into effect. But Assembly Measures enacted before that time continue in force until such time as they are amended and/or repealed.)

13. Part 4 and Schedules 6 and 7 set out a mechanism by which the Assembly's legislative powers could be enhanced further. These provide the procedure for triggering and holding a referendum, together with the provisions specifying the Assembly's legislative competence and powers to pass laws, known as Acts of the Assembly, which would apply in the event of a Yes vote in a referendum. Provision in Part 4 defining Acts of the Assembly and the procedure for making them (sections 108 and 110-115) and the legislative competence of the Assembly (Schedule 7) are known collectively as the Assembly Act provisions. Part 4 also specifies that the Assembly Act provisions would come into force only if a majority of voters in a referendum in Wales voted in favour, and sets out the procedure for triggering and holding a

² The Assembly's legislative competence could be modified by Order in Council.

referendum. (A referendum under Part 4 was held in March 2011, resulting in a vote in favour of the Assembly Act provisions coming into force. The Assembly therefore can now make laws in relation to the subjects listed in Schedule 7 (subject to the exceptions listed in the Schedule)). Schedule 7 can be updated by means of an Order in Council, as provided for in Part 4, or by an Act of Parliament.

Implementation

Commencement

14. The commencement provisions are best viewed in a historical context; the Assembly constituted by the Government of Wales Act 1998 was a corporate body exercising both legislative (but only subordinate legislation) and executive functions. That Assembly was abolished by the Act and a new separate legislature, the National Assembly for Wales, and executive, the Welsh Assembly Government, created. In addition, the Assembly Commission was created as a corporate body to provide property, staff and services to the legislature. Thus a staged commencement was necessary and this was effected in stages as set out in section 161 of the Act.

15. In the first stage, the provisions listed in section 161(2) came into force on 25 July 2006, the day the Act received Royal Assent. These provisions included the transitional provisions in section 162 and Schedule 11, and the powers to make orders including orders to enhance the legislative competence of the Assembly and to amend Schedule 7 (sections 95, 96 and 109).

16. In the second stage, the provisions listed in section 161(3) relating to the financial arrangements for the new Welsh Assembly Government came into force on 1 April 2007 (to coincide with the financial year). These included the establishment of the Welsh Consolidated Fund and the payment of grants by the Secretary of State into that Fund (sections 117, 118 and 120). Repeal of financial provisions in the 1998 Act was also linked to compliance with those provisions for the financial year ending on 31 March 2007 (section 161(6)).

17. The majority of provisions came into force in the third stage on 4 May 2007, the day after elections to the new Assembly were held. However a new Welsh Assembly Government was not established immediately, and so, for example, provisions relating to the functions of the Welsh Ministers and the Auditor General did not come into force until the day after the end of the "initial period". The initial period ceased on the 24 May 2007, the date of the appointment of the first First Minister by Her Majesty under section 46, and those provisions listed in section 161(4) came into force on 25 May 2007.

18. Finally, the Assembly Act provisions in Part 4 of the Act, came into force on 5 May 2011 following the outcome of the referendum held on 3 March 2011 and in accordance with the Government of Wales Act 2006 (Commencement of Assembly Act Provisions, Transitional and Savings Provisions and Modifications) Order 2011 SI 2011/1011.

19. All of the provisions of the Act have been brought into force. However, Part 3 of the Act has ceased to have effect (subject to saving provisions for legislation passed under that Part) as a result of the Assembly Act provisions coming into force.

Enabling powers

20. The Act contains numerous enabling powers, not all of which have been used to date, including some which could be regarded as reserve powers. We consider that the number and nature of enabling powers in the Act are appropriate and provide a comprehensive range of powers for all eventualities. Most enabling powers in the Act fall into one of the following categories:

- Powers for use at the discretion of Welsh Ministers;
- Powers for the legislature, which may be enacted by the National Assembly itself;
- Other powers for use by the Presiding Officer, Secretary of State etc; and
- Reserve powers, which are not expected to be used as a matter of course, but which are nevertheless provided to cover all eventualities.

Enabling powers used

21. In order to provide context in relation to the enabling powers not used, it is useful to compare with those that have been used. For example, under section 48 the First Minister may, with the approval of Her Majesty, appoint Welsh Ministers from among the Assembly Members, and First Ministers have exercised this power following each Assembly election. Section 70 enables the Welsh Ministers to give financial assistance to any person engaged in any activity which the Welsh Ministers consider will secure, or help to secure, the attainment of any objective which they aim to achieve in the exercise of their functions. This power has been used extensively over a wide range of the Welsh Government's functions.

22. Powers that may be exercised by the Assembly include those under section 31 (standing orders) which require Assembly proceedings (including the proceedings of committees and sub-committees) to be regulated by standing orders. Standing orders must also make provision in a number of other areas, including the participation in any Assembly proceedings of a Minister of the Crown. The Act also empowers (but does not oblige) standing orders to be made covering a range of other matters including, for example, provisions for limiting the salaries of Assembly Members, and the power of committees to call for witnesses in Assembly proceedings. The Assembly may by resolution supported by at least two-thirds of the members voting, remake or revise the standing orders. Standing orders were first made in March 2007 and revised in May 2010, November 2010, May 2011, July 2011 and most recently revised orders were agreed on 16 November 2011, completing the consideration and approval of the changes necessary as a result of the referendum result. The orders include provision on both required and discretionary matters.

Enabling powers not used

23. Executive powers not used include the power in section 42 (Defamation). The provision is intended to ensure that Assembly Members are free to debate, and the Assembly is free to report on, matters of public interest without fear of legal action for defamation. A regulation-making power in section 42(2) allows Welsh Ministers to specify how it may be proved conclusively in legal proceedings that a statement was made in Assembly proceedings or published under the authority of the Assembly, and therefore attracts absolute privilege. It has not been necessary to use this power to date, but it may need to be exercised at some point in the future.

24. Examples of other enabling powers not used include:

- Section 49(2) enables the Counsel General to be removed from office by Her Majesty on the recommendation of the First Minister. This power has not needed to be exercised; and
- Section 156 allows the Welsh Ministers to provide by order that particular Welsh words and phrases in Assembly legislation are to have the same meaning as the English words and phrases, in order to ensure that the legislation has the same effect in both languages. It has not been considered necessary to use this order-making power.

Reserve powers not used

25. The following provides a flavour of the reserve powers in the Act that have not been used to date:

- Section 4 (Power to vary date of ordinary general election) contains an enabling power for the Secretary of State to vary the date of Assembly elections by one month earlier or one month later than the first Thursday in May;
- Section 82 relates to international obligations of the United Kingdom which impinge on the functions of the Welsh Ministers and allows the Secretary of State, by order, to intervene to constrain, and if necessary reverse, action by Welsh Ministers which the Secretary of State considers to be incompatible with such an obligation, and other related powers for the Secretary of State in relation to such international obligations;
- Section 99 enabled the Counsel General or Attorney General to refer to the Supreme Court the question of whether a proposed Assembly Measure, or any provision of a proposed Measure, was within the Assembly's legislative competence. (Section 112 now makes equivalent provision in relation to Assembly Bills);
- Section 101 enabled the Secretary of State to make an order prohibiting the Clerk from submitting a proposed Assembly Measure for Royal approval, if it contained provisions which she had reasonable grounds to believe would or might have certain adverse effects. (Section 114 now makes equivalent provision for Assembly Bills);

- Section 151 enables Her Majesty by Order in Council to make provision in consequence of an Assembly Measure or Act which is outside the legislative competence of the Assembly;
- Section 152 allows the Secretary of State to intervene where the exercise of devolved functions might have a serious adverse impact on water resources, supply or quality in England; and
- Section 153 provides for a court or tribunal to remove or limit any retrospective effect of an Assembly Measure or Act (or subordinate legislation under either) made outside the Assembly's competence.

Amendments to the Act

26. There have been a number of changes to the Act since Royal Assent, the most significant of which are set out below. Changes made by other Acts of Parliament include:

- The Parliamentary Voting Systems and Constituencies (PVSC) Act 2011 amended sections 2 and 159, and repealed Schedule 1 and paragraph 1 of Schedule 11, with effect from 16 February 2011. The PVSC Act provides for a reduction in Parliamentary constituencies to 600, likely to reduce the number in Wales from 40 to 30 as a consequence. These changes broke the link between Assembly and Parliamentary constituencies so that Assembly constituencies are unaffected by this change.
- The Bribery Act 2010 repealed section 44, which brought the Assembly and Assembly Commission within the Prevention of Corruption Acts, with effect from 1 July 2011. This was as a consequence of the repeal of the Prevention of Corruption Acts and the introduction of new bribery offences by the 2010 Act.
- The Marine and Coastal Access Act 2009 amended section 158(1) to insert a definition of the Welsh zone. The purpose of the Welsh zone is to enable the Welsh Ministers to exercise functions relating to fishing, fisheries and fish health in seas around the Welsh coast which are outside the territorial sea (beyond 12 nautical miles from the coast) but within British fisheries limits. The limits of the zone were subsequently specified in an Order in Council under section 58. Consequential changes to take account of the Welsh zone are also made elsewhere in the Act, for example, an amendment to section 37(2) (Witnesses and documents - Power to call), which ensures that persons carrying on activities or exercising functions in the Welsh zone can be summoned to attend Assembly proceedings to give evidence.
- The Constitutional Reform and Governance Act 2010 inserted a new section 126A, with effect from November 2010, enabling an Assembly budget motion to include information about the use of resources by bodies designated by the Welsh Ministers.
- The Budget Responsibility and National Audit Act 2011 inserted a new subject in Schedule 7 to the Act relating to the Auditor General for Wales.

- The Fixed-term Parliaments Act 2011 provides for five year parliamentary terms. It moves the date of the next ordinary general election of the Assembly from 5 May 2015 to 5 May 2016 to avoid coinciding with the next UK General Election.

27. Changes to the Act made by Assembly Measures include:

- Schedule 3 to the National Assembly for Wales (Remuneration) Measure 2010 amended various provisions in Parts 1 and 2 of the Act. It transferred the functions of determining the remuneration of Assembly Members and members of the Welsh Government, and the financial support for political groups in the Assembly, from the Assembly to the National Assembly for Wales Remuneration Board; and
- Part 10 of the Welsh Language (Wales) Measure 2011 amends section 78 of the Act to require the Welsh Ministers to prepare an annual Welsh language action plan setting out how they will implement their Welsh language strategy. The amendment is not yet in force.

28. Changes to the Act made by secondary legislation³ include:

- The National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2007 made minor amendments to the description of legislative competence under various subjects in Schedule 7;
- The National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010 updated Schedule 7 in advance of the referendum on further law-making powers for the Assembly, to reflect more accurately the legislative powers which have been devolved to the Assembly in recent years; and
- The Government of Wales Act 2006 (Commencement of Assembly Act Provisions, Transitional and Savings Provisions and Modifications) Order 2011 amended section 106 and inserted a new section 106A, to ensure that proposed Measures passed by the Assembly before the coming into force of the Assembly Act provisions could receive Royal Approval. It also amended section 115 by inserting provisions relating to the preparation of official prints of Assembly Acts and the keeping of Letters Patent and Assembly Acts by the National Library of Wales.

Secondary legislation and Guidance

29. Powers to make secondary legislation under the Act rest with the Welsh Ministers, the Secretary of State and Her Majesty. For ease of reference, the secondary legislation made under the Act has been grouped into the following categories:

- Transitional and Consequential Modification Orders;

³ See Annex A

- Legislative Competence Orders;
- Amendments to Schedule 7 Orders;
- Orders relating to the National Assembly for Wales;
- Referendum Order;
- Election Orders;
- Transfer of Functions Orders; and
- Other Orders.

30. Details of the Orders are set out at Annex A. Assembly Measures are listed at Annex B.

Legal Issues

31. There have been no legal challenges to any provisions of the Act, but in the case of *R (Governors of Brynmawr Foundation School) v Welsh Ministers* [2011] EWHC 519 (Admin) the Administrative Court considered the scope of the Welsh Ministers' power to enter into agency arrangements under section 83. The case involved a challenge to the delegation by the Welsh Ministers of certain functions relating to proposals for school reorganisation. The claimants argued that the general power in section 83 was not intended to apply in a situation governed by other specific statutory provisions, such as those relating to schools. The Judge dismissed the judicial review claim. He held that the language of section 83 was clear, and that the only limitations on the scope of the power to make arrangements under section 83 were those set out in section 83 itself.

32. Pre-legislative scrutiny of draft Legislative Competence Orders (LCOs)⁴ was carried out in Parliament by the House of Lords Constitution Committee and the House of Commons Welsh Affairs Committee, and by a Committee of the National Assembly. Whilst some recommendations were made by these Committees specifically in relation to individual LCOs, some comments about the drafting were of more general application.

33. In the case of the proposed Environment LCO, both the Lords Constitution Committee and the Welsh Affairs Committee (WAC) pointed to the complexity of the LCO, emphasising the need to keep LCOs simple. The Wales Office and Welsh Assembly Government carefully considered all recommendations and revised the proposed LCO before laying a draft for Parliamentary approval. In responding to the WAC, the Secretary of State for Wales noted that the Committee recognised the many exceptions in the Order reflected the complexity of this area of legislation.

34. The WAC also recommended that including general exceptions⁵ not directly related to the matters in an LCO should not become common practice and, likewise, so-called “carve-outs” of legislative competence from exceptions should be kept to a minimum in future legislation (and any in the Environment LCO that were not strictly necessary should be removed). The

⁴ LCOs are Orders in Council made under section 95 of the Act.

⁵ General exceptions apply to all matters in Schedule 5

Lords Constitution Committee endorsed this view. A number of changes were made to the proposed LCO to respond to both Committees' recommendations, making the draft LCO more succinct and easier to understand, clarifying what is in and out of scope and removing unnecessary duplication in the drafting. The Order was subsequently approved by both Houses of Parliament and the Assembly.

35. In its Seventh Report of Session 2008-09, the Joint Committee on Statutory Instruments reported the draft National Assembly for Wales (Legislative Competence) (Housing) Order on the ground of doubtful vires. In doing so, the Committee considered the scope of the power to amend Schedule 5 to the Act by Legislative Competence Order. The Committee took the view that a provision of the draft Order which would have required ministerial consent for an Assembly Measure abolishing the Right to Buy involved an unlawful sub-delegation of the power to determine the Assembly's legislative competence by Order in Council under section 95. Although the UK Government did not agree with the Committee, it did not proceed with the draft Order in that form.

Other Reviews

36. A number of reports and reviews have been published which comment on the Act or how particular Parts of the Act, or processes prescribed by the Act, are working. The key documents are summarised below. This is not intended to be an exhaustive list of all comments on the Act.

All Wales Convention (reported November 2009)

37. The All Wales Convention was set up by the Welsh Assembly Government to facilitate a public debate on the Assembly's law-making powers and to assess the level of public support for giving the Assembly primary law-making powers. The Convention reported in November 2009, and concluded that "*Part 4 offers substantial advantage over the present arrangements in Part 3*"⁶, in terms of efficiency, clarity and a more strategic approach to the drafting of legislation. It further concluded that framework powers in parliamentary Acts were speedier than LCOs in conferring legislative competence on the Assembly, but were opportunistic rather than strategic due to the need for a suitable Bill to be brought forward by the UK Government.

38. Full details of the all Wales Convention report can be found at www.allwalesconvention.org.

Review of scrutiny arrangements by the Secretary of State for Wales

39. The then Secretary of State for Wales reviewed the scrutiny arrangements for LCOs and framework powers, and wrote to the Welsh Affairs Committee about his findings in July 2008. He concluded that, the UK Government must continue to provide as much information as possible about framework powers to facilitate their scrutiny in Parliament, including the publication of a bespoke

⁶ All Wales Convention Report, 2009, p. 6

explanatory memorandum to accompany every framework power, and the Welsh Affairs Committee should continue to conduct pre-legislative scrutiny of proposed LCOs.

Review of the LCO Process – Welsh Affairs Committee (WAC)

40. In January 2010, the WAC published its report “*Review of the LCO Process*”. It made a number of key recommendations including, for example, that every proposed LCO should continue to undergo pre-legislative scrutiny and that each LCO should be as well defined as possible and should reflect the stated policy intention.

41. The then Secretary of State for Wales responded to the report, noting the “*early teething troubles in the new process*” which he felt had been “*largely overcome through the close and co-operative working of all parties involved.*”⁷ The Committee’s report and the response is published on the Welsh Affairs Committee pages on the House of Commons website.

The proposed amendment of Schedule 7 to the Government of Wales Act 2006 – Welsh Affairs Committee

42. Prior to the referendum on further powers for the Assembly, an Order was made updating Schedule 7 to the Act to take account of the powers gained by the Assembly since the Schedule was last updated in 2007. The Welsh Affairs Committee reported on the Order (Second Report of Session 2010-11). The Committee concluded that the Government was right to ensure that Schedule 7 is amended in advance of the referendum. The full report can be viewed on the House of Commons website.

Old Wine in New Bottles? Relations between London and Cardiff after the Government of Wales Act 2006 – Alan Trench

43. Mr Trench noted, in his conclusion, that the 2006 Act was a major step forward in Wales’s constitutional development and demonstrated “*a remarkable degree of constitutional ingenuity and imagination*”⁸.

Law Making in Wales: A Measure of Devolution – David Miers – The Study of Parliament Group, 2011

44. Mr Miers concludes that “*Few will mourn the passing of the LCO procedure*”⁹. He goes on to say that whilst Part 4 is a marked improvement on the LCO procedure, it is unlikely to satisfy all critics of the Part 3 arrangements.

Preliminary Assessment of the Act

45. Most of the provisions of the Act have been used effectively and we have identified no specific failings in the legislation. A preliminary assessment of

⁷ UK Government - *Review of the LCO Process: Government Response to the Committee’s Fifth Report of Session 2009-10*, 2010, p.1

⁸ Alan Trench, *Old Wine in New Bottles? Relations between London and Cardiff after the Government of Wales Act 2006*, 2007, p. 21

⁹ David Miers, “Law Making in Wales: A Measure of Devolution”, the Study of Parliament Group, 2011, p.32

the Act is set out below, and considers the extent to which each Part contributes to the delivery of the Act's three key objectives.

a) Formal separation between the executive and legislative arms of the Assembly

Part 1 – National Assembly for Wales (and Schedules 1 to 2)

46. Part 1 of the Act re-enacts many of the 1998 Act's provisions relating to the establishment of the Assembly and makes additional provision, in part because the Assembly is no longer a "corporate body". The new Assembly was established on 4 May 2007 according to the commencement provisions of the Act, with Assembly constituencies and electoral regions established as set out in the Act. The Assembly as a corporate body, which was set up under the 1998 Act with legislative (subordinate legislation) and executive powers, ceased to exist when Part 1 came into force. The first ordinary Assembly general election held under the Act took place on 5 May 2011¹⁰. Forty constituency Assembly Members continued to be directly elected from constituencies with the same boundaries as Parliamentary constituencies, under the First-Past-The-Post system, and 20 regional Assembly Members were elected proportionally, under the Additional Member System, from five Assembly electoral regions (with four Members elected in each region). Schedule 1 to the Act (since repealed by the PVSC Act) made provision for alteration of the Assembly electoral regions and the allocation of seats to those regions. The provisions were not used.

47. The Electoral Commission concluded in respect of the 2011 Assembly election¹¹:

"We are pleased that voters were positive about their experience of voting in the elections to the National Assembly for Wales, both in polling stations and by post."

48. The various offices of the Assembly were established at the same time as the new Assembly itself - the Presiding Officer, Deputy Presiding Officer, the Clerk to the Assembly and the Assembly Commission (responsible for providing the Assembly with staff and support services). The office of the Clerk of the Assembly was also new, not having been created by the 1998 Act. Section 31 provides for Assembly proceedings to be regulated by standing orders, and these were put in place covering a range of matters including business in plenary meetings, operation of committees, standards of conduct and subordinate legislation.

49. Part 1 also makes provision for the Secretary of State for Wales to consult with the Assembly about the UK Government's legislative programme including participating in the proceedings of the Assembly. The Secretary of State for Wales has appeared before the Assembly shortly after each Queen's

¹⁰ The 2007 Assembly elections were held under the 1998 Act. The relevant provisions in the Act came into force immediately after the 2007 Assembly elections, but transitional provisions in Schedule 11 to the Act applied the ban on dual candidacy to the 2007 elections.

¹¹ Electoral Commission press release, 19 October 2011.

Speech to inform the Assembly and answer questions about the Government's legislative programme.

50. Finally, Part 1 includes provision in relation to witnesses and documents and legal issues. Schedule 2 makes further detailed provision about the National Assembly for Wales Commission established by section 27.

Part 2 – Welsh Assembly Government (and Schedules 3 to 4)

51. Part 2 established the Welsh Assembly Government as a distinct entity in its own right, authorised Ministers to exercise statutory powers and placed certain statutory duties on them. Ministers and the Counsel General discharge their responsibilities on behalf of the Crown. The setting up of a separate executive and legislature was a significant difference from the 1998 Act, and the arrangements have worked effectively.

52. Members of the Welsh Assembly Government (the First Minister, the other Welsh Ministers and Deputy Ministers, and the Counsel General) have been appointed in accordance with the Act, most recently following the elections held in May 2011. They exercise functions in their own right, rather than as delegates of the Assembly. Statutory functions exercisable by the Welsh Assembly Government have been conferred on the 'Welsh Ministers' in subsequent legislation, in accordance with the Act.

53. Nearly all the executive functions of the Assembly established under the 1998 Act were transferred to the Welsh Ministers by transitional provisions in Schedule 11 to the Act. The Act also transferred to the Welsh Ministers the requirement to establish a Partnership Council with Welsh local government, and to establish close working or consultative relations with the voluntary sector and the business community. This was previously the responsibility of the Assembly under the 1998 Act. Similarly functions in relation to having due regard to equality of opportunity and promoting sustainable development transferred to the Welsh Ministers. These requirements were met following the establishment of the Welsh Assembly Government in 2007. The Partnership Council for Wales, as provided for in section 72 of the Act, was established and meets about three times a year.

Part 5 – Finance (and Schedule 8)

54. Part 5 provides for the creation of a Welsh Consolidated Fund. Parliament votes a sum of money annually to provide a budget for the Welsh Government and fund the operation of the Assembly. This money is transferred from the UK Consolidated Fund into an account known as the Welsh Consolidated Fund ("the Fund").

55. The Wales Office makes monthly payments into the Fund. A system has been established between HM Treasury, the Wales Office and the Welsh Government by which the Welsh Government requests a transfer payment to the Fund from the money voted on account by the UK Parliament. The Wales Office approves and authorises transfers of payments from HM Treasury to the Welsh Government. A Service Level Agreement between the Wales Office and the Welsh Government sets out how the process works and makes

provision for top-up arrangements in month, when additional funds are needed. The system works well and ensures the Welsh Government has access to the funds it requires, as voted for by Parliament.

56. Part 5 also provides for payments out of the Welsh Consolidated Fund to meet the costs of Welsh Government programmes to be authorised by Annual and Supplementary Budget Motions adopted by the Assembly. Payments out are approved by the Auditor General for Wales, who needs to be satisfied that they are lawful under the Act. Provision is made for preparation of the accounts of the Welsh Ministers, and of the Assembly Commission, and the Act appoints Accounting Officers to have personal responsibility for these accounts.

57. The National Audit Office audits the Wales Office's accounts and the Wales Audit Office audits the Welsh Government's use of the fund. Scrutiny of the Wales Office's accounts is undertaken in Parliament by the Public Accounts Committee, and of devolved spending by the Assembly's Finance Committee.

58. Schedule 8 re-enacts with modifications provisions relating to the office of the Auditor General for Wales, including that appointments to that office will in future be made by Her Majesty on the nomination of the Assembly. Three Auditor Generals for Wales have been appointed since these provisions came into force (including one interim appointment).

Part 6 – Miscellaneous and Supplementary (and Schedules 9 to 11)

59. This part includes a variety of further provisions and enabling powers, including commencement powers and the provisions have proved to be drafted effectively.

b) Reforming the Assembly's electoral arrangements

60. Sections 5 and 7 in Part 1 and paragraphs 5 & 6 in Schedule 2 brought this objective into effect. Whilst the Secretary of State has not exercised her powers under section 5 relating to extraordinary general elections, the prohibition on dual candidacy in section 7, where a person may not appear on a party list as a candidate for a regional list if that person is also an Assembly constituency candidate, has been implemented as part and parcel of Assembly elections' candidacy rules. The provision in paragraph 5 in Schedule 2 (Promotion of awareness of election system and devolved government) has been used, for example, to promote public awareness in the Assembly's recent Vote 2011 communications campaign.

c) Enhanced legislative powers for the Assembly

Part 3 (and Schedule 5) – Assembly Measures

61. Part 3 (and later, Part 4) fulfilled the third objective of the Act - to enhance the legislative powers of the Assembly. It enabled the Assembly, for the first time, to pass laws, known as *Assembly Measures*. These could make any

provision that could be made by an Act of Parliament, within the legislative competence of the Assembly (as specified in Schedule 5).

The Assembly's Legislative Competence

62. Part 3 provided a means for the newly structured legislature, the National Assembly, to make primary legislation by accruing legislative competence on an incremental basis as and when it was required in order to legislate. The provisions of Part 3 were to have effect only until the "Assembly Act provisions" in Part 4 (see paragraph 72) came into force in the event of an affirmative vote in a referendum under that Part. The Assembly Act provisions came into force on 5 May 2011 following the Assembly referendum held on 3 March. The Part 3 provisions, and the system they set out for increasing the Assembly's legislative competence incrementally over time, were therefore operational for only a four year period, from May 2007 to May 2011. It is however important to note that the system could have operated for a longer time period and, in the event of a negative vote in a referendum under Part 4, would have continued in operation (although the current Secretary of State for Wales had made clear she intended to review the system).

63. Until May 2011 and the coming into force of the Assembly Act provisions in Part 4, the scope of the legislative competence of the Assembly was determined by the matters inserted into the fields in Schedule 5. The twenty fields listed in Schedule 5 covered those areas in which the Welsh Ministers exercised executive functions, and were colloquially termed the "devolved areas". On enactment, only Field 13 - the National Assembly for Wales - was populated. Section 95 of the Act enabled Her Majesty, by Order in Council to add, vary or remove "matters" relating to any of the fields listed in Part 1 of Schedule 5. The Orders could also specify exceptions to matters, where the legislative competence specified in the exceptions remains with Parliament. Orders in Council could also amend Parts 2 and 3 of Schedule 5, which covered general restrictions to the Assembly's legislative competence and exceptions to those restrictions.

Legislative Competence Orders (LCOs)

64. Fifteen Orders in Council enhancing the legislative competence of the Assembly were made in total, from 2007 to 2010, under section 95.¹² These are listed in Annex A. Such Orders were termed Legislative Competence Orders - or LCOs. LCOs provided one of two means by which the Assembly's legislative competence could be increased; the other means was through framework powers in Acts of Parliament (for which provision in GoWA was not required). The general approach taken was that LCOs could be used as the means by which the Assembly's legislative competence could be enhanced when there was no suitable parliamentary Bill in which to include framework

¹² Not all LCOs conferred legislative competence. For example, the National Assembly for Wales (Legislative Competence)(Exceptions to Matters) Order 2009 modified the operation of Schedule 5 so that exceptions applied generally to all matters in Schedule 5 replacing tables previously in the Schedule which fixed exceptions to particular matters (see Annex A). This was broadly in line with the approach to exceptions in Schedule 7.

provisions. LCOs and framework powers, taken together, inserted a total of 79 Matters in 14 of the 20 fields in Schedule 5¹³.

65. Section 95 of the Act specified the statutory process for making LCOs. A draft Order had first to be approved by the Assembly, and then by each House of Parliament. The First Minister wrote to the Secretary of State as soon as reasonably practicable after the Assembly had approved the draft LCO to notify her of the relevant resolution and enclose a copy of the draft Order. The Secretary of State, within 60 days of receiving the notice, either laid the draft Order before Parliament or gave notice to the First Minister of her refusal to do so and the reasons for that refusal.

66. In practice, the Welsh Assembly Government brought forward the vast majority of draft LCOs, although in two cases draft LCOs were proposed and taken forward by backbench Assembly Members (with Welsh Assembly Government support). The Welsh Assembly Government proposed LCOs in order to fulfil commitments set out in its legislative programme, which the First Minister announced in June or July each year.

67. The LCO process received a mixed reception from commentators. Whilst the House of Commons Welsh Affairs Committee concluded from its review of the LCO process¹⁴ that:

“It has proved to be an effective way of responding to requests by the National Assembly for Wales to be given decision-making powers.”

It also noted that:

“Widespread misapprehensions and misunderstanding about the LCO process which exist in Wales can sometimes lead to a negative view of the procedure as a whole.”

68. Some commentators criticised Part 3 for its incremental approach to enhancing the Assembly’s legislative competence, rather than setting out a clear-cut, lasting settlement. But most targeted criticism on the process for making LCOs, viewing it as too slow and cumbersome. However, much of this criticism centred on the non-statutory aspects of the process, and not the provisions specified in section 95 of the Act. We believe that these provisions were fit for purpose, providing a means of enhancing the Assembly’s legislative competence incrementally and in so doing enabling the Assembly to legislate to fulfill the Welsh Assembly Government’s public commitments.

Assembly Measures

69. Sections 97 and 98 of the Act deal with the process for making Assembly Measures, and specified the process to be set out in the Assembly’s standing orders. The standing orders had to include provision for at least three stages of proceedings on proposed Assembly Measures: a general debate, with the opportunity for Assembly Members to vote on the general principles of the proposed Measure; consideration of the details of the proposed Measure,

¹³ Six additional matters were inserted into Field 13 (National Assembly for Wales) directly by the Act.

¹⁴ Welsh Affairs Committee, “Fifth Report: Review of the LCO Process”, 2010, p.3.

again with an opportunity for Assembly Members to vote; and a final stage at which the proposed Measure could be passed or rejected. On or before the introduction of a proposed Measure in the Assembly, the person in charge of a proposed Measure had to make a statement that in their view its provisions would be within the Assembly's legislative competence, and the Presiding Officer needed to state whether, in their view, its provisions would be within the Assembly's legislative competence. Section 102 provided for the Clerk of the Assembly to submit proposed Assembly Measures which had been approved by the Assembly to Her Majesty in Council for approval.

70. 22 Measures approved by the Third Assembly received Royal approval¹⁵. The Measures are listed at Annex B.

71. Part 3 also included powers of intervention by the Counsel General, the Attorney General and the Secretary of State in relation to proposed Assembly Measures (sections 99 and 101). No referrals were ever made under these provisions, but this does not suggest that the provisions were otiose or unnecessary. They ensured that a robust structure of safeguards existed in relation to the Assembly's exercise of its legislative competence, newly established under the Act.

Part 4 – Acts of the Assembly (and Schedules 6 to 7)

72. Part 4 (with Part 3) fulfilled the third objective of the Act – to enhance the legislative powers of the Assembly. It enabled the Assembly to make Acts of the Assembly in relation to any of the subjects listed in the twenty devolved areas in Schedule 7, in the event of an affirmative vote in a referendum, without the need to seek parliamentary consent to devolve legislative competence.

Referendum

73. Part 4 has two principal components: the procedure for triggering a referendum about the commencement of the Assembly Act provisions, and the procedure for making Acts of the Assembly in the event of an affirmative vote in a referendum and the Assembly Act provisions coming into force.

74. The provisions on triggering and holding a referendum in sections 103 and 104 have proved to work well. Section 103 specifies that Her Majesty may by Order in Council cause a referendum to be held in Wales about whether the Assembly Act provisions come into force and the Assembly is able to legislate in relation to the subjects listed in the twenty areas specified in Schedule 7. The draft Order would need to be approved by two-thirds of the Assembly, and by each House of Parliament, before a recommendation could be made to Her Majesty in Council to make the Order. The Secretary of State would need to consult as she considered appropriate before an Order is laid.

¹⁵ Four of these Measures were approved by the Third Assembly before its dissolution but received Royal approval (on 10 May 2011) after Part 3 of the Act ceased to have effect, in accordance with amendments to the Act made by the Government of Wales Act 2006 (Commencement of Assembly Act Provisions, Transitional and Savings Provisions and Modifications) Order 2011.

75. Under section 104, the Assembly may pass a resolution by at least a two-thirds majority that, in its opinion, a recommendation should be made to Her Majesty in Council to make an Order in Council causing a referendum.

76. As soon as practicable after the resolution is passed, the First Minister must give notice in writing of the resolution to the Secretary of State. The Secretary of State must within 120 days of receipt of the letter either lay a draft Order before Parliament or write to the First Minister to explain why she has not done so.

77. The *One Wales* agreement, which formed the basis of the coalition between the Welsh Labour Party and Plaid Cymru following the 2007 Assembly election, committed the Welsh Assembly Government “to proceed to a successful outcome of a referendum for full law-making powers under Part IV as soon as practicable, at or before the end of the Assembly term”¹⁶ (i.e. before May 2011). The Coalition’s Programme for Government (May 2010) also included a commitment to “introduce a referendum on further Welsh devolution”¹⁷.

78. The Assembly passed a resolution under section 104 by the required majority (53 – 0 in favour) on 9 February 2010, beginning a process which culminated in the referendum poll being held on 3 March 2011.

79. Two draft statutory instruments were laid before the Assembly and Parliament in preparation for the referendum (see Annex A):

- A draft Referendum Order specifying the date of the referendum; the question to be asked; and setting out the detailed arrangements for its conduct; and
- A draft Schedule 7 Amendment Order, which updated Schedule 7 to ensure it reflected the Assembly’s current legislative competence as set out in Schedule 5 to the Act.

80. A third Order, a draft Referendum Expenses Limits etc Order, specifying expenses limits for permitted participants in the referendum campaign, required parliamentary approval only and was made using enabling powers in the Political Parties, Elections and Referendums Act 2000.

81. The two draft Orders were approved by the Assembly on 9 November 2010. All three draft Orders were approved by Parliament by 25 November and by Her Majesty in Council on 15 December. The approval meant the referendum period commenced on 16 December 2010.

82. The referendum was generally considered to have been run effectively. The Electoral Commission, in its report on the referendum concluded:

¹⁶ “One Wales – a progressive agenda for the government of Wales” June 2007

¹⁷ “The Coalition: our programme for government” May 2010

“As our public opinion research shows, voters in Wales were overwhelmingly positive about their experience of voting in polling stations or by post.”¹⁸

83. Section 105 enables the Welsh Ministers, by order, to specify when the Assembly Act provisions come into force following an affirmative vote in a referendum. The Order must be approved by the Assembly before coming into force. The Assembly approved a section 105 Order on 30 March 2011, bringing the Assembly Act provisions into force on 5 May - the same day as the Assembly elections. There were no difficulties with this procedure.

Acts of the Assembly

84. Sections 107 to 116 of the Act make provision in relation to making Acts of the Assembly – the legislative competence of the Assembly, the proceedings on Bills, referrals to the Supreme Court, power for the Secretary of State to intervene and Royal Assent.

85. Many of these provisions have not yet been tested given that Bills to implement the Welsh Government’s legislative programme are yet to progress through the Assembly. However, Assembly Standing Orders have been amended to reflect the Assembly’s enhanced law-making powers (see paragraph 22) and, as many of the processes are similar to those used under Part 3 of the Act in relation to Assembly Measures, there is no reason to suppose that the provisions in the Act relating to Acts of the Assembly are defective.

86. Section 108 specifies the Assembly’s legislative competence following the Assembly Act provisions coming into force. A provision of an Act of the Assembly is within the Assembly’s legislative competence if it relates to one or more of the subjects set out in Schedule 7 (and does not fall within any of the exceptions listed in the Schedule); provides for the enforcement or effectiveness of such a provision; or is otherwise incidental to, or consequential on, such a provision. The robustness and clarity of Schedule 7 in specifying the boundaries to the Assembly’s legislative competence is yet to be tested in practice.

87. Section 109 sets out a process to amend Schedule 7 by Order in Council. Two Orders in Council have been made using this process; the first, in 2007, to make further minor modifications to the Schedule following enactment, and the second in 2010, to update Schedule 7 to reflect incremental enhancements to the Assembly’s legislative competence as specified in Schedule 5. Both statutory instruments were made successfully (the first required only parliamentary approval; the second required the approval of both Parliament and the Assembly).

88. Section 116 provides for there to be a Welsh Seal and for the First Minister to be the Keeper of the Seal. It also specifies that Her Majesty may

¹⁸ Electoral Commission, “Report on the referendum on the law-making powers of the National Assembly for Wales, 3 March 2011”, 2011, p.1

by Order in Council make provision as to the Letters Patent to signify Her Assent to a Bill passed by the Assembly. The draft Order would first be subject to approval by the Assembly. The Assembly approved a draft Letters Patent Order on 23 March 2011 and the Order came into force on 5 May. A prerogative Order in Council containing a Welsh Seal was approved by Her Majesty on 14 December 2011. Orders in Council were the appropriate form of statutory instrument for these purposes given the constitutional nature of their subject matter.

Conclusion of Preliminary Assessment

89. The Act successfully delivered the three objectives of UK Government policy set out in the 2005 White Paper *Better Governance for Wales*. These were to:

- a) Effect a formal separation between the executive and the legislative branches of the Assembly;
- b) Reform existing electoral arrangements; and
- c) Enhance the legislative powers of the Assembly.

90. It established a new governance structure for the devolved institutions in Wales which has proved to be effective and durable. In particular, it effected a separation between the legislature - the National Assembly for Wales - and the executive - the Welsh Assembly Government (now known as the Welsh Government). The parliamentary model has proved to be an appropriate one for devolved governance in Wales, affording a more appropriate separation between legislative, executive and scrutiny functions at the national level than the local authority model which preceded it.

91. It also established a system for the Assembly to make laws for the first time (Assembly Measures), exercising legislative competence it accrued incrementally, including through Orders in Council under section 95 (known as Legislative Competence Orders or LCOs). The system conferred legislative competence on the Assembly in 79 areas, providing a means of enhancing the Assembly's legislative competence and thereby enabling the Assembly to legislate in order to implement the Welsh Assembly Government's legislative programme.

92. Finally, the Act specified the conditions for the Assembly to make Acts of the Assembly in relation to all the subjects listed in the twenty devolved areas set out in Schedule 7, and in particular the holding of a referendum on the matter. The Assembly referendum took place in March 2011, and resulted in the Assembly Act provisions replacing the system of making Assembly Measures set out in Part 3. These provisions are yet to be fully tested in practice.

93. The provisions of the Act delivered the UK Government's White Paper objectives for Welsh devolution, and have proved durable and effective in setting the framework for Welsh devolution. They can be seen as a practical and pragmatic response to the unique history of Wales within the United

Kingdom and the relative uncertainty at the time of the White Paper, in 2005, as to the future direction of devolution in Wales.

DETAILS OF SUBORDINATE LEGISLATION MADE UNDER THE GOVERNMENT OF WALES ACT 2006

(Other than the commencement Order)

Transitional and Consequential Modification Orders

Government of Wales Act 2006 (Transitional Provisions) (Finance) Order 2007 SI 2007/726; made 8 March 2007.

This Order modifies the transitional provisions in Schedule 11 of GoWA 2006 which themselves modify the application of the finance provisions in Part 5 of the Act; the modifications relate to the Welsh Consolidated Fund, the Auditor General for Wales, his functions and his staff.

Government of Wales Act 2006 (Designation of Receipts) Order 2007 SI 2007/848; made 14 March 2007.

This Order specifies that receipts of the Welsh Ministers and the National Assembly for Wales Commission are designated receipts and that sums equal to them must be paid from the Welsh Consolidated Fund to the Secretary of State.

Government of Wales Act 2006 (Transitional Provisions) (Assembly General Subordinate Legislation) Order 2007/1171; made 4 April 2007.

This Order makes provision in respect of subordinate legislation made by the Assembly as constituted by the 1998 Act, providing for the validity of that legislation notwithstanding a shortening of the period of 40 days in which a motion to revoke can be tabled caused by the dissolution of the previous Assembly and the election of a new Assembly constituted under the 2006 Act.

Government of Wales Act 2006 (Local Government (Contracts) Act 1997) (Modifications) Order 2007 SI 2007/1182; made 5 April 2007.

The Order applies the Local Government (Contracts) Act 1997 with modifications, to contracts entered into by the Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Assembly Government and the National Assembly for Wales Commission.

Government of Wales Act 2006 (Transitional Provisions) Order 2007 SI 2007/1270; made 18 April 2007.

The Order makes provision in respect of the transition from the National Assembly for Wales constituted by the Government of Wales Act 1998 to the National Assembly for Wales constituted by the Government of Wales Act 2006 and the Welsh Assembly Government.

Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 SI 2007/1388; made 1 May 2007.

This Order makes modifications, to various Acts of the UK Parliament, which are considered to be appropriate in consequence of the Government of Wales

Act 2006. The Order also makes transitional or transitory provisions which appear appropriate in consequence of, or otherwise in connection with, the Act. Examples of these modifications include changes to terminology or obligations to provide reports to the Assembly.

Government of Wales Act 2006 (Approved European Body of Accountants) Order 2007 SI 2007/2973; made 15 October 2007.

This Order provides that each of The Chartered Institute of Public Finance and Accountancy (“CIPFA”) and The Chartered Institute of Management Accountants (“CIMA”) is an approved European body of accountants for the purposes of paragraph 21(6) of Schedule 8 to the Government of Wales Act 2006. The Auditor General for Wales will be able to make arrangements with CIPFA and CIMA to co-operate with, and give assistance to, each other.

Government of Wales Act 2006 (Consequential Modifications, Transitional Provisions and Saving) Order 2009 SI 2009/2958; made 5 November 2009.

This Order makes modifications to enactments in consequence of the Government of Wales Act 2006. This Order also makes related transitional provisions and saving.

Legislative Competence Orders

Until May 2011 and the coming into force of Part 4 of the Act (“the Assembly Act provisions”), the scope of the legislative competence of the Assembly was determined by the matters inserted into the fields in Schedule 5 of the Act. On enactment, only Field 13 – the National Assembly for Wales, was populated. Section 95 of the Act enabled Her Majesty, by Order in Council to add, vary or remove matters in any of the fields listed in Part 1. Orders in Council could also amend Part 2 or 3 of Schedule 5. From 2007 until 2010 15 legislative competence orders were made conferring or modifying the legislative competence of the Assembly. In addition 1 order was made converting extensive framework powers (regulation making powers for the Assembly as constituted by the 1998 Act) into matters.

National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 SI 2007/910; made 21 March 2007.

Regulation making powers in the Education and Inspections Act 2006 and the NHS Redress Act 2006 were converted into matters inserted into field 5, education and training and field 9, health and health services, respectively.

National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008 SI 2008/ 1036; made 9 April 2008.

A matter was inserted into field 5, education and training, relating to those with additional learning needs.

National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008 SI 2008/1785; made 9 July 2008.

A matter was inserted into field 15, social welfare, relating to charging for domiciliary care.

National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 SI 2008/3132; made 10 December 2008.

Matters were inserted into field 15 social welfare relating to the care of vulnerable children.

National Assembly for Wales (Legislative Competence) (Agriculture and Rural Development) Order 209 SI 2009/1758; made 8 July 2009.

A matter was inserted into field 1, agriculture etc, relating to the red meat industry.

National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009 SI 2009/3006; made 17 November 2009.

This order modified the way exceptions to matters (descriptions of areas of competence that remained non-devolved) were dealt with in Schedule 5; initially exceptions had been matter specific, following this Order, all exceptions were of general application and were listed under headings within Part 2 of Schedule 5.

National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009 SI 2009/ 3010; made 17 November 2009.

Matters were inserted into field 15, social welfare, relating to the support of those providing substantial care for children with physical or mental disabilities or those over 18.

National Assembly for Wales (Legislative Competence) (Health and Health Services and Social Welfare) Order 2010 SI 2010/236; made 10 February 2010.

Matters inserted into field 9, health and health services and field 15, social welfare relating to the assessment and treatment of those with a mental disorder, other than those subject to compulsory treatment.

National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2010 SI 2010/245; made 10 February 2010.

Matters inserted into field 20, Welsh language to enable promotion of and facilitating the use of the Welsh language.

National Assembly for Wales (Legislative Competence) (Environment) Order 2010 SI 2010/248; made 10 February 2010.

Matters inserted into field 6, environment, relating to waste, pollution and environmental nuisance; insertion of new exceptions into Part 2 under the heading of economic development.

National Assembly for Wales (Legislative Competence) (Transport) Order 2010 SI 2010/1208; made 12 April 2010.

Matter inserted into field 10, highways and transport, relating to concessionary travel, also amendments to exceptions in Part 2 listed under highways and transport to confer competence in relation to aspects of safety of learner travel.

National Assembly for Wales (Legislative Competence) (Education) Order 2010 SI 2010/1209; made 12 April 2010.

Matters inserted into field 5, education and training, relating to conduct and governance of schools, collaboration between education bodies and the establishment of bodies to carry out functions relating to education and training.

National Assembly for Wales (Legislative Competence) (Housing) (Fire Safety) Order 2010 SI 2010/1210; made 12 April 2010.

Matter inserted into field 11, housing, relating to fire safety and the provision of sprinkler systems in new residential properties.

National Assembly for Wales (Legislative Competence) (Local Government) Order 2010 SI 2010/1211; made 12 April 2010.

Matters inserted into field 12, local government, relating to aspects of community councils and their functions, allowances for members of principal and community councils and other public bodies and support provided for such members.

National Assembly for Wales (Legislative Competence) (Culture and Other Fields) Order 2010 SI 2010/1212; made 12 April 2010.

Matters inserted into field 2, culture, relating to the functions of local authorities in connection with ancient monuments etc, museums, libraries and arts and crafts and matter inserted into field 16, sport and recreation, relating to the promotion of sport by local authorities.

National Assembly for Wales (Legislative Competence) (Housing and Local Government) Order 2010 SI 2010/1838; made 21 July 2010.

Matters inserted into field 11, housing, in relation to social housing providers and disposal of social housing, provision of advice to tenants of social housing and homelessness and matter inserted into field 12, local government, relating to council tax on properties which are not the main residence of an individual.

Amendments to Schedule 7 Orders

Two orders were made under section 109 amending the provisions of Schedule 7 to the Act, which describes the scope of the Assembly's legislative competence once the Assembly Act provisions are in force. Schedule 7 is now the relevant description of the Assembly's competence.

National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2007 SI 2007/2143; made 25 July 2007.

Minor amendments were made to the description of legislative competence under various subjects in Schedule 7 of the Act.

National Assembly for Wales (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010 SI 2010/2968; made 15 December 2010.

Amendments to Schedule 7 to reflect changes in the boundaries of competence effected through the amendments made to Schedule 5.

Orders relating to the National Assembly for Wales

National Assembly for Wales (Date of the First Meeting of the Assembly Constituted by the Government of Wales Act 2006) Order 2007 SI 2007/374; made 13 February 2007.

This Order provides that the date specified for the first meeting of the Assembly is 9 May 2007.

National Assembly for Wales (Diversion of Functions) Order 2007 SI 2007/1117; made 4 April 2007.

Functions conferred on the Assembly as constituted by the 1998 Act transferred automatically to Welsh Ministers by virtue of provision in the 2006 Act. This Order diverts functions of receiving reports created in specified enactments to the Assembly.

National Assembly for Wales Commission (Crown Status) Order 2007 SI 2007/1118; made 4 April 2007.

This Order provides for the National Assembly for Wales Commission to be treated as a Crown body, and as appropriate for employment by the Assembly Commission to be treated as Crown employment, for certain purposes in specified enactments.

National Assembly for Wales Commission (Crown Status)(No 2) Order 2007 SI 2007/ 1353; made 2 May 2007.

This Order provides for the National Assembly for Wales Commission, to be treated as a Crown body for certain purposes in specified enactments.

National Assembly for Wales (Transfer of Staff to Assembly Commission Scheme) Order 2007 SI 2007/1169; made 4 April 2007.

This Order sets out the scheme for the terms of the transfer of members of staff of the Assembly constituted by the Government of Wales Act 1998 to the Assembly Commission so as to ensure that rights, powers, duties and liabilities of the GOWA 1998 Assembly under a contract of employment transfer to the Commission. The transfer scheme contains provisions that are similar to provisions in the Transfer of Undertakings (Protection of Employment) Regulations 2006.

National Assembly for Wales (Transfer of Property, Rights and Liabilities) Order 2007 SI 2007/1269; made 18 April 2007.

The Act established the Welsh Assembly Government in a legal form which is separate, but accountable to a newly formed National Assembly for Wales. In doing so it establishes as legal entities a First Minister (appointed by Her Majesty), Welsh Ministers and Counsel General capable of exercising statutory functions in their own right. The new Assembly, like other legislatures, is not a corporate body, and in consequence a new legal entity known as the National Assembly for Wales Commission ("Assembly Commission") was established to enable administrative and legal arrangements to be made for employing staff, holding property, purchasing services, and more generally entering into contracts for the benefit of the Assembly. This Order transfers certain property, rights and liabilities of the Assembly as constituted by the 1998 Act to the Assembly Commission; all other property is transferred by the operation of the 2006 Act to the Welsh Ministers.

National Assembly for Wales (Diversion of Functions) (No 2) Order 2007 SI 2007/2142; made 25 July 2007.

This Order diverts functions under the Employment Tribunals Rules of Procedure 2004 to the Counsel General to the Welsh Assembly Government and makes consequential modifications to the Rules.

National Assembly for Wales (Letters Patent) Order 2011 SI 2011/752; made 16 March 2011.

This Order prescribes the form of words to be used in Letters Patent signifying Royal Assent to Bills passed by the Assembly. It also makes provision as to the preparation and publication of the Letters Patent.

Referendum Order

National Assembly for Wales (Assembly Act Provisions) (Referendum Question, Date of Referendum Etc.) Order 2010 SI 2010/2387; made 15 December 2010.

This Order provides for the holding of a referendum throughout Wales about whether the Assembly Act set out in Part 4 of the Government of Wales Act 2006 should come into force and prescribes the procedure to be followed for the conduct of that referendum. The provisions of the Order are largely based on existing electoral law precedents.

Election Orders

National Assembly for Wales (Representation of the People) Order 2007 SI 2007/236; made 31 January 2007.

This Order was made using powers under the Government of Wales Act 1998 but it applied to the election to the first Assembly constituted by the Government of Wales Act 2006. It made provision for the conduct of elections

and the return of members to the Assembly and other related matters. The previous elections orders made in 2003 and 2006 were revoked.

National Assembly for Wales (Representation of the People) (Amendment) Order 2010 SI 2010/2931; made 2 December 2010.

This Order makes minor amendments to the National Assembly for Wales (Representation of the People) Order.

National Assembly for Wales (Disqualification) Order 2010 SI 2010/2969; made 15 December 2010.

This Order designates the persons who are disqualified from being a member of the National Assembly for Wales and revokes the previous Order made in 2006. The bodies and offices are described in the Schedule.

Transfer of Functions Orders

Nine Orders were made under the Government of Wales Act 1998 transferring functions from the Secretary of State to the Assembly; by the virtue of the operation of paragraph 30 of Schedule 11 of the 2006 Act, these functions have generally transferred from the Assembly to the Welsh Ministers and the orders still have effect; the most significant, in terms of the volume of functions transferred, is the **National Assembly for Wales (Transfer of Functions) Order SI 1999/672**.

The Welsh Zone (Boundaries and Transfer of Functions) Order 2010 SI 2010/760; made 17 March 2010.

This Order specifies the boundaries of the “Welsh zone” as defined by section 158(1) of the 2006 Act. That definition also applies for the purposes of the Marine and Coastal Access Act 2009 and of certain other enactments. This Order also provides for certain functions connected with fishing, fisheries and fish health to be exercisable by the Welsh Ministers in relation to that zone.

Welsh Ministers (Transfer of Functions) (No 2) Order 2009 SI 2009/3019; made 17 December 2009.

This provides for certain functions under the Building Act 1984, the Sustainable and Secure Buildings Act 2004, and the Climate Change and Sustainable Energy Act 2006 to be transferred from the Secretary of State to the Welsh Ministers. The primary function transferred is the power to make regulations in respect of the design and construction of buildings and the provision of services, fittings and equipment.

Welsh Ministers (Transfer of Functions) Order 2009 SI 2009/703; made 18 March 2009.

This Order provides for certain functions under the Prison Act 1952 to be transferred to the Welsh Ministers.

Welsh Ministers (Transfer of Functions) Order 2008 SI 2008/1786; made 9 July 2008.

This Order provides for certain functions under the Mental Health Act 1983 and the National Health Service Act 2006 to be transferred to the Welsh Ministers.

Other Orders

Local Government (Wales) Measure (Consequential Modifications) Order 2010 SI 2010/ 212; made 3 February 2010.

This Order makes amendments to the Government of Wales Act 2006 in consequence of the Local Government (Wales) Measure 2009. Part 1 of the Measure introduces a new “improvement” regime for Welsh improvement authorities, in place of the “best value” regime under Part 1 of the Local Government Act 1999. The purpose of the Order is to extend certain provisions of the 2006 Act, which apply to the income received by the Auditor General for Wales under Part 1 of the 1999 Act, to income received by the Auditor General under Part 1 of the Measure.

Welsh Ministers (Transfer of Fire and Rescue Services Equipment) (Wales) Order 2010 SI 2010/248; made 24 February 2010.

The Secretary of State provided equipment to fire and rescue authorities in Wales (as well as to authorities in England) mainly for urban search and rescue purposes and to deal with chemical, biological, radiological and nuclear emergencies, as part of the New Dimension programme. The relevant functions under the Fire and Rescue Services Act 2004, in so far as they are exercisable in relation to Wales, are now vested in the Welsh Ministers and this Order, transfers ownership of the equipment provided, and associated rights and liabilities, to the Welsh Ministers.

Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) (Amendment) Order 2010 SI 2010/2961; made 14 December 2010.

This Order makes amendments to the Data Protection (Processing of Sensitive Personal Data)(Elected Representatives) Order 2002 (the 2002 Order) consequent on the coming into force of the Government of Wales Act 2006 (the 2006 Act).

Assembly Measures

The Assembly Measures below were Welsh Assembly Government proposed Measures unless otherwise specified.

NHS Redress (Wales) Measure 2008: Royal approval 9 July 2008.

Makes provision about arrangements for redress in relation to liability in tort in connection with services provided as part of the health services in Wales.

Learner Travel (Wales) Measure 2008: Royal approval 10 December 2008.

Makes provision about the travel of persons receiving primary, secondary or further education or training to and from schools or other places where they require it.

Learning and Skills (Wales) Measure 2009: Royal approval 13 May 2009.

Makes provision about the entitlement to education of children in the last 2 years of compulsory schooling and young persons who have not attained the age of 19; and for other purposes.

Local Government (Wales) Measure 2009: Royal approval 10 June 2009.

The purpose is to reform the statutory basis for service improvement and strategic planning by local authorities in Wales.

Healthy Eating in Schools (Wales) Measure 2009: Royal approval 15 October 2009.

(Member proposed Measure). The primary purpose is a comprehensive, made-in-Wales policy on nutrition which ensures that healthy eating is promoted and supported for all registered pupils of schools maintained by local education authorities in Wales.

National Assembly for Wales Commissioner for Standards Measure 2009: Royal approval 9 December 2009.

(Committee proposed Measure). The Measure places the position of the Commissioner for Standards on a statutory basis, enable him or her to investigate complaints against Assembly Members with complete objectivity, and provide other powers.

Education (Wales) Measure 2009: Royal approval 9 December 2009.

The purpose is to extend children's entitlement by providing them with rights to make special educational needs appeals and claims of disability discrimination to the Special Educational Needs Tribunal for Wales.

Children and Families (Wales) Measure 2010: Royal approval 10 February 2010.

Makes provision, through a legislative framework, to take forward the Welsh Government's commitment in terms of child poverty, and to take forward early development of its strategy for vulnerable children by bringing forward

legislation to provide greater support to families where children may be at risk, and strengthened regulatory enforcement in children settings.

Social Care Charges (Wales) Measure 2010: Royal approval 17 March 2010.

Provides for the introduction of a new regime for charging which will ensure that local authorities across Wales adopt a more consistent approach to charging service users for non-residential social care services. It is primarily enabling in scope.

Red Meat Industry (Wales) Measure 2010: Royal approval 11 May 2010.

The purpose is to make statutory provision, through a legislative framework, for the development and promotion of the Welsh red meat industry.

National Assembly for Wales (Remuneration) Measure 2010: Royal approval 21 July 2010.

(Assembly Commission proposed Measure). A Measure to establish a National Assembly for Wales Remuneration Board.

Carers Strategies (Wales) Measure 2010: Royal approval 10 November 2010.

The purpose is to enable the National Assembly to legislate to introduce a new requirement on the NHS and Local Authorities in Wales to work in partnership to prepare, publish and implement a joint strategy in relation to carers.

Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure 2010: Royal approval 15 December 2010.

(Member proposed Measure). Makes provision in relation to community involvement in decisions by local authorities in Wales whether to dispose of playing fields; and for connected purposes.

Waste (Wales) Measure 2010: Royal approval 15 December 2010.

Makes provision to reduce the amount of waste and litter in Wales and contribute to the development of more effective waste management arrangements.

Mental Health (Wales) Measure 2010: Royal approval 15 December 2010.

Places duties on Local Health Boards and local authorities in Wales in relation to assessment of mental health and treatment of mental disorder. It also makes provision in relation to independent mental health advocacy for qualifying patients – those are persons subject to certain of the compulsory powers of the Mental Health Act 1983, and persons receiving assessment or treatment in hospital for a mental disorder.

Welsh Language (Wales) Measure 2011: Royal approval 9 February 2011.

The Measure is intended to modernise the existing legal framework largely governed by the Welsh Language Act 1993 regarding the use of the Welsh language in the delivery of public services.

Rights of Children and Young Persons (Wales) Measure 2011: Royal approval 16 March 2011.

The purpose is to impose a duty upon the Welsh Ministers and the First Minister to have due regard to the rights and obligations in the United Nations Convention on the Rights of the Child (UNCRC) and its Optional Protocols, when making decisions of a strategic nature about how to exercise functions which are exercisable by them.

Domestic Fire Safety (Wales) Measure 2011: Royal approval 7 April 2011. (Member proposed Measure). A Measure to require the provision of automatic fire suppression systems in new residential premises in Wales.

Local Government (Wales) Measure 2011: Royal approval 10 May 2011. A Measure to make provision to strengthen the structures and working of local government in Wales at all levels, and to ensure that local councils reach out to and engage with all sectors of the communities they serve.

Safety on Learner Transport (Wales) Measure 2011: Royal approval 10 May 2011.

Makes provision about safety on transport provided or otherwise secured by local authorities or governing bodies of maintained schools for the purpose of ensuring the attendance of children at places where they receive education or training; and for connected purposes.

Housing (Wales) Measure 2011: Royal approval 10 May 2011.

Makes provision to support the more effective delivery of affordable housing in Wales. Enables the Welsh Ministers to temporarily suspend the Right to Buy, the Preserved Right to Buy and the Right to Acquire held by tenants of a social housing provider in Wales, in areas of housing pressure. Provides Welsh Ministers with enhanced regulatory and intervention powers concerning the provision of housing by Registered Social Landlords.

Education (Wales) Measure 2011: Royal approval 10 May 2011.

Makes provision to put in place powers and duties to make collaboration commonplace in the education system, to improve school governance and to simplify the planning of school places in Wales.



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