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# United Kingdom's Constitution of 1215 with Amendments through 2013

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# Magna Carta 1297

## Preamble

THE GREAT CHARTER OF THE LIBERTIES OF ENGLAND, AND OF THE LIBERTIES OF THE FOREST; CONFIRMED BY KING EDWARD, IN THE TWENTY-FIFTH YEAR OF HIS REIGN.

EDWARD by the Grace of God King of England, Lord of Ireland, and Duke of Guyan, to all Archbishops, Bishops, &c. We have seen the Great Charter of the Lord Henry sometimes King of England, our Father, of the Liberties of England in these words:

HENRY by the Grace of God King of England, Lord of Ireland, Duke of Normandy and Guyan, and Earl of Anjou, to all Archbishops, Bishops, Abbots, Priors, Earls, Barons, Sheriffs, Provosts, Officers, and to all Bailiffs, and other our faithful Subjects, which shall see this present Charter, Greeting: Know Ye, that We, unto the honour of Almighty God, and for the salvation of the souls of our Progenitors and Successors [Kings of England,] to the advancement of Holy Church and amendment of our Realm, of our meer and free will, have given and granted to all Archbishops, Bishops, Abbots, Priors, Earls, Barons, and to all [Freemen] of this our Realm, these Liberties following, to be kept in our Kingdom of England for ever.

## I. Confirmation of Liberties

FIRST, We have granted to God, and by this our present Charter have confirmed, for Us and our Heirs for ever, that the Church of England shall be free, and shall have all her whole Rights and Liberties inviolable. We have granted also, and given to all the Freemen of our Realm, for Us and our Heirs for ever, these Liberties under-written, to have and to hold to them and their Heirs, of Us and our Heirs for ever.

## II-VIII

[Repealed]

## IX. Liberties of London, &c

THE City of London shall have all the old Liberties and Customs [which it hath been used to have]. Moreover We will and grant, that all other Cities, Boroughs, Towns, and the Barons of the Five Ports, and all other Ports, shall have all their Liberties and free Customs.

## X-XXVIII

[Repealed]

## XXIX. Imprisonment, &c. contrary to Law. Administration of Justice

NO Freeman shall be taken or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any other wise destroyed; nor will We not pass upon him, nor condemn him, but by lawful judgment of his Peers, or by the Law of the Land. We will sell to no man, we will not deny or defer to any man either Justice or Right.

- Source of constitutional authority

- Political theorists/figures
- God or other deities
- Reference to country's history

- Political theorists/figures
- God or other deities
- Motives for writing constitution
- Reference to country's history
- Mentions of social class

- Freedom of religion
- God or other deities
- Separation of church and state
- Mentions of social class

- Municipal government

- Guarantee of due process
- Protection from unjustified restraint
- Jury trials required
- Mentions of social class
- Principle of no punishment without law

## XXX-XXXVII

[Repealed]

**Closing Text: General Saving. Observance of these Liberties. Subsidy, in respect of this Charter and Charter of the Forest**

- General guarantee of equality
- Mentions of social class

Reserving to all Archbishops, Bishops, Abbots, Priors, Templars, Hospitallers, Earls, Barons, and all Persons, as well Spiritual as Temporal, all their free Liberties and free Customs, which they have had in time passed. And all these Customs and Liberties aforesaid, which We have granted to be holden within this our Realm, as much as appertaineth to Us and our Heirs, we shall observe; and all Men of this our Realm, as well Spiritual as Temporal, as much as in them is, shall observe the same against all Persons, in like wise. And for this our Gift and Grant of these Liberties, and of other contained in our Charter of Liberties of our Forest, the Archbishops, Bishops, Abbots, Priors, Earls, Barons, Knights, Freeholders, and other our Subjects, have given unto Us the Fifteenth Part of all their Moveables. And We have granted unto them on the other part, that neither We nor our Heirs shall procure or do any thing whereby the Liberties in this Charter contained shall be infringed or broken. And if any thing be procured by any person contrary to the premises, it shall be had of no force nor effect. These being Witnesses; Lord B. Archbishop of Canterbury, E. Bishop of London, J. Bishop of Bathe, P. of Winchester, H. of Lincoln, R. of Salisbury, W. of Rochester, W. of Worcester, J. of Ely, H. of Hereford, R. of Chichester, W. of Exeter, Bishops; the Abbot of St. Edmonds, the Abbot of St. Albans, the Abbot of Bello, the Abbot of St. Augustine's in Canterbury, the Abbot of Evesham, the Abbot of Westminster, the Abbot of Bourgh St. Peter, the Abbot of Reding, the Abbot of Abindon, the Abbot of Malmsbury, the Abbot of Winchcomb, the Abbot of Hyde, the Abbot of Certesey, the Abbot of Sherburn, the Abbot of Cerne, the Abbot of Abbotebir, the Abbot of Middleton, the Abbot of Seleby, the Abbot of Cirencester; H. de Burgh Justice, H. Earl of Chester and Lincoln, W. Earl of Salisbury, W. Earl of Warren, G. de Clare Earl of Gloucester and Hereford, W. de Ferrars Earl of Derby, W. de Mandeville Earl of Essex, H. de Bygod Earl of Norfolk, W. Earl of Albemarle, H. Earl of Hereford, J. Constable of Chester, R. de Ros, R. Fitzwalter, R. de Vyponte, W. de Bruer, R. de Muntefichet, P. Fitzherbert, W. de Aubenie, F. Gresly, F. de Breus, J. de Monemue, J. Fitzallen, H. de Mortimer, W. de Beauchamp, W. de St. John, P. de Mauly, Brian de Lisle, Thomas de Multon, R. de Argenteyn, G. de Nevil, W. de Mauduit, J. de Balun, and others.

We, Ratifying and approving these Gifts and Grants aforesaid, confirm and make strong all the same for Us and our Heirs perpetually, and by the Tenor of these Presents do renew the same: Willing and granting for Us and our Heirs, that this Charter and all and singular his Articles for ever shall be stedfastly, firmly, and inviolably observed; and if any Article in the same Charter contained yet hitherto peradventure hath not been kept We will and by authority royal command from henceforth firmly they be observed.

In Witness whereof We have caused these our Letters Patents to be made. T. Edward our son at Westminster, the twenty-eighth day of March in the twenty-eighth year of our Reign.

# The Petition of Right 1628

## Preamble

The Petition Exhibited to His Majestie by the Lords Spirituall and Temporall and Comons in this present Parliament assembled concerning divers Rights and Liberties of the Subjects: with the Kings Majesties Royall Aunswere thereunto in full Parliament.

To the Kings most Excellent Majestie.

## I. Reciting that by (25) 34 Ed. I. st. 4. c. 1, by Authority of Parliament holden 25 Ed. III. and by other Laws of this Realm, the Kings Subjects should not be taxed but by Consent in Parliament

HUMBLY shew unto our Sovereigne Lord the King the Lords Spirituall and Temporall and Comons in Parliament assembled, That whereas it is declared and enacted by a Statute made in the tyme of the Raigne of King Edward the first comonly called Statutum de Tallagio non concedendo, That no Tallage or Ayde should be layd or levyed by the King or his Heires in this Realme without the good will and assent of the Archbishopps Bishopps Earles Barons Knights Burgesses and other the Freemen of the Comonaltie of this Realme, And by Authoritie of Parliament holden in the five and twentieth yeare of the raigne of King Edward the third, it is declared and enacted, That from thenceforth no person should be compelled to make any Loanes to the King against his will because such Loanes were against reason and the franchise of the Land, And by other Lawes of this Realme it is provided, that none should be charged by any charge or Imposicion called a Benevolence nor by such like Charge by which the Statutes before mencioned and other the good Lawes and Statutes of this Realme your Subjects have inherited this Freedome That they should not be compelled to contribute to any Taxe Tallage Ayde or other like Charge not sett by comon consent in Parliament.

## II. and that Commissions have of late issued on which Proceedings have been had contrary to Law

Yet neverthesse of late divers Comissions directed to sundry Comissioners in severall Counties with Instruccions have issued, by meanes whereof your people have been in divers places assembled and required to lend certaine somes of mony unto your Majestie, and many of them uppon their refusall soe to doe have had an Oath administred unto them not warrantable by the Lawes or Statutes of this Realme and have been constrayned to become bound to make apparance and give attendance before your Privie Councill and in other places; and others of them have been therefore imprisoned confined and sondry other waies molested and disquieted And divers other charges have been laid and levied upon your people in severall Counties by Lord Lieutenants Deputie Lieutenants Comissioners for Musters Justices of Peace and others by Comaund or Direccion from your Majestie or your Privie Councill against the Lawes and free Customes of the Realme.

## III. [Repealed]

## IV. [Repealed]

- Source of constitutional authority
- Motives for writing constitution

- Source of constitutional authority
- Political theorists/figures
- Head of state powers
- Reference to country's history
- Tax bills

- Protection from unjustified restraint
- Crimes of the previous regime

## V. [Repealed]

## VI. and that Soldiers have been dispersed in divers Counties, and Inhabitants compelled to receive them

And whereas of late great Companies of Souldiers and Marriners have been dispersed into divers Counties of the Realme, and the inhabitants against their wills have been compelled to receive them into their houses, and there to suffer them to sojourn against the Lawes and Customes of this Realme and to the great grievance and vexacion of the people.

## VII. 25 E. III. and that Commissions have issued under the Great Seal for Proceedings according to Martial Law

And whereas also by authoritie of Parliament in the five and twentieth yeare of the Raigne of King Edward the third it is declared and enacted that no man should be forejudged of life or limbe against the forme of the Great Charter and the Lawe of the Land, And by the said Great Charter, and other the Lawes and Statutes of this your Realme no man ought to be adjudged to death but by the Lawes established in this your Realme, either by the customes of the same Realme or by Acts of Parliament. And whereas no offendor of what kinde soever is exempted from the pceedings to be used and punishments to be inflicted by the Lawes and Statutes of this your Realme, Neverthelesse of late tyme divers Comissions under your Majesties great Seale have issued forth, by which certaine persons have been assigned and appointed Comissioners with power and authoritie to proceed within the land according to the Justice of Martiall Lawe against such Souldiers or Marriners or other dissolute persons joyning with them as should comitt any murther robbery felony mutiny or other outrage or misdemeanor whatsoever, and by such sumary course and order as is agreeable to Martiall Lawe and as is used in Armies in tyme of warr to proceed to the tryall and condemnacion of such offenders, and them to cause to be executed and putt to death according to the Lawe Martiall.

By pretext whereof some of your Majesties Subjects have been by some of the said Comissioners put to death, when and where, if by the Lawes and Statuts of the land they had deserved death, by the same Lawes and Statuts alsoe they might and by no other ought to have byn judged and executed.

And alsoe sundrie greivous offenders by colour thereof clayming an exempcion have escaped the punishments due to them by the Lawes and Statutes of this your Realme, by reason that divers of your Officers and ministers of Justic have unjustlie refused or forborne to proceed against such Offendors according to the same Lawes and Statutes uppon pretence that the said offenders were punishable onelie by Martiall law and by authoritie of such Comissions as aforesaid. Which Comissions and all other of like nature are wholly and directlie contrary to the said Lawes and Statutes of this your Realme.

- Protection from expropriation
- Crimes of the previous regime

- Emergency provisions
- General guarantee of equality
- Protection from unjustified restraint
- Crimes of the previous regime
- Principle of no punishment without law

- Source of constitutional authority

## VIII. The Petition

They doe therefore humblie pray your most Excellent Majestie, that no man hereafter be compelled to make or yeild any Guift Loane Benevolence Taxe or such like Charge without comon consent by Acte of Parliament, And that none be called to make aunswere or take such Oath or to give attendance or be confined or otherwise molested or disquieted concerning the same or for refusall thereof And that your Majestie would be pleased to remove the said Souldiers and Mariners and that your people may not be soe burthened in tyme to come. And that the aforesaid Comissions for proceeding by Martiall Lawe may be revoked and annulled. And that hereafter no Comissions of like nature may issue forth to any person or persons whatsoever to be executed as aforesaid, lest by colour of them any of your Majesties Subjects be destroyed or put to death contrary to the Lawes and Franchise of the Land.

All which they most humblie pray of your most Excellent Majestie as their Rightes and Liberties according to the Lawes and Statutes of this Realme, And that your Majestie would alsoe vouchsafe to declare that the Awards doings and proceedings to the prejudice of your people in any of the premisses shall not be drawn hereafter into consequence or example. And that your Majestie would be alsoe graciouslie pleased for the further comfort and safetie of your people to declare your Royall will and pleasure, That in the things aforesaid all your Officers and Ministers shall serve you according to the Lawes and Statutes of this Realme as they tender the Honor of your Majestie and the prosperitie of this Kingdome.

Quaquidem Petitione lecta & plenius intellecta per dictum Dominum Regem taliter est responsum in pleno Parlamento videlicet.

R. Soit droit fait come est desire.

## Habeas Corpus Act 1679

An Act for the better secureing the Liberty of the Subject and for Prevention of Imprisonments beyond the Seas.

### Preamble

Recital that Delays had been used by Sheriffs in making Returns of Writs of Habeas Corpus, &c.

WHEREAS great Delayes have beene used by Sheriffes Goalers and other Officers to whose Custody any of the Kings Subjects have beene committed for criminall or supposed criminall Matters in makeing Returnes of Writts of Habeas Corpus to them directed by standing out an Alias and Pluries Habeas Corpus and sometimes more and by other shifts to avoid their yeilding Obedience to such Writts contrary to their Duty and the knowne Lawes of the Land whereby many of the Kings Subjects have beene and hereafter may be long detained in Prison in such Cases where by Law they are baylable to their great charge and vexation.

**I. Sheriff, &c. within Three Days after Service of Habeas Corpus, with the Exception of Treason and Felony, as and under the Regulations herein mentioned, to bring up the Body before the Court to which the Writ is returnable; and certify the true Causes of Imprisonment. Exceptions in respect of Distance**

For the prevention whereof and the more speedy Reliefe of all persons imprisoned for any such criminall or supposed criminall Matters whensoever any person or persons shall bring any Habeas Corpus directed unto any Sheriffe or Sheriffes Goaler Minister or other Person whatsoever for any person in his or their Custody and the said Writt shall be served upon the said Officer or left at the Goale or Prison with any of the Under Officers Underkeepers or Deputy of the said Officers or Keepers that the said Officer or Officers his or their Under Officers Under-Keepers or Deputyes shall within Three dayes after the Service thereof as aforesaid (unlesse the Commitment aforesaid were for Treason plainely and specially expressed in the Warrant of Commitment) upon Payment or Tender of the Charges of bringing the said Prisoner to be ascertained by the Judge or Court that awarded the same and endorsed upon the said Writt not exceeding Twelve penceper Mile and upon Security given by his owne Bond to pay the Charges of carrying backe the Prisoner if he shall bee remanded by the Court or Judge to which he shall be brought according to the true intent of this present Act and that he will not make any escape by the way make Returne of such Writt or bring or cause to be brought the Body of the Partie soe committed or restrained unto or before the Judges or Barons of the said Court from whence the said Writt shall issue or unto and before such other person and persons before whome the said Writt is made returnable according to the Command thereof, and shall likewise then certifie the true causes of his Detainer or Imprisonment unlesse the Commitment of the said Partie be in any place beyond the distance of Twenty miles from the place or places where such Court or Person is or shall be resideing and if beyond the distance of Twenty miles and not above One hundred miles then within the space of Ten dayes and if beyond the distance of One hundred miles then within the space of Twenty dayes after such delivery aforesaid and not longer.



**II. How Writs to be marked. Persons committed, except for Treason and Felony, &c. may appeal to the Lord Chancellor, &c. Proceedings thereon. Habeas Corpus may be awarded; and upon Service thereof the Officer to bring up the Prisoners as before mentioned; and thereupon within Two Days Lord Chancellor, &c. may discharge upon Recognizance; and certify the Writ with the Return and Recognizance. Proviso for Process notailable**

And to the intent that noe Sheriffe Goaler or other Officer may pretend ignorance of the import of any such Writt all such Writts shall be marked in this manner Per Statutum Tricesimo primo Caroli Secundi Regis and shall be signed by the person that awards the same And if any person or persons shall be or stand committed or detained as aforesaid for any Crime unlesse for Treason plainly expressed in the Warrant of Commitment in the Vacation time and out of Terme it shall and may be lawfull to and for the person or persons soe committed or detained (other then persons Convict or in Execution) by legall Processe or any one in his or their behalfe to appeale or complaine to any one of His Majestyes Justices either of the one Bench or of the other or the Barons of the Exchequer of the Degree of the Coife and the said Justices or Barons or any of them upon view of the Copy or Copies of the Warrant or Warrants of Commitment and Detainer or otherwise upon Oath made that such Copy or Copyes were denyed to be given by such person or persons in whose Custody the Prisoner or Prisoners is or are detained are hereby authorized and required upon Request made in Writeing by such person or persons or any on his her or their behalfe attested and subscribed by two Witnesses that were present at the delivery of the same to award and grant an Habeas Corpus under the Seale of such Court whereof he shall then be one of the Judges to be directed to the Officer or Officers in whose Custodie the Party soe committed or detained shall be returnable immediate before such Justice Baron or any other Justice or Baron of the Degree of the Coife of any of the said Courts and upon Service thereof as aforesaid the Officer or Officers his or their Under-Officer or Under Officers Under Keeper or Under Keepers or their Deputy in whose custodie the Partie is soe committed or detained shall within the times respectively before limited bring such Prisoner or Prisoners before such Justices Barons or one of them before whome the said Writt is made returnable and in case of his absence before any other of them with the Returne of such Writt and the true Causes of the Commitment and Detainer and thereupon within two dayes after the Partie shall be brought before them the said Lord Chauncellor or Lord Keeper or such Justice or Baron before whome the Prisoner shall be brought as aforesaid shall, subject to section 25 of the Criminal Justice and Public Order Act 1994, grant bail in accordance with the Bail Act 1976 to the said prisoner subject to a duty to appear before the Crown Court and then shall certifie the said Writt with the Returne thereof together with the recognizance of any surety for him into the said Court where such Appearance is to be made unlesse it shall appeare unto the said Justice or Justices or Baron or Barons that the Party soe committed is detained upon a legall Processe Order or Warrant out of some Court that hath Jurisdiction of Criminall Matters or by some Warrant signed and sealed with the Hand and Seale of any of the said Justices or Barons or some Justice or Justices of the Peace for such Matters or Offences for the which by the Law the Prisoner is not Baileable.

### **III. Habeas Corpus not granted in Vacation to Prisoners who have neglected to pray the same**

Provided alwayes if any person shall have wilfully neglected by the space of two whole Termes after his Imprisonment to pray a Habeas Corpus for his Enlargement such person soe wilfully neglecting shall not have any Habeas Corpus to be granted in Vacation time in pursuance of this Act.

### **IV. Officer neglecting, &c. to make the said Returnes, &c. or upon Demand to deliver a Copy of Warrant of Commitment; First Offence, Penalty £100. Second Offence, £200 and Incapacity. Judgment at Suit of Party sufficient Conviction**

And if any Officer or Officers his or their Under-Officer or Under-Officers Under-Keeper or Under-Keepers or Deputy shall neglect or refuse to make the Returnes aforesaid or to bring the Body or Bodies of the Prisoner or Prisoners according to the Command of the said Writt within the respective times aforesaid or upon Demand made by the Prisoner or Person in his behalfe shall refuse to deliver or within the space of Six houres after demand shall not deliver to the person soe demanding a true Copy of the Warrant or Warrants of Commitment and Detayner of such Prisoner, which he and they are hereby required to deliver accordingly all and every the Head Goalers and Keepers of such Prisons and such other person in whose Custodie the Prisoner shall be detained shall for the first Offence forfeite to the Prisoner or Partie grieved the summe of One hundred pounds and for the second Offence the summe of Two hundred pounds and shall and is hereby made incapeable to hold or execute his said Office, the said Penalties to be recovered by the Prisoner or Partie grieved his Executors or Administrators against such Offender his Executors or Administrators by any Action or Information in any of the Kings Courts at Westminster wherein noe Injunction or stay of Prosecution by Non vult ulterius prosequi or otherwise shall bee admitted or allowed, and any Recovery or Judgement at the Suite of any Partie grieved shall be a sufficient Conviction for the first Offence and any after Recovery or Judgement at the Suite of a Partie grieved for any Offence after the first Judgement shall bee a sufficient Conviction to bring the Officers or Person within the said Penaltie for the second Offence.

### **V. Proviso as to Imprisonment of Party after having been set at large upon Habeas Corpus. Unduly recommitting such discharged Persons or assisting therein; Penalty to the Party £500**

And for the prevention of unjust vexation by reiterated Commitments for the same Offence noe person or persons which shall be delivered or sett at large upon any Habeas Corpus shall at any time hereafter bee againe imprisoned or committed for the same Offence by any person or persons whatsoever other then by the legall Order and Processe of such Court wherein he or they shall be bound to appeare or other Court haveing Jurisdiction of the Cause and if any other person or persons shall knowingly contrary to this Act recommit or imprison or knowingly procure or cause to be recommitted or imprisoned for the same Offence or pretended Offence any person or persons delivered or sett at large as aforesaid or be knowingly aiding or assisting therein then he or they shall forfeite to the Prisoner or Partie grieved the summe of Five hundred pounds Any colourable pretence or variation in the Warrant or Warrants of Commitment notwithstanding to be recovered as aforesaid.

## VI. [Repealed]

## VII. Proviso respecting Persons charged in Debt, &c

Provided alwayes That nothing in this Act shall extend to discharge out of Prison any person charged in Debt or other Action or with Processe in any Civill Cause but that after he shall be discharged of his Imprisonment for such his Criminall Offence he shall be kept in Custodie according to Law for such other Suite.

## VIII. Persons committed for criminal Matter not to be removed but by Habeas Corpus or other legal Writ. Unduly making out, &c. Warrant for Removal; Penalty

Provided alwaies That if any person or persons Subject of this Realme shall be committed to any Prison or in Custodie of any Officer or Officers whatsoever for any Criminall or supposed Criminall matter That the said person shall not be removed from the said Prison and Custody into the Custody of any other Officer or Officers unlesse it be by Habeas Corpus or some other Legall Writt or where the Prisoner is delivered to the Constable or other inferiour Officer to carry such Prisoner to some Common Goale or where any person is sent by Order of any judge of the Crown Court or Justice of the Peace to any common Worke-house or House of Correction or where the Prisoner is removed from one Prison or place to another within the same County in order to his or her Tryall or Discharge in due course of Law or in case of suddaine Fire or Infection or other necessity and if any person or persons shall after such Commitment aforesaid make out and signe or countersigne any Warrant or Warrants for such removeall aforesaid contrary to this Act as well he that makes or signes or countersignes such Warrant or Warrants as the Officer or Officers that obey or execute the same shall suffer and incurr the Paines and Forfeitures in this Actbefore-mentioned both for the first and second Offence respectively to be recovered in manner aforesaid by the Partie grieved.

## IX. Proviso for Application for and granting Habeas Corpus in Vacation-time. Lord Chancellor, &c. unduly denying Writ; Penalty to Party £500

Provided alsoe That it shall and may be lawfull to and for any Prisoner and Prisoners as aforesaid to move and obtaine his or their Habeas Corpus as well out of the High Court of Chauncery or Court of Exchequer as out of the Courts of Kings Bench or Common Pleas of either of them And if any Judge or Judges Baron or Barons for the time being of the Degree or the Coife of any of the Courts aforesaid in the Vacation time upon view of the Copy or Copies of the Warrant or Warrants of Commitment or Detainer or upon Oath made that such Copy or Copyes were denyed as aforesaid shall deny any Writt of Habeas Corpus by this Act required to be granted being moved for as aforesaid they shall severally forfeite to the Prisoner or Partie grieved the summe of Five hundred pounds to be recovered in manner aforesaid.

## **X. Habeas Corpus may be directed into Counties Palatine, &c**

And an Habeas Corpus according to the true intent and meaning of this Act may be directed and runn into any County Palatine The Cinque Ports or other priviledged Places within the Kingdome of England Dominion of Wales or Towne of Berwicke upon Tweede and the Islands of Jersey or Guernsey Any Law or Usage to the contrary notwithstanding.

## **XI. No subject to be sent Prisoner into Scotland, &c. or any Parts beyond the Seas. Persons so imprisoned may maintain Action against the Person committing or otherwise acting in respect thereof, as herein mentioned; Treble Costs and Damages; and the Person so committing or acting disabled from Office, and incur Premunire 16 R. 11. c. 5. and be incapable of Pardon**

And for preventing illegall Imprisonments in Prisons beyond the Seas noe Subject of this Realme that now is or hereafter shall be an Inhabitant of Resiant of this Kingdome of England Dominion of Wales or Towne of Berwicke upon Tweede shall or may be sent Prisoner into Scotland Ireland Jersey Gaurnesey Tangeir or into any Parts Garrisons Islands or Places beyond the Seas which are or at any time hereafter shall be within or without the Dominions of His Majestie His Heires or Successors and that every such Imprisonment is hereby enacted and adjudged to be illegall and that if any of the said Subjects now is or hereafter shall bee soe imprisoned every such person and persons soe imprisoned shall and may for every such Imprisonment maintaine by vertue of this Act an Action or Actions of false Imprisonment in any of His Majestyes Courts of Record against the person or persons by whome he or she shall be soe committed detained imprisoned sent Prisoner or transported contrary to the true meaning of this Act and against all or any person or persons that shall frame contrive write seale or countersigne any Warrant or Writeing for such Commitment Detainer Imprisonment or Transportation or shall be adviseing aiding or assisting in the same or any of them and the Plaintiffe in every such Action shall have Judgement to recover his Costs besides Damages which Damages soe to be given shall not be lesse then Five hundred pounds In which Action noe delay stay or stopp of Proceeding by Rule Order or Command nor noe Injunction whatsoever shall be allowed excepting such Rule of the Court wherein the Action shall depend made in open Court as shall bee thought in Justice necessary for speciall cause to be expressed in the said Rule and the person or persons who shall knowingly frame contrive write seale or countersigne any Warrant for such Commitment Detainer or Transportation or shall soe committ detaine imprison or transport any person or persons contrary to this Act or be any wayes adviseing aiding or assisting therein being lawfully convicted thereof shall be disabled from thenceforth to beare any Office of Trust or Proffitt within the said Realme of England Dominion of Wales or Towne of Berwicke upon Tweede or any of the Islands Territories or Dominions thereunto belonging and be liable to imprisonment for life and be incapeable of any Pardon from the King His Heires or Successors of the said Disabilities or any of them.

## **XII. [Repealed]**

## **XIII. [Repealed]**

## XIV. [Repealed]

## XV. Proviso for sending Persons to be tried in Places where any Capital Offence committed

Provided alsoe That if any person or persons at any time resiant in this Realme shall have committed any Capitall Offence in Scotland or Ireland or any of the Islands or Forreigne Plantations of the King His Heires or Successors where he or she ought to be tryed for such Offence such person or persons may be sent to such place there to receive such Tryall in such manner as the same might have beene used before the making of this Act Any thing herein contained to the contrary notwithstanding.

## XVI. Limitation of Prosecution for Offences against this Act

Provided alsoe That noe person or persons shall be sued impleaded molested or troubled for any Offence against this Act unless the Partie offending be sued or impleaded for the same within Two yeares at the most after such time wherein the Offence shall be committed in case the partie grieved shall not be then in Prison and if he shall be in Prison then within the space of Two yeares after the decease of the Person imprisoned or his or her delivery out of Prison which shall first happen.

## XVII. [Repealed]

## XVIII. [Repealed]

## XIX. [Repealed]

## XX. [Repealed]

[N.B. A variant reading of some parts of the text in this statute was noted in The Statutes of the Realm. See <http://www.legislation.gov.uk/aep/Cha2/31/2> for full details.]

# Bill of Rights 1689

## Preamble

An Act declaring the Rights and Liberties of the Subject and Setleing the Succession of the Crowne.

Whereas the Lords Spirituall and Temporall and Comons assembled at Westminster lawfully fully and freely representing all the Estates of the People of this Realme did upon the thirteenth day of February in the yeare of our Lord one thousand six hundred eighty eight present unto their Majesties then called and known by the Names and Stile of William and Mary Prince and Princesse of Orange being present in their proper Persons a certaine Declaration in Writeing made by the said Lords and Comons in the Words following viz

• Extradition procedure

• Motives for writing constitution

• Source of constitutional authority  
• Political theorists/figures

## I.

## Heading 1: The Heads of Declaration of Lords and Commons, recited

Whereas the late King James the Second by the Assistance of diverse evill Councillors Judges and Ministers imployed by him did endeavour to subvert and extirpate the Protestant Religion and the Lawes and Liberties of this Kingdome.

## Heading 2: Dispensing and Suspending Power

By Assumeing and Exerciseing a Power of Dispensing with and Suspending of Lawes and the Execution of Lawes without Consent of Parlyament.

## Heading 3: Committing Prelates

By Committing and Prosecuting diverse Worthy Prelates for humbly Petitioning to be excused from Concurring to the said Assumed Power.

## Heading 4: Ecclesiastical Commission

By issueing and causeing to be executed a Commission under the Great Seale for Erecting a Court called The Court of Commissioners for Ecclesiasticall Causes.

## Heading 5: Levying Money

By Levying Money for and to the Use of the Crowne by pretence of Prerogative for other time and in other manner then the same was granted by Parlyament.

## Heading 6: Standing Army

By raising and keeping a Standing Army within this Kingdome in time of Peace without Consent of Parlyament and Quartering Soldiers contrary to Law.

## Heading 7: Disarming Protestants, &c

By causing severall good Subjects being Protestants to be disarmed at the same time when Papists were both Armed and Imployed contrary to Law.

## Heading 8: Violating Elections

By Violating the Freedome of Election of Members to serve in Parlyament.

## Heading 9: Illegal Prosecutions

- Political theorists/figures
- Reference to country's history
- Crimes of the previous regime

- Political theorists/figures
- Reference to country's history
- Crimes of the previous regime

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- Reference to country's history
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- Political theorists/figures
- Reference to country's history
- Crimes of the previous regime

- Political theorists/figures
- Reference to country's history
- Crimes of the previous regime

By Prosecutions in the Court of Kings Bench for Matters and Causes cognizable onely in Parlyament and by diverse other Arbitrary and Illegal Courses.

## Heading 10: Juries

And whereas of late yeares Partiall Corrupt and Unqualifyed Persons have beene returned and served on Juryes in Tryalls and particularly diverse Jurors in Tryalls for High Treason which were not Freeholders,

## Heading 11: Excessive Bail

And excessive Baile hath beene required of Persons committed in Criminall Cases to elude the Benefitt of the Lawes made for the Liberty of the Subjects.

## Heading 12: Fines

And excessive Fines have beene imposed.

## Heading 13: Punishments

And illegal and cruell Punishments inflicted.

## Heading 14: Grants of Fines, &c. before Conviction, &c

And severall Grants and Promises made of Fines and Forfeitures before any Conviction or Judgement against the Persons upon whome the same were to be levyed. All which are utterly directly contrary to the knowne Lawes and Statutes and Freedome of this Realme.

## Heading 15: Recital that the late King James II. had abdicated the Government, and that the Throne was vacant, and that the Prince of Orange had written Letters to the Lords and Commons for the choosing Representatives in Parliament

And whereas the said late King James the Second haveing Abdicated the Government and the Throne being thereby Vacant His Hignesse the Prince of Orange (whome it hath pleased Almighty God to make the glorious Instrument of Delivering this Kingdome from Popery and Arbitrary Power) did (by the Advice of the Lords Spirituall and Temporall and diverse principall Persons of the Commons) cause Letters to be written to the Lords Spirituall and Temporall being Protestants and other Letters to the severall Countyes Cityes Universities Burroughs and Cinque Ports for the Choosing of such Persons to represent them as were of right to be sent to Parlyament to meete and sitt at Westminster upon the two and twentyeth day of January in this Yeare one thousand six hundred eighty and eight in order to such an Establishment as that their Religion Lawes and Liberties might not againe be in danger of being Subverted, Upon which Letters Elections haveing beene accordingly made.

## Heading 16: The Subject's Rights

And thereupon the said Lords Spirituall and Temporall and Commons pursuant to their respective Letters and Elections being now assembled in a full and free Representative of this Nation takeing into their most serious Consideration the best meanes for attaining the Ends aforesaid Doe in the first place (as their Auncestors in like Case have usually done) for the Vindicating and Asserting their auntient Rights and Liberties, Declare

## Heading 17: Dispensing Power

That the pretended Power of Suspending of Laws or the Execution of Laws by Regall Authority without Consent of Parlyament is illegall.

## Heading 18: Late dispensing Power

That the pretended Power of Dispensing with Laws or the Execution of Laws by Regall Authoritie as it hath beene assumed and exercised of late is illegall.

## Heading 19: Ecclesiastical Courts illegal

That the Commission for erecting the late Court of Commissioners for Ecclesiasticall Causes and all other Commissions and Courts of like nature are Illegall and Pernicious.

## Heading 20: Levying Money

That levying Money for or to the Use of the Crowne by pretence of Prerogative without Grant of Parlyament for longer time or in other manner then the same is or shall be granted is Illegall.

## Heading 21: Right to petition

That it is the Right of the Subjects to petition the King and all Commitments and Prosecutions for such Petitioning are Illegall.

• Source of constitutional authority

• Head of state decree power  
• Head of state powers  
• Initiation of general legislation

• Head of state decree power  
• Head of state powers  
• Initiation of general legislation  
• Reference to country's history

• Head of state decree power  
• Head of state powers  
• Initiation of general legislation  
• Tax bills

• Right of petition



## Heading 22: Standing Army

That the raising or keeping a standing Army within the Kingdome in time of Peace unlesse it be with Consent of Parlyament is against Law.

## Heading 23: Subjects' Arms

That the Subjects which are Protestants may have Arms for their Defence suitable to their Conditions and as allowed by Law.

## Heading 24: Freedom of Election

That Election of Members of Parlyament ought to be free.

## Heading 25: Freedom of Speech

That the Freedom of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament.

## Heading 26: Excessive Bail

That excessive Baile ought not to be required nor excessive Fines imposed nor cruell and unusuall Punishments inflicted.

## Heading 27: Juries

That Jurors ought to be duely impannelled and returned.

## Heading 28: Grants of Forfeitures

That all Grants and Promises of Fines and Forfeitures of particular persons before Conviction are illegall and void.

## Heading 29: Frequent Parliaments

And that for Redresse of all Grievances and for the amending strengthening and preserveing of the Lawes Parlyaments ought to be held frequently.

## Heading 30: The said Rights claimed. Tender of the Crown. Regal Power exercised. Limitation of the Crown

• Restrictions on the armed forces

• Right to bear arms

• Immunity of legislators

• Prohibition of cruel treatment

• Political theorists/figures  
• Head of state selection  
• Head of state replacement  
• Head of state term length

And they doe Claime Demand and Insist upon all and singular the Premises as their undoubted Rights and Liberties and that noe Declarations Judgements Doeings or Proceedings to the Prejudice of the People in any of the said Premisses ought in any wise to be drawne hereafter into Consequence or Example. To which Demand of their Rights they are particularly encouraged by the Declaration of this Highnesse the Prince of Orange as being the onely meanes for obtaining a full Redresse and Remedy therein. Haveing therefore an intire Confidence That his said Highnesse the Prince of Orange will perfect the Deliverance soe farr advanced by him and will still preserve them from the Violation of their Rights which they have here asserted and from all other Attempts upon their Religion Rights and Liberties. The said Lords Spirituall and Temporall and Commons assembled at Westminster doe Resolve That William and Mary Prince and Princesse of Orange be and be declared King and Queene of England France and Ireland and the Dominions thereunto belonging to hold the Crowne and Royall Dignity of the said Kingdomes and Dominions to them the said Prince and Princesse dureing their Lives and the Life of the Survivour of them And that the sole and full Exercise of the Regall Power be onely in and executed by the said Prince of Orange in the Names of the said Prince and Princesse dureing their joynt Lives And after their Deceases the said Crowne and Royall Dignitie of the said Kingdoms and Dominions to be to the Heires of the Body of the said Princesse And for default of such Issue to the Princesse Anne of Denmarke and the Heires of her Body And for default of such Issue to the Heires of the Body of the said Prince of Orange. And the Lords Spirituall and Temporall and Commons doe pray the said Prince and Princesse to accept the same accordingly.

### Heading 31: New Oaths of Allegiance, &c

And that the Oathes hereafter mentioned be taken by all Persons of whome the Oathes of Allegiance and Supremacy might be required by Law instead of them And that the said Oathes of Allegiance and Supremacy be abrogated.

### Heading 32: Allegiance

I A B doe sincerely promise and swear That I will be faithfull and beare true Allegiance to their Majestyes King William and Queene Mary Soe helpe me God.

### Heading 33: Supremacy

I A B doe swear That I doe from my Heart Abhor, Detest and Abjure as Impious and Hereticall this damnable Doctrine and Position That Princes Excommunicated or Deprived by the Pope or any Authority of the See of Rome may be deposed or murdered by their Subjects or any other whatsoever. And I doe declare That noe Forreigne Prince Person Prelate, State or Potentate hath or ought to have any Jurisdiction Power Superiority Preeminence or Authoritie Ecclesiasticall or Spirituall within this Realme Soe helpe me God.

• Oaths to abide by constitution

• God or other deities  
• Oaths to abide by constitution

• God or other deities  
• Oaths to abide by constitution

- Political theorists/figures
- God or other deities
- Minimum age of head of state
- Head of state selection
- Eligibility for head of state
- Head of state replacement
- Structure of legislative chamber(s)
- Approval of general legislation
- Oaths to abide by constitution
- Official religion

**Heading 34: Acceptance of the Crown. The Two Houses to sit. Subjects' Liberties to be allowed, and Ministers hereafter to serve according to the same. William and Mary declared King and Queen. Limitation of the Crown. Papists debarred the Crown. Every King, &c. shall make the Declaration of 30 Car. II. If under 12 Years old, to be done after Attainment thereof. King's and Queen's Assent**

Upon which their said Majestyes did accept the Crowne and Royall Dignitie of the Kingdoms of England France and Ireland and the Dominions thereunto belonging according to the Resolution and Desire of the said Lords and Commons contained in the said Declaration. And thereupon their Majestyes were pleased That the said Lords Spirituall and Temporall and Commons being the two Houses of Parlyament should continue to sitt and with their Majesties Royall Concurrence make effectuall Provision for the Setlement of the Religion Lawes and Liberties of this Kingdome soe that the same for the future might not be in danger againe of being subverted, To which the said Lords Spirituall and Temporall and Commons did agree and proceede to act accordingly. Now in pursuance of the Premisses the said Lords Spirituall and Temporall and Commons in Parlyament assembled for the ratifying confirming and establishing the said Declaration and the Articles Clauses Matters and Things therein contained by the Force of a Law made in due Forme by Authority of Parlyament doe pray that it may be declared and enacted That all and singular the Rights and Liberties asserted and claimed in the said Declaration are the true auntient and indubitable Rights and Liberties of the People of this Kingdome and soe shall be esteemed allowed adjudged deemed and taken to be and that all and every the particulars aforesaid shall be firmly and strictly holden and observed as they are expressed in the said Declaration And all Officers and Ministers whatsoever shall serve their Majestyes and their Successors according to the same in all times to come. And the said Lords Spirituall and Temporall and Commons seriously considering how it hath pleased Almighty God in his marvellous Providence and mercifull Goodness to this Nation to provide and preserve their said Majestyes Royall Persons most happily to Raigne over us upon the Throne of their Auncestors for which they render unto him from the bottome of their Hearts their humblest Thanks and Praises doe truely firmly assuredly and in the Sincerity of their Hearts thinke and doe hereby recognize acknowledge and declare That King James the Second haveing abdicated the Government and their Majestyes haveing accepted the Crowne and Royall Dignity as aforesaid Their said Majestyes did become were are and of right ought to be by the Lawes of this Realme our Sovereigne Liege Lord and Lady King and Queene of England France and Ireland and the Dominions thereunto belonging in and to whose Princely Persons the Royall State Crowne and Dignity of the said Realmes with all Honours Stiles Titles Regalities Prerogatives Powers Jurisdictions and Authorities to the same belonging and appertaining are most fully rightfully and intirely invested and incorporated united and annexed And for preventing all Questions and Divisions in this Realme by reason of any pretended Titles to the Crowne and for preserveing a Certainty in the Succession thereof in and upon which the Unity Peace Tranquillity and Safety of this Nation doth under God wholly consist and depend The said Lords Spirituall and Temporall and Commons doe beseech their Majestyes That it may be enacted established and declared That the Crowne and Regall Government of the said Kingdoms and Dominions with all and singular the Premisses thereunto belonging and appertaining shall bee and continue to their said Majestyes and the Survivour of them dureing their Lives and the Life of the Survivour of them And that the entire perfect and full Exercise of the Regall Power and Government be onely in and executed by his Majestie in the Names of both their Majestyes dureing their joynt Lives And after their deceases the said Crowne and Premisses shall be and remaine to the Heires of the Body of her Majestie and for default of such Issue to her Royall Highnesse the Princess Anne of Denmarke and the Heires of her Body and for default of such Issue to the Heires of the Body of his said Majestie And thereunto the said Lords Spirituall and Temporall and Commons doe in the Name of all the People aforesaid most humbly and faithfully submitt themselves their Heires and Posterities for ever and doe faithfully promise That they will stand to maintaine and defend their said Majesties and alsoe the Limitation and Succession of the Crowne herein specified and contained to the utmost of their Powers with their Lives and Estates against all Persons whatsoever that shall attempt any thing to the contrary. And whereas it hath beene found by Experience that it is inconsistent with the Safety and Welfare of this Protestant Kingdome to be governed by a Popish Prince the said Lords Spirituall and Temporall

and Commons doe further pray that it may be enacted That all and every person and persons that is are or shall be reconciled to or shall hold Communion with the See or Church of Rome or shall professe the Popish Religion shall be excluded and be for ever uncapeable to inherit possesse or enjoy the Crowne and Government of this Realme and Ireland and the Dominions thereunto belonging or any part of the same or to have use or exercise any Regall Power Authoritie or Jurisdiction within the same And in all and every such Case or Cases the People of these Realmes shall be and are hereby absolved of their Allegiance And the said Crowne and Government shall from time to time descend to and be enjoyed by such person or persons being Protestants as should have inherited and enjoyed the same in case the said person or persons soe reconciled holding Communion or Professing as aforesaid were naturally dead And that every King and Queene of this Realme who at any time hereafter shall come to and succede in the Imperiall Crowne of this Kingdome shall on the first day of the meeting of the first Parlyament next after his or her coming to the Crowne sitting in his or her Throne in the House of Peeres in the presence of the Lords and Commons therein assembled or at his or her Coronation before such person or persons who shall administer the Coronation Oath to him or her at the time of his or her takeing the said Oath (which shall first happen) make subscribe and audibly repeate the Declaration mentioned in the Statute made in the thirtyeth yeare of the Raigne of King Charles the Second Entituled An Act for the more effectuall Preserveing the Kings Person and Government by disableing Papists from sitting in either House of Parlyament But if it shall happen that such King or Queene upon his or her Succession to the Crowne of this Realme shall be under the Age of twelve yeares then every such King or Queene shall make subscribe and audibly repeate the said Declaration at his or her Coronation or the first day of the meeting of the first Parlyament as aforesaid which shall first happen after such King or Queene shall have attained the said Age of twelve yeares. All which Their Majestyes are contented and pleased shall be declared enacted and established by authoritie of this present Parliament and shall stand remaine and be the Law of this Realme for ever And the same are by their said Majesties by and with the advice and consent of the Lords Spirituall and Temporall and Commons in Parlyament assembled and by the authoritie of the same declared enacted and established accordingly

## II. Non obstantes made void

Noe Dispensation by Non obstante of or to any Statute or any part thereof shall be allowed but the same shall be held void and of noe effect Except a Dispensation be allowed of in such Statute

## III. [Repealed]

# Act of Settlement 1701

## Preamble

An Act for the further Limitation of the Crown and better securing the Rights and Liberties of the Subject

**I. Recital of Stat. 1 W. & M. Sess. 2. c. 2. §2. and that the late Queen and Duke of Gloucester are dead; and that His Majesty had recommended from the Throne a further Provision for the Succession of the Crown in the Protestant Line. The Princess Sophia, Electress and Duchess Dowager of Hanover, Daughter of the late Queen of Bohemia, Daughter of King James the First, to inherit after the King and the Princess Anne, in Default of Issue of the said Princess and His Majesty, respectively and the Heirs of her Body, being Protestants**

Whereasin the First Year of the Reign of Your Majesty and of our late most gracious Sovereign Lady Queen Mary (of blessed Memory) An Act of Parliament was made intituled [An Act for declaring the Rights and Liberties of the Subject and for settling the Succession of the Crown] wherein it was (amongst other things) enacted established and declared That the Crown and Regall Government of the Kingdoms of England France and Ireland and the Dominions thereunto belonging should be and continue to Your Majestie and the said late Queen during the joynt Lives of Your Majesty and the said Queen and to the Survivor And that after the Decease of Your Majesty and of the said Queen the said Crown and Regall Government should be and remain to the Heirs of the Body of the said late Queen And for Default of such Issue to Her Royall Highness the Princess Ann of Denmark and the Heirs of Her Body And for Default of such Issue to the Heirs of the Body of Your Majesty And it was thereby further enacted That all and every Person and Persons that then were or afterwards should be reconciled to or shall hold Communion with the See or Church of Rome or should professe the Popish Religion or marry a Papist should be excluded and are by that Act made for ever incapable to inherit possess or enjoy the Crown and Government of this Realm and Ireland and the Dominions thereunto belonging or any part of the same or to have use or exercise any regall Power Authority or Jurisdiction within the same And in all and every such Case and Cases the People of these Realms shall be and are thereby absolved of their Allegiance And that the said Crown and Government shall from time to time descend to and be enjoyed by such Person or Persons being Protestants as should have inherited and enjoyed the same in case the said Person or Persons so reconciled holding Communion professing or marrying as aforesaid were naturally dead After the making of which Statute and the Settlement therein contained Your Majesties good Subjects who were restored to the full and free Possession and Enjoyment of their Religion Rights and Liberties by the Providence of God giving Success to Your Majesties just Undertakings and unwearied Endeavours for that Purpose had no greater temporall Felicity to hope or wish for then to see a Royall Progeny descending from Your Majesty to whom (under God) they owe their Tranquility and whose Ancestors have for many Years been principall Assertors of the reformed Religion and the Liberties of Europe and from our said most gracious Sovereign Lady whose Memory will always be precious to the Subjects of these Realms And it having since pleased Almighty God to take away our said Sovereign Lady and also the most hopefull Prince William Duke of Gloucester (the only surviving Issue of Her Royall Highness the Princess Ann of Denmark) to the unspeakable Grief and Sorrow of Your Majesty and Your said good Subjects who under such Losses being sensibly put in mind that it standeth wholly in the Pleasure of Almighty God to prolong the Lives of Your Majesty and of Her Royall Highness and to grant to Your Majesty or to Her Royall Highness such Issue as may be inheritable to the Crown and Regall Government aforesaid by the respective Limitations in the said recited Act contained doe constantly implore the Divine Mercy for those Blessings And Your Majesties said Subjects having Daily Experience

of Your Royall Care and Concern for the present and future Welfare of these Kingdoms and particularly recommending from Your Throne a further Provision to be made for the Succession of the Crown in the Protestant Line for the Happiness of the Nation and the Security of our Religion And it being absolutely necessary for the Safety Peace and Quiet of this Realm to obviate all Doubts and Contentions in the same by reason of any pretended Titles to the Crown and to maintain a Certainty in the Succession thereof to which Your Subjects may safely have Recourse for their Protection in case the Limitations in the said recited Act should determine Therefore for a further Provision of the Succession of the Crown in the Protestant Line We Your Majesties most dutifull and Loyall Subjects the Lords Spirituall and Temporall and Commons in this present Parliament assembled do beseech Your Majesty that it may be enacted and declared and be it enacted and declared by the Kings most Excellent Majesty by and with the Advice and Consent of the Lords Spirituall and Temporall and Comons in this present Parliament assembled and by the Authority of the same That the most Excellent Princess Sophia Electress and Dutchess Dowager of Hannover Daughter of the most Excellent Princess Elizabeth late Queen of Bohemia Daughter of our late Sovereign Lord King James the First of happy Memory be and is hereby declared to be the next in Succession in the Protestant Line to the Imperiall Crown and Dignity of the said Realms of England France and Ireland with the Dominions and Territories thereunto belonging after His Majesty and the Princess Ann of Denmark and in Default of Issue of the said Princess Ann and of His Majesty respectively and that from and after the Deceases of His said Majesty our now Sovereign Lord and of Her Royall Highness the Princess Ann of Denmark and for Default of Issue of the said Princess Ann and of His Majesty respectively the Crown and Regall Government of the said Kingdoms of England France and Ireland and of the Dominions thereunto belonging with the Royall State and Dignity of the said Realms and all Honours Stiles Titles Regalities Prerogatives Powers Jurisdictions and Authorities to the same belonging and appertaining shall be remain and continue to the said most Excellent Princess Sophia and the Heirs of Her Body being Protestants And thereunto the said Lords Spirituall and Temporall and Commons shall and will in the Name of all the People of this Realm most humbly and faithfully submitt themselves their Heirs and Posterities and do faithfully promise That after the Deceases of His Majesty and Her Royall Highness and the failure of the Heirs of their respective Bodies to stand to maintain and defend the said Princess Sophia and the Heirs of Her Body being Protestants according to the Limitation and Succession of the Crown in this Act specified and contained to the utmost of their Powers with their Lives and Estates against all Persons whatsoever that shall attempt any thing to the contrary.

## **II. The Persons inheritable by this Act, holding Communion with the Church of Rome, incapacitated as by the former Act; to take the Oath at their Coronation, according to Stat. 1 W. & M. c. 6**

Provided always and it is hereby enacted That all and every Person and Persons who shall or may take or inherit the said Crown by vertue of the Limitation of this present Act and is are or shall be reconciled to or shall hold Communion with the See or Church of Rome or shall profess the Popish Religion or shall marry a Papist shall be subject to such Incapacities as in such Case or Cases are by the said recited Act provided enacted and established And that every King and Queen of this Realm who shall come to and succeed in the Imperiall Crown of this Kingdom by vertue of this Act shall have the Coronation Oath administred to him her or them at their respective Coronations according to the Act of Parliament made in the First Year of the Reign of His Majesty and the said late Queen Mary intituled An Act for establishing the Coronation Oath and shall make subscribe and repeat the Declaration in the Act first above recited mentioned or referred to in the Manner

- Head of state removal
- Oaths to abide by constitution

and Form thereby prescribed

### III. Further Provisions for securing the Religion, Laws, and Liberties of these Realms

And whereas it is requisite and necessary that some further Provision be made for securing our Religion Laws and Liberties from and after the Death of His Majesty and the Princess Ann of Denmark and in default of Issue of the Body of the said Princess and of His Majesty respectively Be it enacted by the Kings most Excellent Majesty by and with the Advice and Consent of the Lords Spirituall and Temporall and Commons in Parliament assembled and by the Authority of the same

That whosoever shall hereafter come to the Possession of this Crown shall joyn in Communion with the Church of England as by Law established

That in case the Crown and Imperiall Dignity of this Realm shall hereafter come to any Person not being a Native of this Kingdom of England this Nation be not obliged to ingage in any Warr for the Defence of any Dominions or Territories which do not belong to the Crown of England without the Consent of Parliament.

That after the said Limitation shall take Effect as aforesaid no Person born out of the Kingdoms of England Scotland or Ireland or the Dominions thereunto belonging (although he be made a Denizen) (except such as are born of English Parents) shall be capable to be of the Privy Councill or a Member of either House of Parliament or to enjoy any Office or Place of Trust either Civill or Military or to have any Grant of Lands Tenements or Hereditaments from the Crown to himself or to any other or others in Trust for him [This paragraph has been repealed so far as it relates to British subjects and citizens of Eire]

That no Pardon under the Great Seal of England be pleadable to an Impeachment by the Commons in Parliament.

### IV. The Laws and Statutes of the Realm confirmed

And whereas the Laws of England are the Birthright of the People thereof and all the Kings and Queens who shall ascend the Throne of this Realm ought to administer the Government of the same according to the said Laws and all their Officers and Ministers ought to serve them respectively according to the same The said Lords Spirituall and Temporall and Commons do therefore further humbly pray That all the Laws and Statutes of this Realm for securing the established Religion and the Rights and Liberties of the People thereof and all other Laws and Statutes of the same now in Force may be ratified and confirmed And the same are by His Majesty by and with the Advice and Consent of the said Lords Spirituall and Temporall and Commons and by Authority of the same ratified and confirmed accordingly.

## Union with Scotland Act 1706

An Act for an Union of the Two Kingdoms of England and Scotland  
Most gracious Sovereign

- Source of constitutional authority
- Eligibility for head of state
- Motives for writing constitution
- Official religion

- Eligibility for head of state
- Official religion

- Colonies

- Eligibility for first chamber
- Restrictions on the armed forces
- Eligibility for second chamber

- Power to pardon

- Motives for writing constitution



## **Preamble: Recital of Articles of Union, dated 22d July, 5 Ann.; and of an Act of Parliament passed in Scotland, 16th January, 5 Ann**

Whereas Articles of Union were agreed on the Twenty Second day of July in the Fifth year of Your Majesties reign by the Commissioners nominated on behalf of the Kingdom of England under Your Majesties Great Seal of England bearing date at Westminster the Tenth day of April then last past in pursuance of an Act of Parliament made in England in the Third year of Your Majesties reign and the Commissioners nominated on the behalf of the Kingdom of Scotland under Your Majesties Great Seal of Scotland bearing date the Twenty Seventh day of February in the Fourth year of Your Majesties Reign in pursuance of the Fourth Act of the Third Session of the present Parliament of Scotland to treat of and concerning an Union of the said Kingdoms

And Whereas an Act hath passed in the Parliament of Scotland at Edinburgh the Sixteenth day of January in the Fifth year of Your Majesties reign wherein 'tis mentioned that the Estates of Parliament considering the said Articles of Union of the two Kingdoms had agreed to and approved of the said Articles of Union with some Additions and Explanations And that Your Majesty with Advice and Consent of the Estates of Parliament for establishing the Protestant Religion and Presbyterian Church Government within the Kingdom of Scotland had passed in the same Session of Parliament an Act intituled Act for securing of the Protestant Religion and Presbyterian Church Government which by the Tenor thereof was appointed to be inserted in any Act ratifying the Treaty and expressly declared to be a fundamental and essential Condition of the said Treaty or Union in all times coming the Tenor of which Articles as ratified and approved of with Additions and Explanations by the said Act of Parliament of Scotland follows

### **Article I: The Kingdoms United; Ensigns Armorial**

That the two Kingdoms of England and Scotland shall upon the First day of May which shall be in the year One thousand seven hundred and seven and for ever after be united into one Kingdom by the name of Great Britain And that the Ensigns Armorial of the said United Kingdom be such as Her Majesty shall appoint and the Crosses of St. George and St. Andrew be conjoynd in such manner as Her Majesty shall think fit and used in all Flags Banners Standards and Ensigns both at Sea and Land.

## Article II: Succession to the Monarchy

That the Succession to the Monarchy of the United Kingdom of Great Britain and of the Dominions thereto belonging after Her most Sacred Majesty and in default of Issue of Her Majesty be remain and continue to the most Excellent Princess Sophia Electoress and Dutchess Dowager of Hanover and the Heirs of her body being Protestants upon whom the Crown of England is settled by an Act of Parliament made in England in the Twelfth year of the reign of His late Majesty King William the Third intituled an Act for the further Limitation of the Crown and better securing the rights and Liberities of the Subject And that all Papists and persons marrying Papists shall be excluded from and for ever incapable to inherit possess or enjoy the Imperial Crown of Great Britain and the Dominions thereunto belonging or any part thereof and in every such Case the Crown and Government shall from time to time descend to and be enjoyed by such person being a Protestant as should have inherited and enjoyed the same in case such Papist or person marrying a Papist was naturally dead according to the Provision for the descent of the Crown of England made by another Act of Parliament in England in the first year of the reign of Their late Majesties King William and Queen Mary intituled an Act declaring the Rights and Liberties of the Subject and settling the Succession of the Crown.

## Article III: Parliament

That the United Kingdom of Great Britain be represented by one and the same Parliament to be stiled The Parliament of Great Britain.

## Article IIII: Trade and Navigation and other Rights

That all the Subjects of the United Kingdom of Great Britain shall from and after the Union have full freedom and Intercourse of Trade and Navigation to and from any port or place within the said United Kingdom and the Dominions and Plantations thereunto belonging And that there be a Communication of all other Rights Privileges and Advantages which do or may belong to the Subjects of either Kingdom except where it is otherwise expressly agreed in these Articles.

## Article V

[Repealed]

## Article VI: Regulations of Trade, Duties, &c

That all parts of the United Kingdom for ever from and after the Union shall have the same Allowances Encouragements and Drawbacks and be under the same prohibitions restrictions and regulations of Trade and liable to the same Customs and Duties on Import and Export And that the Allowances Encouragements and Drawbacks prohibitions restrictions and regulations of Trade and the Customs and Duties on Import and Export settled in England when the Union commences shall from and after the Union take place throughout the whole United Kingdom

## Article VII: Excise

That all parts of the United Kingdom be for ever from and after the Union liable to the same Excise upon all excisable Liquors

## Article VIII-XV

[Repealed]

## Article XVI: Coin

That from and after the Union the Coin shall be of the same Standard and value throughout the United Kingdom as now in England

## Article XVII

[Repealed]

## Article XVIII: Laws concerning public rights. Private rights

That the Laws concerning regulation of Trade Customs and such Excises to which Scotland is by virtue of this Treaty to be liable be the same in Scotland from and after the Union as in England and that all other Laws in use within the Kingdom of Scotland do after the Union and notwithstanding thereof remain in the same force as before (except such as are contrary to or inconsistent with this Treaty) but alterable by the Parliament of Great Britain with this difference betwixt the Laws concerning publick right Policy and Civil Government and those which concern private right that the Laws which concern publick right Policy and Civil Government may be made the same throughout the whole United Kingdom But that no alteration be made in Laws which concern private right Except for evident Utility of the Subjects within Scotland

- National vs subnational laws
- Subsidiary unit government

## **Article XIX: Court of Session. Writers to the Signet admitted Lords of Session. Court of Justiciary. Other Courts. Causes in Scotland not cognizable in Courts in Westminster Hall**

That the Court of Session or Colledge of Justice do after the Union and notwithstanding thereof remain in all time coming within Scotland as it is now constituted by the Laws of that Kingdom and with the same authority and privileges as before the Union Subject nevertheless to such regulations for the better Administration of Justice as shall be made by the Parliament of Great Britain and that hereafter none shall be named by Her Majesty or Her Royal Successors to be ordinary Lords of Session but such who have served in the Colledge of Justice as Advocates or Principal Clerks of Session for the Space of Five years or as Writers to the Signet for the Space of ten years with this provision that noWriter to the Signet be capable to be admitted a Lord of the Session unless he undergo a private and publick Tryal on the Civil Law before the Faculty of Advocates and be found by them qualified for the said Office two years before he be named to be a Lord of the Session yet so as the Qualifications made or to be made for capacitating persons to be named ordinary Lords of Session may be altered by the Parliament of Great Britain And that the Court of Justiciary do also after the Union and notwithstanding thereof remain in all time coming within Scotland as it is now constituted by the Laws of that Kingdom and with the same authority and privileges as before the Union Subject nevertheless to such regulations as shall be made by the Parliament of Great Britain and without prejudice of other rights of Justiciary And that the heretable rights of Admiralty and Vice Admiralties in Scotland be reserved to the respective proprietors as rights of property Subject nevertheless as to the manner of exercising such heretable rights to such regulations and alterations as shall be thought proper to be made by the Parliament of Great Britain And that all other Courts now in being within the Kingdom of Scotland do remain but Subject to alterations by the Parliament of Great Britain And that all inferior Courts within the said limits do remain Subordinate as they are now to the supreme Courts of Justice within the same in all time coming And that no Causes in Scotland be cognoscible by the Courts of Chancery Queen's Bench Common Pleas or any other Court in Westminster Hall and that the said Courts or any other of the like nature after the Union shall have no Power to cognosce review or alter the Acts or Sentences of the Judicatures within Scotland or stop the Execution of the same

## **Article XX: Heritable Offices, &c**

That all Heretable Offices Superiorities Heretable Jurisdictions Offices for Life and Jurisdictions for Life be reserved to the owners thereof as Rights of Property in the same manner as they are now enjoyed by the Laws of Scotland notwithstanding this Treaty.

## **Article XXI: Royal Burghs**

That the Rights and Privileges of the Royal Burghs in Scotland as they now are do remain entire after the Union and notwithstanding thereof.

## **Article XXII**

[Repealed]

## Article XXIII: Privileges of the Sixteen Peers of Scotland

That all Peers of Scotland and their Successors to their Honours and Dignities shall from and after the Union be Peers of Great Britain and have rank and precedency next and immediately after the Peers of the like Orders and Degrees in England at the time of the Union and before all Peers of Great Britain of the like Orders and Degrees who may be created after the Union and shall enjoy all privileges of Peers as fully as the Peers of England do now or as they or any other Peers of Great Britain may hereafter enjoy the same

## Article XXIV: Heraldry; Great Seal; Seal kept in Scotland; Privy Seal, &c. in Scotland; Regalia

That from and after the Union there be one Great Seal for the United Kingdom of Great Britain which shall be different from the Great Seal now used in either Kingdom and that the Quartering the Arms and the rank and precedency of the Lyon King of Arms of the Kingdom of Scotland as may best suit the Union be left to Her Majesty And that in the mean time the Great Seal of England be used as the Great Seal of the United Kingdom and that the Great Seal of the United Kingdom be used for sealing Writts to elect and summon the Parliament of Great Britain and for sealing all Treaties with foreign Princes and States and all Publick Acts Instruments and Orders of State which concern the whole United Kingdom and in all other matters relating to England as the Great Seal of England is now used And that a Seal in Scotland after the Union be always kept and made use of in all things relating to private rights or Grants which have usually passed the Great Seal of Scotland and which only concern Offices Grants Commissions and private rights within that Kingdom and that until such Seal shall be appointed by Her Majesty the present Great Seal of Scotland shall be used for such purposes And that the Privy Seal Signet Casset Signet of the Justiciary Court Quarter Seal and Seals of Courts now used in Scotland be continued But that the said Seals be altered and adapted to the State of the Union as Her Majesty shall think fit And the said Seals and all of them and the Keepers of them shall be subject to such regulations as the Parliament of Great Britain shall hereafter make And that the Crown Scepter and Sword of State the Records of Parliament and all other Records Rolls and Registers whatsoever both publick and private general and particular and Warrants thereof continue to be kept as they are within that part of the United Kingdom now called Scotland and that they shall so remain in all time coming notwithstanding the Union

## Article XXV

### I. Laws inconsistent with the Articles, void

That all Laws and Statutes in either Kingdom so far as they are contrary to or inconsistent with the Terms of these Articles or any of them shall from and after the Union cease and become void and shall be so declared to be by the respective Parliaments of the said Kingdoms. As by the said Articles of Union ratified and approved by the said Act of Parliament of Scotland relation thereunto being had may appear

**II. Acts of Scotland herein mentioned, confirmed; Universities and colleges of Saint Andrew, Glasgow, Aberdeen and Edinburgh, to continue; Subjects not liable to Oath, Test, or Subscription, inconsistent with the Presbyterian Church Government; Successor to swear to maintain the said Settlement of Religion; This Act to be held a fundamental Condition of Union, and to be inserted in any Act of Parliament for concluding the said Union; This Ratification of the said Articles not binding until they are ratified by Parliament of England, &c.; Laws contrary to Articles void.**

And the Tenor of the aforesaid Act for securing the Protestant Religion and Presbyterian Church Government within the Kingdom of Scotland is as follows.

Our Sovereign Lady and the Estates of Parliament considering that by the late Act of Parliament for a Treaty with England for an Union of both Kingdoms It is provided that the Commissioners for that Treaty should not treat of or concerning any Alteration of the Worship Discipline and Government of the Church of this Kingdom as now by Law established which Treaty being now reported to the Parliament and it being reasonable and necessary that the true Protestant Religion as presently professed within this Kingdom with the Worship Discipline and Government of this Church should be effectually and unalterably secured Therefore Her Majesty with Advice and Consent of the said Estates of Parliament doth hereby establish and confirm the said true Protestant Religion and the Worship Discipline and Government of this Church to continue without any Alteration to the People of this Land in all succeeding Generations And more especially Her Majesty with Advice and Consent aforesaid ratifies approves and for ever confirms the Fifth Act of the first Parliament of King William and Queen Mary intituled Act ratifying the Confession of Faith and settling Presbyterian Church Government with all other Acts of Parliament relating thereto in Prosecution of the Declaration of the Estates of this Kingdom, containing the Claim of Right bearing date the Eleventh of April One thousand six hundred and eighty nine And Her Majesty with Advice and Consent aforesaid expressly provides and declares that the foresaid true Protestant Religion contained in the above mentioned Confession of Faith with the Form and Purity of Worship presently in use within this Church and its Presbyterian Church Government and Discipline (that is to say) the Government of the Church by Kirk Sessions Presbyteries Provincial Synods and General Assemblies all established by the foresaid Acts of Parliament pursuant to the Claim of Right shall remain and continue unalterable And that the said Presbyterian Government shall be the only Government of the Church within the Kingdom of Scotland

And further for the Greater Security of the foresaid Protestant Religion and of the Worship Discipline and Government of this Church as above established Her Majesty with Advice and Consent foresaid statutes and ordains that the Universities and Colledges of Saint Andrew's Glasgow Aberdeen and Edinburgh as now established by Law shall continue within this Kingdom for ever

And further Her Majesty with Advice aforesaid expressly declares and statutes that none of the Subjects of this Kingdom shall be liable to but all and every one of them for ever free of any Oath Test or Subscription within this Kingdom contrary to or inconsistent with the foresaid true Protestant Religion and Presbyterian Church Government Worship and Discipline as above established and that the same within the Bounds of this Church and Kingdom shall never be imposed upon or required of

- Official religion
- Unamendable provisions

them in any sort And lastly that after the decease of Her present Majesty (whom God long preserve) the Sovereign succeeding to Her in the Royal Government of the Kingdom of Great Britain shall in all time coming at His or Her Accession to the Crown swear and subscribe that they shall inviolably maintain and preserve the foresaid Settlement of the true Protestant Religion with the Government Worship Discipline right and Privileges of this Church as above established by the Laws of this Kingdom in Prosecution of the Claim of Right

And it is hereby statute and ordained that this Act of Parliament with the Establishment therein contained shall be held and observed in all time coming as a Fundamental and Essential Condition of any Treaty or Union to be concluded betwixt the two Kingdoms without any Alteration thereof or Derogation thereto in any sort for ever As also that this Act of Parliament and Settlement therein contained shall be insert and repeated in any Act of Parliament that shall pass for agreeing and concluding the foresaid Treaty or Union betwixt the two Kingdoms and that the same shall be therein expressly declared to be a Fundamental and Essential Condition of the said Treaty or Union in all time coming which Articles of Union and Act immediately above written Her Majesty with Advice and Consent aforesaid statutes enacts and ordains to be and continue in all time coming the Sure and perpetual Foundation of a compleat and entire Union of the two Kingdoms of Scotland and England under the express Condition and provision that this approbation and ratification of the foresaid Articles and Act shall be no ways binding on this Kingdom until the said Articles and Act be ratified approved and confirmed by Her Majesty with and by the Authority of the Parliament of England as they are now agreed to approved and confirmed by Her Majesty with and by the Authority of the Parliament of Scotland declaring nevertheless that the Parliament of England may provide for the Security of the Church of England as they think expedient to take place within the Bounds of the said Kingdom of England and not derogating from the Security above provided for establishing of the Church of Scotland within the Bounds of this Kingdom As also the said Parliament of England may extend the Additions and other Provisions contained in the Articles of Union as above insert in favours of the Subjects of Scotland to and in favours of the Subjects of England which shall not suspend or derogate from the force and effect of this present Ratification but shall be understood as herein included without the necessity of any new ratification in the Parliament of Scotland

And lastly Her Majesty enacts and declares that all Laws and Statutes in this Kingdom so far they are contrary to or inconsistent with the Terms of these Articles as above mentioned shall from and after the Union cease and become void.

### III. Cap. 8 ante

And Whereas an Act hath passed in this present Session of Parliament intituled An Act for securing the Church of England as by Law established the Tenor whereof follows

Whereas by an Act made in the Session of Parliament held in the third and fourth year of Her Majesties reign whereby Her Majesty was impowered to appoint Commissioners under the Great Seal of England to treat with Commissioners to be authorized by the Parliament of Scotland concerning an Union of the Kingdoms of England and Scotland It is Provided and enacted that the Commissioners to be named in pursuance of the said Act should not treat of or concerning any Alteration of the Liturgy Rites Ceremonies Discipline or Government of the Church as by Law established within this Realm And whereas certain Commissioners appointed by Her Majesty in pursuance of the said Act and also other Commissioners nominated by Her Majesty by the Authority of the Parliament of Scotland have met and agreed upon a Treaty of Union of the said Kingdoms which Treaty is now under the Consideration of this present Parliament And whereas the said Treaty (with some Alterations therein made) is ratified and approved by Act of Parliament in Scotland

and the said Act of Ratification is by Her Majesties Royal Command laid before the Parliament of this Kingdom And whereas it is reasonable and necessary that the true Protestant Religion Professed and established by Law in the Church of England and the Doctrine Worship Discipline and Government thereof should be effectually and unalterably secured Be it enacted by the Queens most Excellent Majesty by and with the Advice and Consent of the Lords Spiritual and Temporal and the Commons in this present Parliament assembled and by Authority of the same That an Act made in the thirteenth year of the reign of the late King Charles the Second intituled an Act for the Uniformity of the publick Prayers and Administration of Sacraments and other rites and ceremonies and for establishing the form of making ordaining and consecrating Bishops Priests and Deacons in the Church of England (other than such Clauses in the said Acts or either of them as have been repealed or altered by any subsequent Act or Acts of Parliament) and all and singular other Acts of Parliament now in force for the Establishment and Preservation of the Church of England and the Doctrine Worship Discipline and Government thereof shall remain and be in full force for ever

• Oaths to abide by constitution

And be it further enacted by the Authority aforesaid That after the Demise of Her Majesty (whom God long preserve) the Sovereign next succeeding to Her Majesty in the Royal Government of the Kingdom of Great Britain and so for ever hereafter every King or Queen succeeding and coming to the Royal Government of the Kingdom of Great Britain at His or Her Coronation shall in the presence of all persons who shall be attending assisting or otherwise then and there present take and subscribe an Oath to maintain and preserve inviolably the said Settlement of the Church of England and the Doctrine Worship Discipline and Government thereof as by Law established within the Kingdoms of England and Ireland the Dominion of Wales and Town of Berwick upon Tweed and the Territories thereunto belonging.

And be it further enacted by the Authority aforesaid That this Act and all and every the matters and things therein contained be and shall for ever be holden and adjudged to be a Fundamental and Essential part of any Treaty of Union to be concluded between the said two Kingdoms and also that this Act shall be inserted in express Terms in any Act of Parliament which shall be made for settling and ratifying any such Treaty of Union and shall be therein declared to be an Essential and Fundamental part thereof.

• Source of constitutional authority  
• Official religion  
• Unamendable provisions

## **IV. The said Articles and Act of Parliament of Scotland confirmed**

May It therefore please Your most Excellent Majesty that it may be enacted and be it enacted by the Queen's most Excellent Majesty by and with the Advice and Consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by Authority of the same That all and every the said Articles of Union as ratified and approved by the said Act of Parliament of Scotland as aforesaid and herein before particularly mentioned and inserted and also the said Act of Parliament of Scotland for establishing the Protestant Religion and Presbyterian Church Government within that Kingdom intituled Act for Securing the Protestant Religion and Presbyterian Church Government and every Clause matter and thing in the said Articles and Act contained shall be and the said Articles and Act are hereby for ever ratified approved and confirmed.



## **V. Cap. 8 ante, and the said Act of Parliament of Scotland to be observed as fundamental Conditions of the said Union; and the said Articles and Acts of Parliament to continue the Union**

And it is hereby further enacted by the Authority aforesaid That the said Act passed in this present Session of Parliament intituled An Act for securing the Church of England as by Law established and all and every the matters and things therein contained And also the said Act of Parliament of Scotland intituled Act for securing the Protestant Religion and Presbyterian Church Government with the Establishment in the said Act contained be and shall for ever be held and adjudged to be and observed as Fundamental and Essential Conditions of the said Union And shall in all times coming be taken to be and are hereby declared to be essential and fundamental parts of the said Articles and Union And the said Articles of Union so as aforesaid ratified approved and confirmed by Act of Parliament of Scotland and by this present Act And the said Act passed in this present Session of Parliament intituled an Act for securing the Church of England as by Law established And also the said Act passed in the Parliament of Scotland intituled Act for securing the Protestant Religion and Presbyterian Church Government are hereby enacted and ordained to be and continue in all times coming the complete and intire Union of the two Kingdoms of England and Scotland

## **VI. Recital of Act of Parliament of Scotland for settling Election of the Sixteen Peers and Forty-five Members for Scotland**

And whereas since the passing the said Act in the Parliament of Scotland for ratifying the said Articles of Union one other Act intituled Act settling the manner of electing the Sixteen Peers and Forty Five Members to represent Scotland in the Parliament of Great Britain hath likewise passed in the said Parliament of Scotland at Edinburgh the Fifth day of February One thousand seven hundred and seven the Tenor whereof follows

- Official religion
- Unamendable provisions

- First chamber selection
- Minimum age for second chamber
- Second chamber selection

Our Sovereign Lady considering that by the Twenty Second Article of the Treaty of Union as the same is ratified by an Act passed in this Session of Parliament upon the Sixteenth of January last It is provided That by virtue of the said Treaty of the Peers of Scotland at the time of the Union Sixteen shall be the number to sit and vote in the House of Lords and Forty Five the number of the Representatives of Scotland in the House of Commons of the Parliament of Great Britain and that the said Sixteen Peers and Forty Five Members in the House of Commons be named and chosen in such manner as by a subsequent Act in this present Session of Parliament in Scotland should be settled which Act is thereby declared to be as valid as if it were a part of and ingrossed in the said Treaty Therefore Her Majesty with Advice and Consent of the Estates of Parliament statutes enacts and ordains that the said Sixteen Peers who shall have right to sit in the House of Peers in the Parliament of Great Britain on the part of Scotland by virtue of this Treaty shall be named by the said Peers of Scotland whom they represent their Heirs or Successors to their Dignities and Honours out of their own number and that by open Election and Plurality of Voices of the Peers present and of the Proxies for such as shall be absent the said Proxies being Peers and producing a Mandate in Writing duly signed before Witnesses and both the Constituent and Proxy being qualified according to Law declaring also that such Peers as are absent being qualified as aforesaid may send to all such meetings Lists of the Peers whom they judge fittest validly signed by the said absent Peers which shall be reckoned in the same manner as if the parties had been present and given in the said List And in case of the Death or legal incapacity of any of the said Sixteen Peers that the aforesaid Peers of Scotland shall nominate another of their own Number in place of the said Peer or Peers in manner before and after mentioned It is always hereby expressly provided and declared that none shall be capable to elect or be elected for any of the said Estates but such as are twenty one years of Age complete

## VII. The said Act declared valid as if it had been Part of the said Articles of Union

As by the said Act passed in Scotland for settling the manner of electing the Sixteen Peers and Forty Five Members to represent Scotland in the Parliament of Great Britain may appear

Be it therefore further enacted and declared by the Authority aforesaid That the said last mentioned Act Passed in Scotland for settling the manner of electing the Sixteen Peers and Forty Five Members to represent Scotland in the Parliament of Great Britain as aforesaid shall be and the same is hereby declared to be as valid as if the same had been part of and engrossed in the said Articles of Union ratified and approved by the said Act of Parliament of Scotland and by this Act as aforesaid.

## Union with Ireland Act 1800

An Act for the Union of Great Britain and Ireland.

- First chamber selection
- Minimum age for second chamber
- Second chamber selection

- Motives for writing constitution

## Preamble

Whereas in pursuance of his Majesty's most gracious recommendation to the two Houses of Parliament in Great Britain and Ireland respectively, to consider of such measures as might best tend to strengthen and consolidate the connection between the two kingdoms, the two Houses of the Parliament of Great Britain and the two Houses of the Parliament of Ireland have severally agreed and resolved, that, in order to promote and secure the essential interests of Great Britain and Ireland, and to consolidate the strength, power and resources of the British Empire, it will be advisable to concur in such measures as may best tend to unite the two kingdoms of Great Britain and Ireland into one kingdom, in such manner, and on such terms and conditions, as may be established by the Acts of the respective Parliaments of Great Britain and Ireland:

### Part 1: The Parliaments of England and Ireland have agreed upon the articles following

And whereas, in furtherance of the said resolution, both Houses of the said two Parliaments respectively have likewise agreed upon certain Articles for effectuating and establishing the said purposes, in the tenor following:

#### **Article First: That Great Britain and Ireland shall upon Jan. 1, 1801, be united into one kingdom; and that the titles appertaining to the crown, &c. shall be such as his Majesty shall be pleased to appoint**

That it be the First Article of the Union of the kingdoms of Great Britain and Ireland, that the said kingdoms of Great Britain and Ireland shall, upon the first day of January which shall be in the year of our Lord one thousand eight hundred and one, and for ever after, be united into one kingdom, by the name of the United Kingdom of Great Britain and Ireland, and that the royal stile and titles appertaining to the imperial crown of the said United Kingdom and its dependencies, and also the ensigns, armorial flags and banners thereof, shall be such as his Majesty, by his royal proclamation under the Great Seal of the United Kingdom, shall be pleased to appoint.

#### **Article Second: That the succession to the crown shall continue limited and settled as at present**

That it be the Second Article of Union, that the succession to the imperial crown of the said United Kingdom, and of the dominions thereunto belonging, shall continue limited and settled in the same manner as the succession to the imperial crown of the said kingdoms of Great Britain and Ireland now stands limited and settled, according to the existing laws and to the terms of union between England and Scotland.

#### **Article Third: That the United Kingdom be represented in one Parliament**

That it be the Third Article of Union, that the said United Kingdom be represented in one and the same Parliament, to be stiled the Parliament of the United Kingdom of Great Britain and Ireland.

## Article Fourth

### **1. That such Act as shall be passed in Ireland to regulate the mode of summoning and returning the lords and commoners to serve in the united Parliament of the United Kingdom, shall be considered as part of the treaty of union**

That such Act as shall be passed in the Parliament of Ireland previous to the union, to regulate the mode by which the lords spiritual and temporal and the commons, to serve in the Parliament of the United Kingdom on the part of Ireland, shall be summoned and returned to the said Parliament, shall be considered as forming part of the treaty of union, and shall be incorporated in the Acts of the respective Parliaments by which the said union shall be ratified and established:

### **2. That any peer of Ireland may be elected to serve in the House of Commons of the United Kingdom, unless previously elected to sit in the House of Lords, but shall not be entitled to the privilege of peerage, etc**

That any person holding any peerage of Ireland now subsisting, or hereafter to be created, shall not thereby be disqualified from being elected to serve, if he shall so think fit, or from serving or continuing to serve, if he shall so think fit, for any county, city or borough, in the House of Commons of the United Kingdom, but that so long as such peer of Ireland shall so continue to be a member of the House of Commons, he shall not be entitled to the privilege of peerage:

### **3. His Majesty may create peers, and make promotions in the peerage of Ireland after the union, under certain regulations**

That it shall be lawful for his Majesty, his heirs and successors, to create peers of Ireland, and to make promotions in the peerage thereof, after the union; provided that no new creation of any such peers shall take place after the union, until three of the peerages of Ireland which shall have been existing at the time of the union shall have become extinct; and upon such extinction of three peerages that it shall be lawful for his Majesty, his heirs and successors, to create one peer of Ireland; and in like manner so often as three peerages of Ireland shall become extinct, it shall be lawful for his Majesty, his heirs and successors, to create one other peer of the said part of the United Kingdom; and if it shall happen that the peers of Ireland shall, by extinction of peerages or otherwise, be reduced to the number of one hundred exclusive of all such peers of Ireland as shall hold any peerage of Great Britain subsisting at the time of the union, or of the United Kingdom created since the union, by which such peers shall be entitled to an hereditary seat in the House of Lords of the United Kingdom then and in that case it shall and may be lawful for his Majesty, his heirs and successors, to create one peer of Ireland, as often as any one of such one hundred peerages shall fail by extinction, or as often as any one peer of Ireland shall become entitled by descent or creation to an hereditary seat in the House of Lords of the United Kingdom; it being the true intent and meaning of this Article, that at all times after the union it shall and may be lawful for his Majesty, his heirs and successors, to keep up the peerage of Ireland to the number of one hundred, over and above the number of such of the said peers as shall be entitled by descent or creation to an hereditary seat in the House of Lords of the United Kingdom:

- First chamber selection
- Second chamber selection

- Eligibility for first chamber
- First chamber selection
- Eligibility for second chamber

- Head of state powers
- Eligibility for second chamber
- Size of second chamber
- Second chamber selection

• Second chamber selection

#### **4. Peerages in abeyance to be deemed existing peerages, and no peerage to be deemed extinct but on default of claim for a year after the death of the late possessor. If a claim be after that period made and allowed, and a new creation shall have taken place in the interval, no new right of creation shall accrue to his Majesty on the next extinction of a peerage**

That if any peerage shall at any time be in abeyance, such peerage shall be deemed and taken as an existing peerage; and no peerage shall be deemed extinct, unless on default of claimants to the inheritance of such peerage for the space of one year from the death of the person who shall have been last possessed thereof; and if no claim shall be made to the inheritance of such peerage, in such form and manner as may from time to time be prescribed by the House of Lords of the United Kingdom, before the expiration of the said period of a year, then and in that case such peerage shall be deemed extinct; provided that nothing herein shall exclude any person from afterwards putting in a claim to the peerage so deemed extinct; and if such claim shall be allowed as valid by judgement of the House of Lords of the United Kingdom, reported to his Majesty, such peerage shall be considered as revived; and in case any new creation of a peerage of Ireland shall have taken place in the interval, in consequence of the supposed extinction of such peerage, then no new right of creation shall accrue to his Majesty, his heirs or successors in consequence of the next extinction which shall take place of any peerage of Ireland:

• First chamber selection

#### **5. Questions touching the election of members to sit in the House of Commons of the United Kingdom on the part of Ireland shall be decided as questions touching such elections in Great Britain**

That all questions touching the election of members to sit on the part of Ireland in the House of Commons of the United Kingdom shall be heard and decided in the same manner as questions touching such elections in Great Britain now are or at any time hereafter shall by law be heard and decided; subject nevertheless to such particular regulations in respect of Ireland as, from local circumstances, the Parliament of the United Kingdom may from time to time deem expedient:

#### **6. When his Majesty shall declare his pleasure for holding a Parliament of the United Kingdom, a proclamation shall issue to cause the lords and commons, who are to serve on the part of Ireland to be returned as shall be provided by any Act of the present session in Ireland**

That when his Majesty, his heirs or successors, shall declare his, her or their pleasure for holding the first or any subsequent Parliament of the United Kingdom, a proclamation shall issue, under the Great Seal of the United Kingdom, to cause the commons, who are to serve in the Parliament thereof on the part of Ireland, to be returned in such manner as by any Act of this present session of the Parliament of Ireland shall be provided; and that the lords spiritual and temporal and commons of Great Britain shall, together with the commons so returned as aforesaid on the part of Ireland, constitute the two Houses of the Parliament of the United Kingdom:

**7. The lords of Parliament on the part of Ireland shall have the same privileges as the lords on the part of Great Britain, and all lords spiritual of Ireland shall have rank next after the lords spiritual of the same rank of Great Britain, and shall enjoy the same privileges, (except those depending upon sitting in the House of Lords), and the temporal peers of Ireland shall have rank next after the peers of the like rank in Great Britain at the time of the union; and all peerages of Ireland and of the United Kingdom created after the union shall have rank according to creation; and all peerages of Great Britain and of Ireland shall, in all other respects, be considered as peerages of the United Kingdom, and the peers of Ireland shall enjoy the same privileges, except those depending upon sitting in the House of Lords**

And that the persons holding any temporal peerages of Ireland existing at the time of the union shall, from and after the union, have rank and precedence next and immediately after all the persons holding peerages of the like orders and degrees in Great Britain subsisting at the time of the union; and that all peerages of Ireland created after the union shall have rank and precedence with the peerages of the United Kingdom so created, according to the dates of their creations; and that all peerages both of Great Britain and Ireland now subsisting or hereafter to be created shall in all other respects from the date of the union be considered as peerages of the United Kingdom; and that the peers of Ireland shall, as peers of the United Kingdom enjoy all privileges of peers as fully as the peers of Great Britain, the right and privilege of sitting in the House of Lords and the privileges depending thereon, only excepted.

**Article Fifth: The churches of England and Ireland to be united into one Protestant Episcopal Church, and the doctrine of the Church of Scotland to remain as now established**

That it be the Fifth Article of Union, that the doctrine, worship, discipline and government of the Church of Scotland shall remain and be preserved as the same are now established by law and by the Acts for the union of the two kingdoms of England and Scotland.

• Official religion

## Article Sixth

### **1. The subjects of Great Britain and Ireland shall be on the same footing in respect of trade and navigation, and in all treaties with foreign powers the subjects of Ireland shall have the same privileges as British subject**

That it be the Sixth Article of Union, that his Majesty's subjects of Great Britain and Ireland shall from and after the first day of January one thousand eight hundred and one be entitled to the same privileges and be on the same footing, as to encouragements and bounties on the like articles, being the growth, produce or manufacture of either country respectively, and generally in respect of trade and navigation in all ports and places in the United Kingdom and its dependencies; and that in all treaties made by his Majesty his heirs and successors, with any foreign power, his Majesty's subjects of Ireland shall have the same privileges and be on the same footing as his Majesty's subjects of Great Britain.

### **2. From January 1, 1801, all prohibitions and bounties on the export of articles the produce or manufacture of either country to the other shall cease**

That from the first day of January one thousand eight hundred and one all prohibitions and bounties on the export of articles, the growth, produce or manufacture of either country, to the other shall cease and determine; and that the said articles shall thenceforth be exported from one country to the other without duty or bounty on such export:

### **3. All articles the produce or manufacture of either country, not herein-after enumerated as subject to specific duties, shall be imported into each country from the other, duty free, other than the countervailing duties in the Schedule No. 1. or to such as shall hereafter be imposed by the united Parliament**

That all articles, the Growth, Produce or Manufacture of either Country (not herein-after enumerated as subject to specific duties), shall from thenceforth be imported into each country from the other free from duty other than such countervailing duties as shall hereafter be imposed by the Parliament of the United Kingdom, in the manner herein-after provided;

**4. Articles of the produce or manufacture of either country, subject to internal duty, or to duty on the materials, may be subjected on importation into each country to countervailing duties, and upon their export a drawback of the duty shall be allowed**

That any articles of the growth, produce or manufacture of either country, which are or may be subject to internal duty or to duty on the materials of which they are composed, may be made subject, on their importation into each country respectively from the other, to such countervailing duty as shall appear to be just and reasonable in respect of such internal duty or duties on the materials; and that upon the export of the said articles from each country to the other respectively, a drawback shall be given equal in amount to the countervailing duty payable on such articles on the import thereof into the same country from the other; and that in like manner in future it shall be competent to the united Parliament to impose any new or additional countervailing duties, or to take off or diminish such existing countervailing duties as may appear, on like principles, to be just and reasonable in respect of any future or additional internal duty on any article of the growth, produce or manufacture of either country, or of any new or additional duty on any materials of which such article may be composed, or of any abatement of duty on the same; and that when any such new or additional countervailing duty shall be so imposed on the import of any article into either country from the other, a drawback, equal in amount to such countervailing duty, shall be given in like manner on the export of every such article respectively from the same country to the other:

**5. Articles the produce or manufacture of either country when exported through the other, shall be subject to the same charges as if exported directly from the country of which they were the produce or manufacture**

That all articles, the growth, produce or manufacture of either country, when exported through the other, shall in all cases be exported subject to the same charges as if they had been exported directly from the country of which they were the growth, produce or manufacture:

**Article Seventh**

[Repealed]



## Article Eight

**1. All laws in force at the union, and all courts of jurisdiction within the respective kingdoms, shall remain, subject to such alterations as may appear proper to the united Parliament. All appeals to be finally decided by the peers of the United Kingdom. There shall remain in Ireland a Court of Admiralty, and appeals therefrom shall be to the delegates in Chancery there. All laws contrary to the provisions enacted for carrying these articles into effect to be repealed**

That it be the Eighth Article of Union, that all laws in force at the time of the union, and all the courts of civil and ecclesiastical jurisdiction within the respective kingdoms, shall remain as now by law established within the same, subject only to such alterations and regulations from time to time as circumstances may appear to the Parliament of the United Kingdom to require; provided that from and after the union there shall remain in Ireland an Instance Court of Admiralty for the determination of causes civil and maritime only, and that the appeal from sentences of the said court shall be to his Majesty's Delegates in his Court of Chancery in Ireland; and that all laws at present in force in either kingdom, which shall be contrary to any of the provisions which may be enacted by any Act for carrying these Articles into effect, be from and after the union repealed.

**2. His Majesty having been pleased to approve of the foregoing articles, it is enacted, that they shall be the articles of union, and be in force for ever, from Jan. 1, 1801; provided that before that period an Act shall have been passed in Ireland for carrying them into effect**

And whereas the said Articles having, by address of the respective Houses of Parliament in Great Britain and Ireland, been humbly laid before his Majesty, his Majesty has been graciously pleased to approve the same, and to recommend it to his two Houses of Parliament in Great Britain and Ireland to consider of such measures as may be necessary for giving effect to the said Articles: In order therefore to give full effect and validity to the same, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that the said foregoing recited Articles, each and every one of them, according to the true import and tenor thereof, be ratified, confirmed and approved, and be and they are hereby declared to be the Articles of the Union of Great Britain and Ireland, and the same shall be in force and have effect for ever, from the first day of January which shall be in the year of our Lord one thousand eight hundred and one; provided that before that period an Act shall have been passed by the Parliament of Ireland, for carrying into effect in the like manner the said foregoing recited Articles.

## Part 2

### 1. Recital of an Act of the Parliament of Ireland to regulate the mode by which the lords and the commons, to serve in the Parliament of the United Kingdom on the part of Ireland, shall be summoned and returned

And whereas an Act, intituled “An Act to regulate the mode by which the lords spiritual and temporal, and the commons, to serve in the Parliament of the United Kingdom on the part of Ireland, shall be summoned and returned to the said Parliament,” has been passed by the Parliament of Ireland, the tenor whereof is as follows:

An Act to regulate the mode by which the lords spiritual and temporal, and the commons, to serve in the Parliament of the United Kingdom on the part of Ireland, shall be summoned and returned to the said Parliament;

In case of the summoning of a new Parliament, or if the seat of any of the commoners shall become vacant by death or otherwise, then the counties, cities or boroughs, or any of them, as the case may be, shall proceed to a new election; and no meeting shall at any time hereafter be summoned, called, convened or held for the purpose of electing any person or persons to serve or act or be considered as representative or representatives of any other place, town, city, corporation or borough, or as representative or representatives of the freemen, freeholders, householders or inhabitants thereof, either in the Parliament of the United Kingdom or elsewhere (unless it shall hereafter be otherwise provided by the Parliament of the United Kingdom);

Whenever his Majesty, his heirs and successors, shall by proclamation under the Great Seal of the United Kingdom summon a new Parliament of the United Kingdom of Great Britain and Ireland, the Chancellor, Keeper or Commissioners of the Great Seal of Ireland, shall cause writs to be issued to the several counties, cities, and boroughs in Ireland, for the election of members to serve in the Parliament of the United Kingdom, and whenever any vacancy of a seat in the House of Commons of the Parliament of the United Kingdom for any of the said counties, cities or boroughs, shall arise by death or otherwise, the Chancellor, Keeper or Commissioners of the Great Seal, upon such vacancy being certified to them respectively by the proper warrant, shall forthwith cause a writ to issue for the election of a person to fill up such vacancy;

### 2. Recited Act to be taken as a part of this Act.

Be it enacted, that the said Act so herein recited be taken as a part of this Act, and be deemed to all intents and purposes incorporated within the same.

## Parliament Acts 1911 and 1949

### Preamble

An Act to make provision with respect to the powers of the House of Lords in relation to those of the House of Commons, and to limit the duration of Parliament.

[18th August 1911]

• Structure of legislative chamber(s)

Whereas it is expedient that provision should be made for regulating the relations between the two Houses of Parliament:

• Second chamber selection

And whereas it is intended to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis, but such substitution cannot be immediately brought into operation:

And whereas provision will require hereafter to be made by Parliament in a measure effecting such substitution for limiting and defining the powers of the new Second Chamber, but it is expedient to make such provision as in this Act appears for restricting the existing powers of the House of Lords:

• Budget bills  
 • Division of labor between chambers  
 • Finance bills  
 • First chamber reserved policy areas  
 • Spending bills  
 • Tax bills  
 • Approval of general legislation

## 1. Powers of House of Lords as to Money Bills

1. If a Money Bill, having been passed by the House of Commons, and sent up to the House of Lords at least one month before the end of the session, is not passed by the House of Lords without amendment within one month after it is so sent up to that House, the Bill shall, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent being signified, notwithstanding that the House of Lords have not consented to the Bill.
2. A Money Bill means a Public Bill which in the opinion of the Speaker of the House of Commons contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration, or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund, the National Loans Fund or on money provided by Parliament, or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; or subordinate matters incidental to those subjects or any of them. In this subsection the expressions "taxation," "public money," and "loan" respectively do not include any taxation, money, or loan raised by local authorities or bodies for local purposes.
3. There shall be endorsed on every Money Bill when it is sent up to the House of Lords and when it is presented to His Majesty for assent the certificate of the Speaker of the House of Commons signed by him that it is a Money Bill. Before giving his certificate the Speaker shall consult, if practicable, two members to be appointed from the Chairmen's Panel at the beginning of each Session by the Committee of Selection.

• Division of labor between chambers

## 2. Restriction of the powers of the House of Lords as to Bills other than Money Bills

• Approval of general legislation

1. If any Public Bill (other than a Money Bill or a Bill containing any provision to extend the maximum duration of Parliament beyond five years) is passed by the House of Commons in two successive sessions (whether of the same Parliament or not), and, having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of those sessions, that Bill shall, on its rejection for the second time by the House of Lords, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent being signified thereto, notwithstanding that the House of Lords have not consented to the Bill: Provided that this provision shall not take effect unless one year has elapsed between the date of the second reading in the first of those sessions of the Bill in the House of Commons and the date on which it passes the House of Commons in the second of these sessions.

2. When a Bill is presented to His Majesty for assent in pursuance of the provisions of this section, there shall be endorsed on the Bill the certificate of the Speaker of the House of Commons signed by him that the provisions of this section have been duly complied with.
3. A Bill shall be deemed to be rejected by the House of Lords if it is not passed by the House of Lords either without amendment or with such amendments only as may be agreed to by both Houses.
4. A Bill shall be deemed to be the same Bill as a former Bill sent up to the House of Lords in the preceding session if, when it is sent up to the House of Lords, it is identical with the former Bill or contains only such alterations as are certified by the Speaker of the House of Commons to be necessary owing to the time which has elapsed since the date of the former Bill, or to represent any amendments which have been made by the House of Lords in the former Bill in the preceding session, and any amendments which are certified by the Speaker to have been made by the House of Lords in the second session and agreed to by the House of Commons shall be inserted in the Bill as presented for Royal Assent in pursuance of this section:

Provided that the House of Commons may, if they think fit, on the passage of such a Bill through the House in the second session, suggest any further amendments without inserting the amendments in the Bill, and any such suggested amendments shall be considered by the House of Lords, and, if agreed to by that House, shall be treated as amendments made by the House of Lords and agreed to by the House of Commons; but the exercise of this power by the House of Commons shall not affect the operation of this section in the event of the Bill being rejected by the House of Lords.

### **3. Certificate of Speaker**

Any certificate of the Speaker of the House of Commons given under this Act shall be conclusive for all purposes, and shall not be questioned in any court of law.

### **4. Enacting words**

1. In every Bill presented to His Majesty under the preceding provisions of this Act, the words of enactment shall be as follows, that is to say:—

“Be it enacted by the King’s most Excellent Majesty, by and with the advice and consent of the Commons in this present Parliament assembled, in accordance with the provisions of the Parliament Acts 1911 and 1949 and by authority of the same, as follows.”
2. Any alteration of a Bill necessary to give effect to this section shall not be deemed to be an amendment of the Bill.

### **5. Provisional Order Bills excluded**

In this Act the expression “Public Bill” does not include any Bill for confirming a Provisional Order.

### **6. Saving for existing rights and privileges of the House of Commons**

Nothing in this Act shall diminish or qualify the existing rights and privileges of the House of Commons.

## 7. Duration of Parliament

[Omitted]

## 8. Short title

This Act may be cited as the Parliament Acts 1911 and 1949.

# Life Peerages Act 1958

## Preamble

An Act to make provision for the creation of life peerages carrying the right to sit and vote in the House of Lords.

[30th April 1958]

## 1. Power to create life peerages carrying right to sit in the House of Lords

1. Her Majesty shall have power by letters patent to confer on any person a peerage for life having the incidents specified in subsection (2) of this section.
2. A peerage conferred under this section shall, during the life of the person on whom it is conferred, entitle him—
  - a. to rank as a baron under such style as may be appointed by the letters patent; and
  - b. subject to subsection (4) of this section, to receive writs of summons to attend the House of Lords and sit and vote therein accordingly, and shall expire on his death.
3. A life peerage may be conferred under this section on a woman.
4. Nothing in this section shall enable any person to receive a writ of summons to attend the House of Lords, or to sit and vote in that House, at any time when disqualified therefor by law.

## 2. Short title

This Act may be cited as the Life Peerages Act 1958.

# European Communities Act 1972

## Preamble

An Act to make provision in connection with the enlargement of the European Communities to include the United Kingdom, together with (for certain purposes) the Channel Islands, the Isle of Man and Gibraltar.

## Part I: General Provisions

### 1. Short title and interpretation

1. This Act may be cited as the European Communities Act 1972.
2. In this Act-
  - “the Communities” means the European Economic Community, the European Coal and Steel Community and the European Atomic Energy Community;
  - “the Treaties” or “the EU Treaties” means, subject to subsection (3) below, the pre-accession treaties, that is to say, those described in Part I of Schedule 1 to this Act, taken with—
    - a. the treaty relating to the accession of the United Kingdom to the European Economic Community and to the European Atomic Energy Community, signed at Brussels on the 22nd January 1972; and
    - b. the decision, of the same date, of the Council of the European Communities relating to the accession of the United Kingdom to the European Coal and Steel Community; and
    - c. the treaty relating to the accession of the Hellenic Republic to the European Economic Community and to the European Atomic Energy Community, signed at Athens on 28th May 1979; and
    - d. the decision, of 24th May 1979, of the Council relating to the accession of the Hellenic Republic to the European Coal and Steel Community; and
    - e. the decisions of the Council of 7th May 1985, 24th June 1988, 31st October 1994, 29th September 2000 and 7th June 2007 on the Communities' system of own resources; and
    - g. the treaty relating to the accession of the Kingdom of Spain and the Portuguese Republic to the European Economic Community and to the European Atomic Energy Community, signed at Lisbon and Madrid on 12th June 1985; and
    - h. the decision, of 11th June 1985, of the Council relating to the accession of the Kingdom of Spain and the Portuguese Republic to the European Coal and Steel Community; and
    - j. the following provisions of the Single European Act signed at Luxembourg and The Hague on 17th and 28th February 1986, namely Title II (amendment of the treaties establishing the Communities) and, so far as they relate to any of the Communities or any Community institution, the preamble and Titles I (common provisions) and IV (general and final provisions); and

- k. Titles II, III and IV of the Treaty on European Union signed at Maastricht on 7th February 1992, together with the other provisions of the Treaty so far as they relate to those Titles, and the Protocols adopted at Maastricht on that date and annexed to the Treaty establishing the European Community with the exception of the Protocol on Social Policy on page 117 of Cm 1934; and
- l. the decision, of 1st February 1993, of the Council amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20th September 1976; and
- m. the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993; and
- n. the treaty concerning the accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union, signed at Corfu on 24th June 1994; and
- o. the following provisions of the Treaty signed at Amsterdam on 2nd October 1997 amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts—
  - i. Articles 2 to 9,
  - ii. Article 12, and
  - iii. the other provisions of the Treaty so far as they relate to those Articles,and the Protocols adopted on that occasion other than the Protocol on Article J.7 of the Treaty on European Union; and
- p. the following provisions of the Treaty signed at Nice on 26th February 2001 amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts—
  - i. Articles 2 to 10, and
  - ii. the other provisions of the Treaty so far as they relate to those Articles,and the Protocols adopted on that occasion; and

- q. the treaty concerning the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union, signed at Athens on 16th April 2003; and
  - r. the treaty concerning the accession of the Republic of Bulgaria and Romania to the European Union, signed at Luxembourg on 25th April 2005; and
  - s. the Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community signed at Lisbon on 13th December 2007 (together with its Annex and protocols), excluding any provision that relates to, or in so far as it relates to or could be applied in relation to, the Common Foreign and Security Policy; and
  - t. the Protocol amending the Protocol (No. 36) on transitional provisions annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community, signed at Brussels on 23 June 2010; and
  - u. the treaty concerning the accession of the Republic of Croatia to the European Union, signed at Brussels on 9 December 2011; and
  - v. the Protocol on the concerns of the Irish people on the Treaty of Lisbon, adopted at Brussels on 16 May 2012;
- and any other treaty entered into by the EU (except in so far as it relates to, or could be applied in relation to, the Common Foreign and Security Policy) , with or without any of the member States, or entered into, as a treaty ancillary to any of the Treaties, by the United Kingdom;
  - and any expression defined in Schedule 1 to this Act has the meaning there given to it.

• Structure of the courts

• Legal status of treaties

3. If Her Majesty by Order in Council declares that a treaty specified in the Order is to be regarded as one of the EU Treaties as herein defined, the Order shall be conclusive that it is to be so regarded; but a treaty entered into by the United Kingdom after the 22nd January 1972, other than a pre-accession treaty to which the United Kingdom accedes on terms settled on or before that date, shall not be so regarded unless it is so specified, nor be so specified unless a draft of the Order in Council has been approved by resolution of each House of Parliament.
4. For purposes of subsections (2) and (3) above, "treaty" includes any international agreement, and any protocol or annex to a treaty or international agreement.

• Legal status of treaties



## 2. General implementation of Treaties

1. All such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Treaties, and all such remedies and procedures from time to time provided for by or under the Treaties, as in accordance with the Treaties are without further enactment to be given legal effect or used in the United Kingdom shall be recognised and available in law, and be enforced, allowed and followed accordingly; and the expression “enforceable EU right” and similar expressions shall be read as referring to one to which this subsection applies.
2. Subject to Schedule 2 to this Act, at any time after its passing Her Majesty may by Order in Council, and any designated Minister or department may by order, rules, regulations or scheme, make provision—

- a. for the purpose of implementing any EU obligation of the United Kingdom, or enabling any such obligation to be implemented, or of enabling any rights enjoyed or to be enjoyed by the United Kingdom under or by virtue of the Treaties to be exercised; or
- b. for the purpose of dealing with matters arising out of or related to any such obligation or rights or the coming into force, or the operation from time to time, of subsection (1) above;

and in the exercise of any statutory power or duty, including any power to give directions or to legislate by means of orders, rules, regulations or other subordinate instrument, the person entrusted with the power or duty may have regard to the objects of the EU and to any such obligation or rights as aforesaid.

In this subsection “designated Minister or department” means such Minister of the Crown or government department as may from time to time be designated by Order in Council in relation to any matter or for any purpose, but subject to such restrictions or conditions (if any) as may be specified by the Order in Council.

3. There shall be charged on and issued out of the Consolidated Fund or, if so determined by the Treasury, the National Loans Fund the amounts required to meet any EU obligation to make payments to the EU or a member State, or any EU obligation in respect of contributions to the capital or reserves of the European Investment Bank or in respect of loans to the Bank, or to redeem any notes or obligations issued or created in respect of any such EU obligation and, except as otherwise provided by or under any enactment,—
  - a. any other expenses incurred under or by virtue of the Treaties or this Act by any Minister of the Crown or government department may be paid out of moneys provided by Parliament; and
  - b. any sums received under or by virtue of the Treaties or this Act by any Minister of the Crown or government department, save for such sums as may be required for disbursements permitted by any other enactment, shall be paid into the Consolidated Fund or, if so determined by the Treasury, the National Loans Fund.

- Legal status of treaties

- Powers of cabinet
- Head of government powers
- Head of state powers
- Advisory bodies to the head of state
- Initiation of general legislation
- Subsidiary unit government
- Legal status of treaties
- Constitutionality of legislation

- Powers of cabinet
- Head of government powers
- Head of state powers
- Subsidiary unit government
- Legal status of treaties
- Constitutionality of legislation

4. The provision that may be made under subsection (2) above includes, subject to Schedule 2 to this Act, any such provision (of any such extent) as might be made by Act of Parliament, and any enactment passed or to be passed, other than one contained in this part of this Act, shall be construed and have effect subject to the foregoing provisions of this section; but, except as may be provided by any Act passed after this Act, Schedule 2 shall have effect in connection with the powers conferred by this and the following sections of this Act to make Orders in Council or orders, rules, regulations or schemes.
5. and the references in that subsection to a Minister of the Crown or government department and to a statutory power or duty shall include a Minister or department of the Government of Northern Ireland and a power or duty arising under or by virtue of an Act of the Parliament of Northern Ireland.
6. A law passed by the legislature of any of the Channel Islands or of the Isle of Man, or a colonial Law (within the meaning of the Colonial Laws Validity Act 1865) passed or made for Gibraltar, if expressed to be passed or made in the implementation of the Treaties and of the obligations of the United Kingdom thereunder, shall not be void or inoperative by reason of any inconsistency with or repugnancy to an Act of Parliament, passed or to be passed, that extends to the Island or Gibraltar or any provision having the force and effect of an Act there (but not including this section), nor by reason of its having some operation outside the Island or Gibraltar; and any such Act or provision that extends to the Island or Gibraltar shall be construed and have effect subject to the provisions of any such law.

- Subsidiary unit government

- Colonies

### 3. Decisions on, and proof of, Treaties and EU instruments etc

- Constitutional interpretation

- Structure of the courts

1. For the purposes of all legal proceedings any question as to the meaning or effect of any of the Treaties, or as to the validity, meaning or effect of any EU instrument, shall be treated as a question of law (and, if not referred to the European Court, be for determination as such in accordance with the principles laid down by and any relevant decision of the European Court).
2. Judicial notice shall be taken of the Treaties, of the Official Journal of the European Union and of any decision of, or expression of opinion by, the European Court on any such question as aforesaid; and the Official Journal shall be admissible as evidence of any instrument or other act thereby communicated of the EU or of any EU institution.
3. Evidence of any instrument issued by an EU institution, including any judgment or order of the European Court, or of any document in the custody of an EU institution, or any entry in or extract from such a document, may be given in any legal proceedings by production of a copy certified as a true copy by an official of that institution; and any document purporting to be such a copy shall be received in evidence without proof of the official position or handwriting of the person signing the certificate.
4. Evidence of any EU instrument may also be given in any legal proceedings—
  - a. by production of a copy purporting to be printed by the Queen's Printer;
  - b. where the instrument is in the custody of a government department (including a department of the Government of Northern Ireland), by production of a copy certified on behalf of the department to be a true copy by an officer of the department generally or specially authorised so to do;

- Structure of the courts

and any document purporting to be such a copy as is mentioned in paragraph (b) above of an instrument in the custody of a department shall be received in evidence without proof of the official position or handwriting of the person signing the certificate, or of his authority to do so, or of the document being in the custody of the department.

5. In any legal proceedings in Scotland evidence of any matter given in a manner authorised by this section shall be sufficient evidence of it.

## Part II: Amendment of Law

### 4. General provision for repeal and amendment

1. The enactments mentioned in Schedule 3 to this Act (being enactments that are superseded or to be superseded by reason of EU obligations and of the provision made by this Act in relation thereto or are not compatible with EU obligations) are hereby repealed, to the extent specified in column 3 of the Schedule, with effect from the entry date or other date mentioned in the Schedule; and in the enactments mentioned in Schedule 4 to this Act there shall, subject to any transitional provision there included, be made the amendments provided for by that Schedule.
2. Where in any Part of Schedule 3 to this Act it is provided that repeals made by that Part are to take effect from a date appointed by order, the orders shall be made by statutory instrument, and an order may appoint different dates for the repeal of different provisions to take effect, or for the repeal of the same provision to take effect for different purposes; and an order appointing a date for a repeal to take effect may include transitional and other supplementary provisions arising out of that repeal, including provisions adapting the operation of other enactments included for repeal but not yet repealed by that Schedule, and may amend or revoke any such provisions included in a previous order.
3. Where any of the following sections of this Act, or any paragraph of Schedule 4 to this Act, affects or is construed as one with an Act or Part of an Act similar in purpose to provisions having effect only in Northern Ireland, then—
  - a. unless otherwise provided by Act of the Parliament of Northern Ireland, the Governor of Northern Ireland may by Order in Council make provision corresponding to any made by the section or paragraph, and amend or revoke any provision so made; and
  - b. [Repealed]
4. Where Schedule 3 or 4 to this Act provides for the repeal or amendment of an enactment that extends or is capable of being extended to any of the Channel Islands or the Isle of Man, the repeal or amendment shall in like manner extend or be capable of being extended thereto.

## 5. Customs duties

1. Subject to subsection (2) below, on and after the relevant date there shall be charged, levied, collected and paid on goods imported into the United Kingdom such EU customs duty, if any, as is for the time being applicable in accordance with the Treaties or, if the goods are not within the common customs tariff of the EU and the duties chargeable are not otherwise fixed by any directly applicable EU provision, such duty of customs, if any, as the Treasury, on the recommendation of the Secretary of State, may by order specify.

For this purpose “the relevant date”, in relation to any goods, is the date on and after which the duties of customs that may be charged thereon are no longer affected under the Treaties by any temporary provision made on or with reference to the accession of the United Kingdom to the Communities.

2. Where as regards goods imported into the United Kingdom provision may, in accordance with the Treaties, be made in derogation of the common customs tariff or of the exclusion of customs duties as between member States, the Treasury may by order make such provision as to the customs duties chargeable on the goods, or as to exempting the goods from any customs duty, as the Treasury may on the recommendation of the Secretary of State determine.
3. Schedule 2 to this Act shall also have effect in connection with the powers to make orders conferred by subsections (1) and (2) above.

(4)(6). [Repealed]

6A. [Repealed]

(7)(9). [Repealed]

## 6. The common agricultural policy

1. [Repealed]
2. [Repealed]
3. Sections 5 and 7 of the Agriculture Act 1957 (which make provision for the support of arrangements under section 1 of that Act for providing guaranteed prices or assured markets) shall apply in relation to any EU arrangements for or related to the regulation of the market for any agricultural produce as if references, in whatever terms, to payments made by virtue of section 1 were references to payments made by virtue of the EU arrangements by or on behalf of the relevant Minister and as if for every reference in section 5 to the Minister there were substituted a reference to the relevant Minister.
4. Agricultural levies of the EU, so far as they are charged on goods exported from the United Kingdom or shipped as stores, shall be paid to and recoverable by the relevant Minister; and the power of the relevant Minister to make orders under section 5 of the Agriculture Act 1957, as extended by this section, shall include power to make such provision supplementary to any directly applicable EU provision as the relevant Minister considers necessary for securing the payment of any agricultural levies so charged, including provision for the making of declarations or the giving of other information in respect of goods exported, shipped as stores, or otherwise dealt with.

5. Except as otherwise provided by or under any enactment, agricultural levies of the EU, so far as they are charged on goods imported into the United Kingdom, shall be levied, collected and paid, and the proceeds shall be dealt with, as if they were EU customs duties, and in relation to those levies the following enactments shall apply as they would apply in relation to EU customs duties, that is to say:—
  - a. the Customs and Excise Management Act 1979 (as for the time being amended by any later Act) and any other statutory provisions for the time being in force relating generally to customs or excise duties on imported goods; and
  - b. sections 1, 3, 4, 5, 6 (including Schedule 1), 7, 8, 9, 12, 13, 15, 17 and 18 of the Customs and Excise Duties (General Reliefs) Act 1979 but so that—
    - i. any references in sections 1, 3 and 4 to the Secretary of State shall include the Ministers; and
    - ii. the reference in section 15 to an application for an authorisation under regulations made under section 2 of that Act shall be read as a reference to an application for an authorisation under regulations made under section 2(2) of this Act;and, if, in connection with any such EU arrangements as aforesaid, the Commissioners of Customs and Excise are charged with the performance, on behalf of the Board or otherwise, of any duties in relation to the payment of refunds or allowances on goods exported or to be exported from the United Kingdom, then in relation to any such refund or allowance section 133 (except subsection (3) and the reference to that subsection in subsection (2) and section 159 of the Customs and Excise Management Act 1979 shall apply as they apply in relation to a drawback of excise duties, and other provisions of that Act shall have effect accordingly.
6. The enactments applied by subsection (5)(a) above shall apply subject to such exceptions and modifications, if any, as the Commissioners of Customs and Excise may by regulations prescribe, and shall be taken to include section 10 of the Finance Act 1901 (which relates to changes in customs import duties in their effect on contracts), but shall not include section 126 of the Customs and Excise Management Act 1979 (charge of duty on manufactured or composite articles).
7. [Repealed]
8. Expressions used in this section shall be construed as if contained in Part I of the Agriculture Act 1957; and in this section “agricultural levy” shall include any tax not being a customs duty, but of equivalent effect, that may be chargeable in accordance with any such EU arrangements as aforesaid, and “statutory provision” includes any provision having effect by virtue of any enactment and, in subsection (2), any enactment of the Parliament of Northern Ireland or provision having effect by virtue of such an enactment.
7. [Repealed]
8. [Repealed]
9. [Repealed]
10. [Repealed]

## 11. EU offences

1. A person who, in sworn evidence before the the European Court, makes any statement which he knows to be false or does not believe to be true shall, whether he is a British subject or not, be guilty of an offence and may be proceeded against and punished—

- a. in England and Wales as for an offence against section 1(1) of the Perjury Act 1911; or
- b. in Scotland as for an offence against section 44(1) of the Criminal Law (Consolidation) (Scotland) Act 1995; or
- c. in Northern Ireland as for an offence against Article 3(1) of the Perjury (Northern Ireland) Order 1979.

Where a report is made as to any such offence under the authority of the the European Court then a bill of indictment for the offence may, in England or Wales or in Northern Ireland, be preferred as in a case where a prosecution is ordered under section 9 of the Perjury Act 1911 or Article 13 of the Perjury (Northern Ireland) Order 1979, but the report shall not be given in evidence on a person's trial for the offence.

2. Where a person (whether a British subject or not) owing either—

- a. to his duties as a member of any Euratom institution or committee, or as an officer or servant of Euratom; or
- b. to his dealings in any capacity (official or unofficial) with any Euratom institution or installation or with any Euratom joint enterprise;

has occasion to acquire, or obtain cognisance of, any classified information, he shall be guilty of a misdemeanour if, knowing or having reason to be believe that it is classified information, he communicates it to any unauthorised person or makes any public disclosure of it, whether in the United Kingdom or elsewhere and whether before or after the termination of those duties or dealings; and for this purpose "classified information" means any facts, information, knowledge, documents or objects that are subject to the security rules of a member State or of any Euratom institution.

This subsection shall be construed, and the Official Secrets Acts 1911 to 1939 shall have effect, as if this subsection were contained in the Official Secrets Act 1911, but so that in that Act sections 10 and 11, except section 10(4), shall not apply.

3. This section shall not come into force until the entry date.

## 12. Furnishing of information to EU

Estimates, returns and information that may under section 9 of the Statistics of Trade Act 1947 or section 3 of the Agricultural Statistics Act 1979 be disclosed to a government department, the Scottish Ministers or Minister in charge of a government department may, in like manner, be disclosed in pursuance of an EU obligation to an EU institution.

# Senior Courts Act 1981

## Preamble

An Act to consolidate with amendments the Supreme Court of Judicature (Consolidation) Act 1925 and other enactments relating to the Senior Courts in England and Wales and the administration of justice therein; to repeal certain obsolete or unnecessary enactments so relating; to amend Part VIII of the Mental Health Act 1959, the Courts-Martial (Appeals) Act 1968, the Arbitration Act 1979 and the law relating to county courts; and for connected purposes.

[28th July 1981]

## Part I: CONSTITUTION OF Senior Courts

### Subheading 1: The Senior Courts

#### 1. The Senior Courts

1. The Senior Courts of England and Wales shall consist of the Court of Appeal, the High Court of Justice and the Crown Court, each having such jurisdiction as is conferred on it by or under this or any other Act.
2. The Lord Chancellor shall be president of the Senior Courts.

### Subheading 2: The Court of Appeal

#### 2. The Court of Appeal

1. The Court of Appeal shall consist of
  - a. ex-officio judges, and
  - b. ordinary judges, of whom the maximum full-time equivalent number is 38.
2. The following shall be ex-officio judges of the Court of Appeal—
  - a. [repealed]
  - b. any person who was Lord Chancellor before 12 June 2003;
  - c. any judge of the Supreme Court who at the date of his appointment was, or was qualified for appointment as, an ordinary judge of the Court of Appeal or held an office within paragraphs (d) to (g);
  - d. the Lord Chief Justice;
  - e. the Master of the Rolls;
  - f. the President of the Queen's Bench Division;

g. the President of the Family Division;

h. the Chancellor of the High Court;

but a person within paragraph (b) or (c) shall not be required to sit and act as a judge of the Court of Appeal unless at the request of the Lord Chief Justice he consents to do so.

- 2A. The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his function under subsection (2) of making requests to persons within paragraphs (b) and (c) of that subsection.
3. An ordinary judge of the Court of Appeal (including the vice-president, if any, of either division) shall be styled "Lord Justice of Appeal" or "Lady Justice of Appeal".
4. Her Majesty may by Order in Council from time to time amend subsection (1) so as to increase or further increase the maximum full-time equivalent number of ordinary judges of the Court of Appeal.
- 4A. It is for the Lord Chancellor to recommend to Her Majesty the making of an Order under subsection (4).
5. No recommendation shall be made to Her Majesty in Council to make an Order under subsection (4) unless a draft of the Order has been laid before Parliament and approved by resolution of each House of Parliament.
6. The Court of Appeal shall be taken to be duly constituted notwithstanding any vacancy in the office of Lord Chief Justice, Master of the Rolls, President of the Queen's Bench Division, President of the Family Division or Chancellor of the High Court.
7. For the purposes of this section the full-time equivalent number of ordinary judges is to be calculated by taking the number of full-time ordinary judges and adding, for each ordinary judge who is not a full-time ordinary judge, such fraction as is reasonable.

### 3. Divisions of Court of Appeal

1. There shall be two divisions of the Court of Appeal, namely the criminal division and the civil division.
2. The Lord Chief Justice shall be president of the criminal division of the Court of Appeal, and the Master of the Rolls shall be president of the civil division of that court.
3. The Lord Chief Justice may, after consulting the Lord Chancellor appoint one of the ordinary judges of the Court of Appeal as vice-president of both divisions of that court, or one of those judges as vice-president of the criminal division and another of them as vice-president of the civil division.
4. When sitting in a court of either division of the Court of Appeal in which no ex-officio judge of the Court of Appeal is sitting, the vice-president (if any) of that division shall preside.
5. Any number of courts of either division of the Court of Appeal may sit at the same time.
6. The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under subsection (3).

• Structure of the courts



## Subheading 3: The High Court

### 4. The High Court

• Eligibility for ordinary court judges

1. The High Court shall consist of
  - a. [repealed]
  - b. the Lord Chief Justice;
  - ba. the President of the Queen's Bench Division;
  - c. the President of the Family Division;
  - d. the Chancellor of the High Court;
  - dd. the Senior Presiding Judge
  - ddd. the vice-president of the Queen's Bench Division; and
  - e. the puisne judges of that court, of whom the maximum full-time equivalent number is 108.
2. The puisne judges of the High Court shall be styled "Justices of the High Court".
3. All the judges of the High Court shall, except where this Act expressly provides otherwise, have in all respects equal power, authority and jurisdiction.
4. Her Majesty may by Order in Council from time to time amend subsection (1) so as to increase or further increase the maximum full-time equivalent number of puisne judges of the High Court.
- 4A. It is for the Lord Chancellor to recommend to Her Majesty the making of an Order under subsection (4).
5. No recommendation shall be made to Her Majesty in Council to make an Order under subsection (4) unless a draft of the Order has been laid before Parliament and approved by resolution of each House of Parliament.
6. The High Court shall be taken to be duly constituted notwithstanding any vacancy in the office of Lord Chief Justice, President of the Queen's Bench Division, President of the Family Division, Chancellor of the High Court or Senior Presiding Judge and whether or not an appointment has been made to the office of vice-president of the Queen's Bench Division.
7. For the purposes of this section the full-time equivalent number of puisne judges is to be calculated by taking the number of full-time puisne judges and adding, for each puisne judge who is not a full-time puisne judge, such fraction as is reasonable.

### 5. Divisions of High Court

• Structure of the courts

1. There shall be three divisions of the High Court namely—
  - a. the Chancery Division, consisting of the Chancellor of the High Court, who shall be president thereof, the Vice-Chancellor, who shall be vice-president thereof, and such of the puisne judges as are for the time being attached thereto in accordance with this section;

- b. the Queen's Bench Division, consisting of the Lord Chief Justice, the President of the Queen's Bench Division, the vice-president of the Queen's Bench Division and such of the puisne judges as are for the time being so attached thereto; and
  - c. the Family Division, consisting of the President of the Family Division and such of the puisne judges as are for the time being so attached thereto.
2. The puisne judges of the High Court shall be attached to the various Divisions by direction given by the Lord Chief Justice after consulting the Lord Chancellor; and any such judge may with his consent be transferred from one Division to another by direction given by the Lord Chief Justice after consulting the Lord Chancellor, but shall be so transferred only with the concurrence of the senior judge of the Division from which it is proposed to transfer him.
  3. Any judge attached to any Division may act as an additional judge of any other Division at the request of the Lord Chief Justice made with the concurrence of both of the following—
    - a. the senior judge of the Division to which the judge is attached;
    - b. the senior judge of the Division of which the judge is to act as an additional judge.
  4. Nothing in this section shall be taken to prevent a judge of any Division (whether nominated under section 6(2) or not) from sitting, whenever required, in a divisional court of another Division or for any judge of another Division.
  5. Without prejudice to the provisions of this Act relating to the distribution of business in the High Court, all jurisdiction vested in the High Court under this Act shall belong to all the Divisions alike.
  6. The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under subsection (2).

## 6. The Patents, Admiralty and Commercial Courts

1. There shall be—
  - a. as part of the Chancery Division, a Patents Court; and
  - b. as parts of the Queen's Bench Division, an Admiralty Court and a Commercial Court.
2. The judges of the Patents Court, of the Admiralty Court and of the Commercial Court shall be such of the puisne judges of the High Court as the Lord Chief Justice may, after consulting the Lord Chancellor, from time to time nominate to be judges of the Patents Court, Admiralty Judges and Commercial Judges respectively.
3. The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under subsection (2).

• Provisions for intellectual property

• Structure of the courts

## 7. Power to alter Divisions or transfer certain courts to different Divisions

1. Her Majesty may from time to time, on a recommendation of the Lord Chancellor and the judges mentioned in subsection (2), by Order in Council direct that—
  - a. any increase or reduction in the number of Divisions of the High Court; or
  - b. the transfer of any of the courts mentioned in section 6(1) to a different Division,
 be carried into effect in pursuance of the recommendation.
2. Those judges are the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division and the Chancellor of the High Court
3. An Order in Council under this section may include such incidental, supplementary or consequential provisions as appear to Her Majesty necessary or expedient, including amendments of provisions referring to particular Divisions contained in this Act or any other statutory provision.
4. Any Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### Subheading 4: The Crown Court

## 8. The Crown Court

1. The jurisdiction of the Crown Court shall be exercisable by—
  - a. any judge of the High Court; or
  - b. any Circuit judge , Recorder, qualifying judge advocate or District Judge (Magistrates' Courts); or
  - c. subject to and in accordance with the provisions of sections 74 and 75(2), a judge of the High Court, Circuit judge or Recorder or qualifying judge advocate sitting with not more than four justices of the peace,
 and any such persons when exercising the jurisdiction of the Crown Court shall be judges of the Crown Court.
- 1A. The jurisdiction of the Crown Court exercisable by a qualifying judge advocate by virtue of subsection (1) is the jurisdiction of the Court in relation to any criminal cause or matter other than an appeal from a youth court.
2. A justice of the peace is not disqualified from acting as a judge of the Crown Court merely because the proceedings are not at a place within the local justice area to which he is assigned or because the proceedings are not related to that area in any other way.
3. When the Crown Court sits in the City of London it shall be known as the Central Criminal Court; and the Lord Mayor of the City and any Alderman of the City shall be entitled to sit as judges of the Central Criminal Court with any judge of the High Court , Circuit judge, Recorder, qualifying judge advocate or District Judge (Magistrates' Courts).

• Eligibility for ordinary court judges

• Eligibility for ordinary court judges

4. Subsection (1A) does not affect the jurisdiction of the Crown Court exercisable by a person who holds an office mentioned in subsection (1)(a) or (b) where that person is also a qualifying judge advocate.

## Subheading 5: Other provisions

### 9. Assistance for transaction of judicial business

1. A person within any entry in column 1 of the following Table may subject to the provision at the end of that Table at any time, at the request of the appropriate authority, act—
  - a. as a judge of a relevant court specified in the request; or
  - b. if the request relates to a particular division of a relevant court so specified, as a judge of that court in that division.

#### Table

Key: Column 1 = Judge or ex-judge; Column 2 = Where competent to act on request

#### Row 1

##### Column 1

A judge of the Court of Appeal.

##### Column 2

The High Court and the Crown Court.

#### Row 2

##### Column 1

A person who has been a judge of the Court of Appeal.

##### Column 2

The Court of Appeal, the High Court, the family court, the county court and the Crown Court.

#### Row 3

##### Column 1

A puisne judge of the High Court.

• Eligibility for ordinary court judges  
• Ordinary court selection

**Column 2**

The Court of Appeal.

**Row 4****Column 1**

A person who has been a puisne judge of the High Court.

**Column 2**

The Court of Appeal, the High Court, the family court, the county court and the Crown Court.

**Row 4A****Column 1**

The Senior President of Tribunals.

**Column 2**

The Court of Appeal and the High Court.

**Row 5****Column 1**

A Circuit judge.

**Column 2**

The High Court and the Court of Appeal.

**Row 6****Column 1**

A Recorder or a person within subsection (1ZB).

**Column 2**

The High Court.

The entry in column 2 specifying the Court of Appeal in relation to a Circuit judge only authorises such a judge to act as a judge of a court in the criminal division of the Court of Appeal.

**1ZA.** The Senior President of Tribunals is to be treated as not being within any entry in column 1 of the Table other than entry 4A.

• Eligibility for ordinary court judges

• Eligibility for ordinary court judges

**1ZB.** A person is within this subsection if the person—

- a. is a Chamber President, or a Deputy Chamber President, of a chamber of the Upper Tribunal or of a chamber of the First-tier Tribunal,
- b. is a judge of the Upper Tribunal by virtue of appointment under paragraph 1(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007,
- c. is a transferred-in judge of the Upper Tribunal (see section 31(2) of that Act),
- d. is a deputy judge of the Upper Tribunal (whether under paragraph 7 of Schedule 3 to, or section 31(2) of, that Act), or
- e. is the President of Employment Tribunals (England and Wales) or the President of Employment Tribunals (Scotland).

• Eligibility for ordinary court judges

**1A.** A person shall not act as a judge by virtue of subsection (1) after the day on which he attains the age of 75.

• Ordinary court selection

**2.** In subsection (1)—

- “the appropriate authority” means—
  - a. the Lord Chief Justice or a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) nominated by him to exercise his functions under this section, or
  - b. at any time when the Lord Chief Justice or the nominated judicial office holder is unable to make such a request himself, or there is a vacancy in the office of Lord Chief Justice, the Master of the Rolls;
- “relevant court”, in the case of a person within any entry in column 1 of the Table, means a court specified in relation to that entry in column 2 of the Table.

• Ordinary court selection

**2A.** The power of the appropriate authority to make a request under subsection (1) is subject to subsections (2B) to (2D).

• Ordinary court selection

**2B.** In the case of a request to a person within entry 1, 3, 4A, 5 or 6 in column 1 of the Table, the appropriate authority may make the request only after consulting the Lord Chancellor.

• Ordinary court selection

**2C.** In any other case the appropriate authority may make a request only with the concurrence of the Lord Chancellor.

• Ordinary court selection

**2CA.** In the case of a request to a person within entry 5 or 6 in column 1 of the Table to act as a judge of the High Court, the appropriate authority may make the request only if the person is a member of the pool for requests under subsection (1) to persons within that entry.

• Ordinary court selection

**2D.** In the case of a request to a Circuit judge to act as a judge of the Court of Appeal, the appropriate authority may make the request only with the concurrence of the Judicial Appointments Commission.

• Ordinary court selection

**3.** The person to whom a request is made under subsection (1) must comply with the request, but this does not apply to—

- a. a request made to a person who has been a judge of the Court of Appeal,

- b. a request made to a person who has been a puisne judge of the High Court and is not a judge of the Court of Appeal, or
- c. a request made to the Senior President of Tribunals if the holder of that office is a judge of the Court of Session or of the High Court, or Court of Appeal, in Northern Ireland.

it shall be the duty of the person to whom the request is made to comply with it.

- 4. Without prejudice to section 24 of the Courts Act 1971 (temporary appointment of deputy Circuit judges), if it appears to the Lord Chief Justice, after consulting the Lord Chancellor, that it is expedient as a temporary measure to make an appointment under this subsection in order to facilitate the disposal of business in the High Court or the Crown Court or any other court or tribunal to which persons appointed under this subsection may be deployed, he may appoint a person qualified for appointment as a puisne judge of the High Court to be a deputy judge of the High Court during such period or on such occasions as the Lord Chief Justice may, after consulting the Lord Chancellor, think fit; and during the period or on the occasions for which a person is appointed as a deputy judge under this subsection, he may act as a puisne judge of the High Court.

- 4A. No appointment of a person as a deputy judge of the High Court shall be such as to extend beyond the day on which he attains the age of 70, but this subsection is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (Lord Chancellor's power to authorise continuance in office up to the age of 75).

- 5. Every person while acting under this section shall, subject to subsections (6) and (6A), be treated for all purposes as, and accordingly may perform any of the functions of, a judge of the court in which he is acting.

- 6. A person shall not by virtue of subsection (5)—

- a. be treated as a judge of the court in which he is acting for the purposes of section 98(2) or of any statutory provision relating to—

- i. the appointment, retirement, removal or disqualification of judges of that court;

- ii. the tenure of office and oaths to be taken by such judges; or

- iii. the remuneration, allowances or pensions of such judges; or

- b. subject to section 27 of the Judicial Pensions and Retirement Act 1993, be treated as having been a judge of a court in which he has acted only under this section.

- 6A. A Circuit judge or Recorder or person within subsection (1ZB) shall not by virtue of subsection (5) exercise any of the powers conferred on a single judge by sections 31, 31B, 31C and 44 of the Criminal Appeal Act 1968 (powers of single judge in connection with appeals to the Court of Appeal and appeals from the Court of Appeal to the Senior Courts).

- 7. [Repealed]

8. Such remuneration and allowances as the Lord Chancellor may, with the concurrence of the Minister for the Civil Service, determine may be paid out of money provided by Parliament—
- a. to any person who has been—
    - i. a judge of the Supreme Court; or
    - ii. a judge of the Court of Appeal; or
    - iii. a judge of the High Court,
 and is by virtue of subsection (1) acting as mentioned in that subsection;
  - b. to any deputy judge of the High Court appointed under subsection (4).
- 8A. A person may be removed from office as a deputy judge of the High Court—
- a. only by the Lord Chancellor with the agreement of the Lord Chief Justice, and
  - b. only on—
    - i. the ground of inability or misbehaviour, or
    - ii. a ground specified in the person's terms of appointment.
- 8B. Subject to the preceding provisions of this section, a person appointed under subsection (4) is to hold and vacate office as a deputy judge of the High Court in accordance with the terms of the person's appointment, which are to be such as the Lord Chancellor may determine.
9. The Lord Chief Justice may nominate a senior judge (as defined in section 109(5) of the Constitutional Reform Act 2005) to exercise functions of the Lord Chief Justice under this section.

## 10. Appointment of judges of Senior Courts

1. Whenever the office of Lord Chief Justice, Master of the Rolls, President of the Queen's Bench Division, President of the Family Division or Chancellor of the High Court is vacant, Her Majesty may , on the recommendation of the Lord Chancellor, by letters patent appoint a qualified person to that office.
2. Subject to the limits on full-time equivalent numbers for the time being imposed by sections 2(1) and 4(1), Her Majesty may , on the recommendation of the Lord Chancellor, from time to time by letters patent appoint qualified persons as Lords Justices of Appeal or as puisne judges of the High Court.
3. No person shall be qualified for appointment—
  - a. as Lord Chief Justice, Master of the Rolls, President of the Queen's Bench Division, President of the Family Division or Chancellor of the High Court, unless he is qualified for appointment as a Lord Justice of Appeal or is a judge of the Court of Appeal;
  - b. as a Lord Justice of Appeal, unless—



- i. he satisfies the judicial-appointment eligibility condition on a 7-year basis; or
  - ii. he is a judge of the High Court; or
- c. as a puisne judge of the High Court, unless—
- i. he satisfies the judicial-appointment eligibility condition on a 7-year basis; or
  - ii. he is a Circuit judge who has held that office for at least 2 years.

4. A person appointed—

- a. to any of the offices mentioned in subsection (1),
  - b. as a Lord Justice of Appeal, or
  - c. as a puisne judge of the High Court,
- shall take the required oaths as soon as may be after accepting office.

5. In the case of a person appointed to the office of Lord Chief Justice, the required oaths are to be taken in the presence of all of the following—

- a. the Master of the Rolls;
- b. the President of the Queen's Bench Division;
- c. the President of the Family Division;
- d. the Chancellor of the High Court.

6. Where subsection (5) applies but there is a vacancy in one or more (but not all) of the offices mentioned in that subsection, the required oaths are to be taken in the presence of the holders of such of the offices as are not vacant.

6A. Where the holder of an office mentioned in subsection (5) is incapable of exercising the functions of the office, the office is to be treated as vacant for the purposes of subsection (6).

7. In the case of a person appointed other than to the office of Lord Chief Justice, the required oaths are to be taken in the presence of—

- a. the Lord Chief Justice, or
- b. a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) nominated by him for this purpose.

8. In this section “required oaths” means—

- a. the oath of allegiance, and
- b. the judicial oath,

• Oaths to abide by constitution

• Oaths to abide by constitution

as set out in the Promissory Oaths Act 1868.

## 11. Tenure of office of judges of Senior Courts

1. This section applies to the office of any judge of the Senior Courts
2. A person appointed to an office to which this section applies shall vacate it on the day on which he attains the age of seventy years unless by virtue of this section he has ceased to hold it before then.
3. A person appointed to an office to which this section applies shall hold that office during good behaviour, subject to a power of removal by Her Majesty on an address presented to Her by both Houses of Parliament.
- 3A. It is for the Lord Chancellor to recommend to Her Majesty the exercise of the power of removal under subsection (3).
4. A person holding an office within section 2(2)(d) to (g) shall vacate that office on becoming a judge of the Supreme Court.
5. A Lord Justice of Appeal shall vacate that office on becoming an ex-officio judge of the Court of Appeal.
6. A puisne judge of the High Court shall vacate that office on becoming a judge of the Court of Appeal.
7. A person who holds an office to which this section applies may at any time resign it by giving the Lord Chancellor notice in writing to that effect.
8. The Lord Chancellor, if satisfied by means of a medical certificate that a person holding an office to which this section applies—
  - a. is disabled by permanent infirmity from the performance of the duties of his office; and
  - b. is for the time being incapacitated from resigning his office, may, subject to subsection (9), by instrument under his hand declare that person's office to have been vacated; and the instrument shall have the like effect for all purposes as if that person had on the date of the instrument resigned his office.
9. A declaration under subsection (8) with respect to a person shall be of no effect unless it is made—
  - a. in the case of any of the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division and the Chancellor of the High Court, with the concurrence of two others of them;
  - b. in the case of a Lord Justice of Appeal, with the concurrence of the Master of the Rolls;
  - c. in the case of a puisne judge of any Division of the High Court, with the concurrence of the senior judge of that Division.
10. [Repealed]

## 12. Salaries etc. of judges of Senior Courts

1. Subject to subsections (2) and (3), there shall be paid to judges of the Senior Courts such salaries as may be determined by the Lord Chancellor with the concurrence of the Minister for the Civil Service.

• Protection of judges' salaries

2. Until otherwise determined under this section, there shall be paid to the judges mentioned in subsection (1) the same salaries as at the commencement of this Act.

• Protection of judges' salaries

3. Any salary payable under this section may be increased, but not reduced, by a determination or further determination under this section.

4. [Repealed]

5. Salaries payable under this section shall be charged on and paid out of the Consolidated Fund.

6. There shall be paid out of money provided by Parliament to any judge of the Court of Appeal or of the High Court, in addition to his salary, such allowances as may be determined by the Lord Chancellor with the concurrence of the Minister for the Civil Service.

7. Pensions shall be payable to or in respect of the judges mentioned in subsection (1) in accordance with section 2 of the Judicial Pensions Act 1981 or, in the case of a judge who is a person to whom Part I of the Judicial Pensions and Retirement Act 1993 applies, in accordance with that Act.

### 13. Precedence of judges of Senior Courts

1. When sitting in the Court of Appeal—

a. the Lord Chief Justice and the Master of the Rolls shall rank in that order; and

b. judges of the Supreme Court and persons who have been Lord Chancellor shall rank next after the Master of the Rolls and, among themselves, according to the priority of the dates on which they respectively became judges of the Supreme Court or Lord Chancellor, as the case may be.

2. Subject to subsection (1)(b), the President of the Queen's Bench Division shall rank next after the Master of the Rolls.

2A. The President of the Family Division shall rank next after the President of the Queen's Bench Division.

3. The Chancellor of the High Court shall rank next after the President of the Family Division.

4. The vice-president or vice-presidents of the divisions of the Court of Appeal shall rank next after the Chancellor of the High Court; and if there are two vice-presidents of those divisions, they shall rank, among themselves, according to the priority of the dates on which they respectively became vice-presidents.

5. The Lords Justices of Appeal (other than the vice-president or vice-presidents of the divisions of the Court of Appeal) shall rank after the ex-officio judges of the Court of Appeal and, among themselves, according to the priority of the dates on which they respectively became judges of that court.

6. The puisne judges of the High Court shall rank next after the judges of the Court of Appeal and, among themselves, according to the priority of the dates on which they respectively became judges of the High Court.

### 14. Power of judge of Senior Courts or Crown Court to act in cases relating to rates and taxes

1. A judge of the Senior Courts or of the Crown Court shall not be incapable of acting as such in any proceedings by reason of being, as one of a class of ratepayers, taxpayers or persons of any other description, liable in common with others to pay, or contribute to, or benefit from, any rate or tax which may be

increased, reduced or in any way affected by those proceedings.

2. In this section “rate or tax” means any rate, tax, duty or liability, whether public, general or local, and includes—
  - a. any fund formed from the proceeds of any such rate, tax, duty or liability; and
  - b. any fund applicable for purposes the same as, or similar to, those for which the proceeds of any such rate, tax, duty or liability are or might be applied.

## Part II: JURISDICTION

### Heading 1: The Court of Appeal

#### 15. General jurisdiction of Court of Appeal

1. The Court of Appeal shall be a superior court of record.
2. Subject to the provisions of this Act, there shall be exercisable by the Court of Appeal—
  - a. all such jurisdiction (whether civil or criminal) as is conferred on it by this or any other Act; and
  - b. all such other jurisdiction (whether civil or criminal) as was exercisable by it immediately before the commencement of this Act.
3. For all purposes of or incidental to—
  - a. the hearing and determination of any appeal to the civil division of the Court of Appeal; and
  - b. the amendment, execution and enforcement of any judgment or order made on such an appeal,

the Court of Appeal shall have all the authority and jurisdiction of the court or tribunal from which the appeal was brought.
4. It is hereby declared that any provision in this or any other Act which authorises or requires the taking of any steps for the execution or enforcement of a judgment or order of the High Court applies in relation to a judgment or order of the civil division of the Court of Appeal as it applies in relation to a judgment or order of the High Court.

#### 16. Appeals from High Court

1. Subject as otherwise provided by this or any other Act (and in particular to the provision in section 13(2)(a) of the Administration of Justice Act 1969 excluding appeals to the Court of Appeal in cases where leave to appeal from the High Court directly to the Senior Courts is granted under Part II of that Act), or as provided by any order made by the Lord Chancellor under section 56(1) of the Access to Justice Act 1999, the Court of Appeal shall have jurisdiction to hear and determine appeals from any judgment or order of the High Court.

2. An appeal from a judgment or order of the High Court when acting as a prize court shall not be to the Court of Appeal, but shall be to Her Majesty in Council in accordance with the Prize Acts 1864 to 1944.

## 17. Applications for new trial

1. Where any cause or matter, or any issue in any cause or matter, has been tried in the High Court, any application for a new trial thereof, or to set aside a verdict, finding or judgment therein, shall be heard and determined by the Court of Appeal except where rules of court made in pursuance of subsection (2) provide otherwise.
2. As regards cases where the trial was by a judge alone and no error of the court at the trial is alleged, or any prescribed class of such cases, rules of court may provide that any such application as is mentioned in subsection (1) shall be heard and determined by the High Court.
3. Nothing in this section shall alter the practice in bankruptcy.

## 18. Restrictions on appeals to Court of Appeal

1. No appeal shall lie to the Court of Appeal—
  - a. except as provided by the Administration of Justice Act 1960, from any judgment of the High Court in any criminal cause or matter;
  - b. from any order of the High Court or any other court or tribunal allowing an extension of time for appealing from a judgment or order;
  - c. from any order, judgment or decision of the High Court or any other court or tribunal which, by virtue of any provision (however expressed) of this or any other Act, is final;
  - d. from a decree absolute of divorce or nullity of marriage, by a party who, having had time and opportunity to appeal from the decree nisi on which that decree was founded, has not appealed from the decree nisi;
  - e. [Repealed]
  - f. [Repealed]
  - fa. from a dissolution order, nullity order or presumption of death order under Chapter 2 of Part 2 of the Civil Partnership Act 2004 that has been made final, by a party who, having had time and opportunity to appeal from the conditional order on which that final order was founded, has not appealed from the conditional order;
  - g. except as provided by Part I of the Arbitration Act 1996, from any decision of the High Court under that Part;
  - h. [Repealed]
- 1A. [Repealed]
- 1B. [Repealed]
2. [Repealed]

## Heading 2: The High Court

### Subheading 1: General jurisdiction

#### 19. General jurisdiction of High Court

1. The High Court shall be a superior court of record.
2. Subject to the provisions of this Act, there shall be exercisable by the High Court—
  - a. all such jurisdiction (whether civil or criminal) as is conferred on it by this or any other Act; and
  - b. all such other jurisdiction (whether civil or criminal) as was exercisable by it immediately before the commencement of this Act (including jurisdiction conferred on a judge of the High Court by any statutory provision).
3. Any jurisdiction of the High Court shall be exercised only by a single judge of that court, except in so far as it is—
  - a. by or by virtue of rules of court or any other statutory provision required to be exercised by a divisional court; or
  - b. by rules of court made exercisable by a master, registrar or other officer of the court, or by any other person.
4. The specific mention elsewhere in this Act of any jurisdiction covered by subsection (2) shall not derogate from the generality of that subsection.

### Subheading 2: Admiralty jurisdiction

#### 20. Admiralty jurisdiction of High Court

1. The Admiralty jurisdiction of the High Court shall be as follows, that is to say—
  - a. jurisdiction to hear and determine any of the questions and claims mentioned in subsection (2);
  - b. jurisdiction in relation to any of the proceedings mentioned in subsection (3);
  - c. any other Admiralty jurisdiction which it had immediately before the commencement of this Act; and
  - d. any jurisdiction connected with ships or aircraft which is vested in the High Court apart from this section and is for the time being by rules of court made or coming into force after the commencement of this Act assigned to the Queen's Bench Division and directed by the rules to be exercised by the Admiralty Court.

2. The questions and claims referred to in subsection (1)(a) are—
- a. any claim to the possession or ownership of a ship or to the ownership of any share therein;
  - b. any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;
  - c. any claim in respect of a mortgage of or charge on a ship or any share therein;
  - d. any claim for damage received by a ship;
  - e. any claim for damage done by a ship;
  - f. any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or in consequence of the wrongful act, neglect or default of—
    - i. the owners, charterers or persons in possession or control of a ship; or
    - ii. the master or crew of a ship, or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible,  
  
being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship, or in the embarkation, carriage or disembarkation of persons on, in or from the ship;
  - g. any claim for loss of or damage to goods carried in a ship;
  - h. any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
  - j. any claim—
    - i. under the Salvage Convention 1989;
    - ii. under any contract for or in relation to salvage services; or
    - iii. in the nature of salvage not falling within (i) or (ii) above;or any corresponding claim in connection with an aircraft;
  - k. any claim in the nature of towage in respect of a ship or an aircraft;
  - l. any claim in the nature of pilotage in respect of a ship or an aircraft;

- m. any claim in respect of goods or materials supplied to a ship for her operation or maintenance;
  - n. any claim in respect of the construction, repair or equipment of a ship or in respect of dock charges or dues;
  - o. any claim by a master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages);
  - p. any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;
  - q. any claim arising out of an act which is or is claimed to be a general average act;
  - r. any claim arising out of bottomry;
  - s. any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of Admiralty.
3. The proceedings referred to in subsection (1)(b) are—
- a. any application to the High Court under the Merchant Shipping Acts 1894 to 1979 other than an application under the Merchant Shipping Act 1995;
  - b. any action to enforce a claim for damage, loss of life or personal injury arising out of—
    - i. a collision between ships; or
    - ii. the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships; or
    - iii. non-compliance, on the part of one or more of two or more ships, with the collision regulations;
  - c. any action by shipowners or other persons under the Merchant Shipping Act 1995 for the limitation of the amount of their liability in connection with a ship or other property.
4. The jurisdiction of the High Court under subsection (2)(b) includes power to settle any account outstanding and unsettled between the parties in relation to the ship, and to direct that the ship, or any share thereof, shall be sold, and to make such other order as the court thinks fit.
5. Subsection (2)(e) extends to—
- a. any claim in respect of a liability incurred under the Chapter III of Part VI of the Merchant Shipping Act 1995; and



- b. any claim in respect of a liability falling on the International Oil Pollution Compensation Fund, or on the International Oil Compensation Fund 1984, under Chapter IV of Part VI of the Merchant Shipping Act 1995, or on the International Oil Pollution Compensation Supplementary Fund 2003.
6. In subsection (2)(j)—
- a. the “Salvage Convention 1989” means the International Convention on Salvage, 1989 as it has effect under section 224 of the Merchant Shipping Act 1995;
  - b. the reference to salvage services includes services rendered in saving life from a ship and the reference to any claim under any contract for or in relation to salvage services includes any claim arising out of such a contract whether or not arising during the provision of the services;
  - c. the reference to a corresponding claim in connection with an aircraft is a reference to any claim corresponding to any claim mentioned in sub-paragraph (i) or (ii) of paragraph (j) which is available under section 87 of the Civil Aviation Act 1982.
7. The preceding provisions of this section apply—
- a. in relation to all ships or aircraft, whether British or not and whether registered or not and wherever the residence or domicile of their owners may be;
  - b. in relation to all claims, wherever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land); and
  - c. so far as they relate to mortgages and charges, to all mortgages or charges, whether registered or not and whether legal or equitable, including mortgages and charges created under foreign law:

Provided that nothing in this subsection shall be construed as extending the cases in which money or property is recoverable under any of the provisions of the Merchant Shipping Act 1995.

## 21. Mode of exercise of Admiralty jurisdiction

1. Subject to section 22, an action in personam may be brought in the High Court in all cases within the Admiralty jurisdiction of that court.
2. In the case of any such claim as is mentioned in section 20(2)(a), (c) or (s) or any such question as is mentioned in section 20(2)(b), an action in rem may be brought in the High Court against the ship or property in connection with which the claim or question arises.
3. In any case in which there is a maritime lien or other charge on any ship, aircraft or other property for the amount claimed, an action in rem may be brought in the High Court against that ship, aircraft or property.
4. In the case of any such claim as is mentioned in section 20(2)(e) to (r), where—
  - a. the claim arises in connection with a ship; and

- b. the person who would be liable on the claim in an action in personam (“the relevant person”) was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship,  
an action in rem may (whether or not the claim gives rise to a maritime lien on that ship) be brought in the High Court against—
  - i. that ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise; or
  - ii. any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it.
- 5. In the case of a claim in the nature of towage or pilotage in respect of an aircraft, an action in rem may be brought in the High Court against that aircraft if, at the time when the action is brought, it is beneficially owned by the person who would be liable on the claim in an action in personam.
- 6. Where, in the exercise of its Admiralty jurisdiction, the High Court orders any ship, aircraft or other property to be sold, the court shall have jurisdiction to hear and determine any question arising as to the title to the proceeds of sale.
- 7. In determining for the purposes of subsections (4) and (5) whether a person would be liable on a claim in an action in personam it shall be assumed that he has his habitual residence or a place of business within England or Wales.
- 8. Where, as regards any such claim as is mentioned in section 20(2)(e) to (r), a ship has been served with a writ or arrested in an action in rem brought to enforce that claim, no other ship may be served with a writ or arrested in that or any other action in rem brought to enforce that claim; but this subsection does not prevent the issue, in respect of any one such claim, of a writ naming more than one ship or of two or more writs each naming a different ship.

## **22. Restrictions on entertainment of actions in personam in collision and other similar cases**

- 1. This section applies to any claim for damage, loss of life or personal injury arising out of—
  - a. a collision between ships; or
  - b. the carrying out of, or omission to carry out, a manoeuvre in the case of one or more of two or more ships; or
  - c. non-compliance, on the part of one or more of two or more ships, with the collision regulations.
- 2. The High Court shall not entertain any action in personam to enforce a claim to which this section applies unless—
  - a. the defendant has his habitual residence or a place of business within England or Wales; or
  - b. the cause of action arose within inland waters of England or Wales or within the limits of a port of England or Wales; or

- c. an action arising out of the same incident or series of incidents is proceeding in the court or has been heard and determined in the court.

In this subsection—

- "inland waters" includes any part of the sea adjacent to the coast of the United Kingdom certified by the Secretary of State to be waters falling by international law to be treated as within the territorial sovereignty of Her Majesty apart from the operation of that law in relation to territorial waters;
  - "port" means any port, harbour, river, estuary, haven, dock, canal or other place so long as a person or body of persons is empowered by or under an Act to make charges in respect of ships entering it or using the facilities therein, and "limits of a port" means the limits thereof as fixed by or under the Act in question or, as the case may be, by the relevant charter or custom;
  - "charges" means any charges with the exception of light dues, local light dues and any other charges in respect of lighthouses, buoys or beacons and of charges in respect of pilotage.
3. The High Court shall not entertain any action in personam to enforce a claim to which this section applies until any proceedings previously brought by the plaintiff in any court outside England and Wales against the same defendant in respect of the same incident or series of incidents have been discontinued or otherwise come to an end.
  4. Subsections (2) and (3) shall apply to counterclaims (except counterclaims in proceedings arising out of the same incident or series of incidents) as they apply to actions, the references to the plaintiff and the defendant being for this purpose read as references to the plaintiff on the counterclaim and the defendant to the counterclaim respectively.
  5. Subsections (2) and (3) shall not apply to any action or counterclaim if the defendant thereto submits or has agreed to submit to the jurisdiction of the court.
  6. Subject to the provisions of subsection (3), the High Court shall have jurisdiction to entertain an action in personam to enforce a claim to which this section applies whenever any of the conditions specified in subsection (2)(a) to (c) is satisfied, and the rules of court relating to the service of process outside the jurisdiction shall make such provision as may appear to the rule-making authority to be appropriate having regard to the provisions of this subsection.
  7. Nothing in this section shall prevent an action which is brought in accordance with the provisions of this section in the High Court being transferred, in accordance with the enactments in that behalf, to some other court.
  8. For the avoidance of doubt it is hereby declared that this section applies in relation to the jurisdiction of the High Court not being Admiralty jurisdiction, as well as in relation to its Admiralty jurisdiction.

## **23. High Court not to have jurisdiction in cases within Rhine Convention**

The High Court shall not have jurisdiction to determine any claim or question certified by the Secretary of State to be a claim or question which, under the Rhine Navigation Convention, falls to be determined in accordance with the provisions of that Convention; and any proceedings to enforce such a claim which are commenced in the High Court shall be set aside.

## 24. Supplementary provisions as to Admiralty jurisdiction

1. In sections 20 to 23 and this section, unless the context otherwise requires—
  - “collision regulations” means safety regulations under section 85 of the Merchant Shipping Act 1995;
  - “goods” includes baggage;
  - “master” has the same meaning as in the Merchant Shipping Act 1995, and accordingly includes every person (except a pilot) having command or charge of a ship;
  - “the Rhine Navigation Convention” means the Convention of the 7th October 1868 as revised by any subsequent Convention;
  - “ship” includes any description of vessel used in navigation and (except in the definition of “port” in section 22(2) and in subsection (2)(c) of this section) includes, subject to section 2(3) of the Hovercraft Act 1968, a hovercraft;
  - “towage” and “pilotage”, in relation to an aircraft, mean towage and pilotage while the aircraft is water-borne.
2. Nothing in sections 20 to 23 shall—
  - a. be construed as limiting the jurisdiction of the High Court to refuse to entertain an action for wages by the master or a member of the crew of a ship, not being a British ship;
  - b. affect the provisions of section 226 of the Merchant Shipping Act 1995 (power of a receiver of wreck to detain a ship in respect of a salvage claim); or
  - c. authorise proceedings in rem in respect of any claim against the Crown, or the arrest, detention or sale of any of Her Majesty’s ships or Her Majesty’s aircraft, or, subject to section 2(3) of the Hovercraft Act 1968, Her Majesty’s hovercraft, or of any cargo or other property belonging to the Crown.
3. In this section—
  - “Her Majesty’s ships” and “Her Majesty’s aircraft” have the meanings given by section 38(2) of the Crown Proceedings Act 1947;
  - “Her Majesty’s hovercraft” means hovercraft belonging to the Crown in right of Her Majesty’s Government in the United Kingdom or Her Majesty’s Government in Northern Ireland.

## Subheading 3: Other particular fields of jurisdiction

### 25. Probate jurisdiction of High Court

1. Subject to the provisions of Part V, the High Court shall, in accordance with section 19(2), have the following probate jurisdiction, that is to say all such jurisdiction in relation to probates and letters of administration as it had immediately before the commencement of this Act, and in particular all such contentious and non-contentious jurisdiction as it then had in relation to—
  - a. testamentary causes or matters;
  - b. the grant, amendment or revocation of probates and letters of administration; and
  - c. the real and personal estate of deceased persons.
2. Subject to the provisions of Part V, the High Court shall, in the exercise of its probate jurisdiction, perform all such duties with respect to the estates of deceased persons as fell to be performed by it immediately before the commencement of this Act.

### 26. Matrimonial jurisdiction of High Court

The High Court shall, in accordance with section 19(2), have all such jurisdiction in relation to matrimonial causes and matters as was immediately before the commencement of the Matrimonial Causes Act 1857 vested in or exercisable by any ecclesiastical court or person in England or Wales in respect of—

- a. divorce a mensa et thoro (renamed judicial separation by that Act);
- b. nullity of marriage; and
- c. any matrimonial cause or matter except marriage licences.

### 27. Prize jurisdiction of High Court

The High Court shall, in accordance with section 19(2), have as a prize court—

- a. all such jurisdiction as is conferred on it by the Prize Acts 1864 to 1944 (in which references to the High Court of Admiralty are by virtue of paragraph 1 of Schedule 4 to this Act to be construed as references to the High Court); and
- b. all such other jurisdiction on the high seas and elsewhere as it had as a prize court immediately before the commencement of this Act.

### 28. Appeals from Crown Court and inferior courts

1. Subject to subsection (2), any order, judgment or other decision of the Crown Court may be questioned by any party to the proceedings, on the ground that it is wrong in law or is in excess of jurisdiction, by applying to the Crown Court to

- have a case stated by that court for the opinion of the High Court.
2. Subsection (1) shall not apply to—
    - a. a judgment or other decision of the Crown Court relating to trial on indictment; or
    - b. any decision of that court under the Local Government (Miscellaneous Provisions) Act 1982 which, by any provision of any of those Acts, is to be final.
  3. Subject to the provisions of this Act and to rules of court, the High Court shall, in accordance with section 19(2), have jurisdiction to hear and determine—
    - a. any application, or any appeal (whether by way of case stated or otherwise), which it has power to hear and determine under or by virtue of this or any other Act; and
    - b. all such other appeals as it had jurisdiction to hear and determine immediately before the commencement of this Act.
  4. In subsection (2)(a) the reference to a decision of the Crown Court relating to trial on indictment does not include a decision relating to a requirement to make a payment under regulations under section 23 or 24 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

## **28A. Proceedings on case stated by magistrates' court or Crown Court**

1. This section applies where a case is stated for the opinion of the High Court—
  - a. by a magistrates' court under section 111 of the Magistrates' Courts Act 1980; or
  - b. by the Crown Court under section 28(1) of this Act.
2. The High Court may, if it thinks fit, cause the case to be sent back for amendment and, where it does so, the case shall be amended accordingly.
3. The High Court shall hear and determine the question arising on the case (or the case as amended) and shall—
  - a. reverse, affirm or amend the determination in respect of which the case has been stated; or
  - b. remit the matter to the magistrates' court, or the Crown Court, with the opinion of the High Court,  
and may make such other order in relation to the matter (including as to costs) as it thinks fit.
4. Except as provided by the Administration of Justice Act 1960 (right of appeal to Senior Courts in criminal cases), a decision of the High Court under this section is final.

## **29. Mandatory, prohibiting and quashing orders**

- 1. The orders of mandamus, prohibition and certiorari shall be known instead as mandatory, prohibiting and quashing orders respectively.
- 1A. The High Court shall have jurisdiction to make mandatory, prohibiting and quashing orders in those classes of case in which, immediately before 1st May 2004, it had jurisdiction to make orders of mandamus, prohibition and certiorari respectively.
- 2. Every such order shall be final, subject to any right of appeal therefrom.
- 3. In relation to the jurisdiction of the Crown Court, other than its jurisdiction in matters relating to trial on indictment, the High Court shall have all such jurisdiction to make mandatory, prohibiting or quashing orders as the High Court possesses in relation to the jurisdiction of an inferior court.
- 3A. The High Court shall have no jurisdiction to make mandatory, prohibiting or quashing orders in relation to the jurisdiction of the Court Martial in matters relating to-
  - a. trial by the Court Martial for an offence; or
  - b. appeals from the Service Civilian Court.
- 4. The power of the High Court under any enactment to require justices of the peace or a judge or officer of the county court to do any act relating to the duties of their respective offices, or to require a magistrates' court to state a case for the opinion of the High Court, in any case where the High Court formerly had by virtue of any enactment jurisdiction to make a rule absolute, or an order, for any of those purposes, shall be exercisable by mandatory order.
- 5. In any statutory provision-
  - a. references to mandamus or to a writ or order of mandamus shall be read as references to a mandatory order;
  - b. references to prohibition or to a writ or order of prohibition shall be read as references to a prohibiting order;
  - c. references to certiorari or to a writ or order of certiorari shall be read as references to a quashing order; and
  - d. references to the issue or award of a writ of mandamus, prohibition or certiorari shall be read as references to the making of the corresponding mandatory, prohibiting or quashing order.
- 6. In subsection (3) the reference to the Crown Court's jurisdiction in matters relating to trial on indictment does not include its jurisdiction relating to requirements to make payments under regulations under section 23 or 24 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

### **30. Injunctions to restrain persons from acting in offices in which they are not entitled to act**

- 1. Where a person not entitled to do so acts in an office to which this section applies, the High Court may—
  - a. grant an injunction restraining him from so acting; and
  - b. if the case so requires, declare the office to be vacant.

2. This section applies to any substantive office of a public nature and permanent character which is held under the Crown or which has been created by any statutory provision or royal charter.

### 31. Application for judicial review

1. An application to the High Court for one or more of the following forms of relief, namely—

- a. a mandatory, prohibiting or quashing order;
- b. a declaration or injunction under subsection (2); or
- c. an injunction under section 30 restraining a person not entitled to do so from acting in an office to which that section applies,  
shall be made in accordance with rules of court by a procedure to be known as an application for judicial review.

2. A declaration may be made or an injunction granted under this subsection in any case where an application for judicial review, seeking that relief, has been made and the High Court considers that, having regard to—

- a. the nature of the matters in respect of which relief may be granted by mandatory, prohibiting or quashing orders;
- b. the nature of the persons and bodies against whom relief may be granted by such orders; and
- c. all the circumstances of the case,  
it would be just and convenient for the declaration to be made or the injunction to be granted, as the case may be.

3. No application for judicial review shall be made unless the leave of the High Court has been obtained in accordance with rules of court; and the court shall not grant leave to make such an application unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

4. On an application for judicial review the High Court may award to the applicant damages, restitution or the recovery of a sum due if—

- a. the application includes a claim for such an award arising from any matter to which the application relates; and
- b. the court is satisfied that such an award would have been made if the claim had been made in an action begun by the applicant at the time of making the application.

5. If, on an application for judicial review, the High Court quashes the decision to which the application relates, it may in addition—

- a. remit the matter to the court, tribunal or authority which made the decision, with a direction to reconsider the matter and reach a decision in accordance with the findings of the High Court, or
- b. substitute its own decision for the decision in question.

• Ultra-vires administrative actions  
• Constitutional interpretation

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• Ultra-vires administrative actions

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• Constitutional interpretation



- Ultra-vires administrative actions
- Constitutional interpretation

- 5A.** But the power conferred by subsection (5)(b) is exercisable only if—
- a. the decision in question was made by a court or tribunal,
  - b. the decision is quashed on the ground that there has been an error of law, and
  - c. without the error, there would have been only one decision which the court or tribunal could have reached.
- 5B.** Unless the High Court otherwise directs, a decision substituted by it under subsection (5)(b) has effect as if it were a decision of the relevant court or tribunal.
- 6.** Where the High Court considers that there has been undue delay in making an application for judicial review, the court may refuse to grant—
- a. leave for the making of the application; or
  - b. any relief sought on the application, if it considers that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration.
- 7.** Subsection (6) is without prejudice to any enactment or rule of court which has the effect of limiting the time within which an application for judicial review may be made.

- Ultra-vires administrative actions
- Constitutional interpretation

- Constitutional interpretation

### **31A. Transfer of judicial review applications to Upper Tribunal**

1. This section applies where an application is made to the High Court—
  - a. for judicial review, or
  - b. for permission to apply for judicial review.
2. If Conditions 1, 2, and 3 are met, the High Court must by order transfer the application to the Upper Tribunal.
3. If Conditions 1 and 2 are met, but Condition 3 is not, the High Court may by order transfer the application to the Upper Tribunal if it appears to the High Court to be just and convenient to do so.
4. Condition 1 is that the application does not seek anything other than—
  - a. relief under section 31(1)(a) and (b);
  - b. permission to apply for relief under section 31(1)(a) and (b);
  - c. an award under section 31(4);
  - d. interest;
  - e. costs.

5. Condition 2 is that the application does not call into question anything done by the Crown Court.
6. Condition 3 is that the application falls within a class specified under section 18(6) of the Tribunals, Courts and Enforcement Act 2007.

## **Subheading 4: Powers**

### **32. Orders for interim payment**

1. As regards proceedings pending in the High Court, provision may be made by rules of court for enabling the court, in such circumstances as may be prescribed, to make an order requiring a party to the proceedings to make an interim payment of such amount as may be specified in the order, with provision for the payment to be made to such other party to the proceedings as may be so specified or, if the order so provides, by paying it into court.
2. Any rules of court which make provision in accordance with subsection (1) may include provision for enabling a party to any proceedings who, in pursuance of such an order, has made an interim payment to recover the whole or part of the amount of the payment in such circumstances, and from such other party to the proceedings, as may be determined in accordance with the rules.
3. Any rules made by virtue of this section may include such incidental, supplementary and consequential provisions as the rule-making authority may consider necessary or expedient.
4. Nothing in this section shall be construed as affecting the exercise of any power relating to costs, including any power to make rules of court relating to costs.
5. In this section "interim payment", in relation to a party to any proceedings, means a payment on account of any damages, debt or other sum (excluding any costs) which that party may be held liable to pay to or for the benefit of another party to the proceedings if a final judgment or order of the court in the proceedings is given or made in favour of that other party.

### **32A. Orders for provisional damages for personal injuries**

1. This section applies to an action for damages for personal injuries in which there is proved or admitted to be a chance that at some definite or indefinite time in the future the injured person will, as a result of the act or omission which gave rise to the cause of action, develop some serious disease or suffer some serious deterioration in his physical or mental condition.
2. Subject to subsection (4) below, as regards any action for damages to which this section applies in which a judgment is given in the High Court, provision may be made by rules of court for enabling the court, in such circumstances as may be prescribed, to award the injured person—
  - a. damages assessed on the assumption that the injured person will not develop the disease or suffer the deterioration in his condition; and
  - b. further damages at a future date if he develops the disease or suffers the deterioration.
3. Any rules made by virtue of this section may include such incidental, supplementary and consequential provisions as the rule-making authority may consider necessary or expedient.

4. Nothing in this section shall be construed—
  - a. as affecting the exercise of any power relating to costs, including any power to make rules of court relating to costs; or
  - b. as prejudicing any duty of the court under any enactment or rule of law to reduce or limit the total damages which would have been recoverable apart from any such duty.

### **33. Powers of High Court exercisable before commencement of action**

1. On the application of any person in accordance with rules of court, the High Court shall, in such circumstances as may be specified in the rules, have power to make an order providing for any one or more of the following matters, that is to say—
  - a. the inspection, photographing, preservation, custody and detention of property which appears to the court to be property which may become the subject-matter of subsequent proceedings in the High Court, or as to which any question may arise in any such proceedings; and
  - b. the taking of samples of any such property as is mentioned in paragraph (a), and the carrying out of any experiment on or with any such property.
2. On the application, in accordance with rules of court, of a person who appears to the High Court to be likely to be a party to subsequent proceedings in that court the High Court shall, in such circumstances as may be specified in the rules, have power to order a person who appears to the court to be likely to be a party to the proceedings and to be likely to have or to have had in his possession, custody or power any documents which are relevant to an issue arising or likely to arise out of that claim—
  - a. to disclose whether those documents are in his possession, custody or power; and
  - b. to produce such of those documents as are in his possession, custody or power to the applicant or, on such conditions as may be specified in the order—
    - i. to the applicant's legal advisers; or
    - ii. to the applicant's legal advisers and any medical or other professional adviser of the applicant; or
    - iii. if the applicant has no legal adviser, to any medical or other professional adviser of the applicant.
3. This section applies in relation to the family court as it applies in relation to the High Court.

### **34. Power of High Court to order disclosure of documents, inspection of property etc. in proceedings for personal injuries or death**

1. [Omitted]
2. On the application, in accordance with rules of court, of a party to any proceedings to which this section applies, the High Court shall, in such circumstances as may be specified in the rules, have power to order a person who is not a party to the proceedings and who appears to the court to be likely to have in his possession, custody or power any documents which are relevant to an issue arising out of the said claim—
  - a. to disclose whether those documents are in his possession, custody or power; and
  - b. to produce such of those documents as are in his possession, custody or power to the applicant or, on such conditions as may be specified in the order—
    - i. to the applicant's legal advisers; or
    - ii. to the applicant's legal advisers and any medical or other professional adviser of the applicant; or
    - iii. if the applicant has no legal adviser, to any medical or other professional adviser of the applicant.
3. On the application, in accordance with rules of court, of a party to any proceedings to which this section applies, the High Court shall, in such circumstances as may be specified in the rules, have power to make an order providing for any one or more of the following matters, that is to say—
  - a. the inspection, photographing, preservation, custody and detention of property which is not the property of, or in the possession of, any party to the proceedings but which is the subject-matter of the proceedings or as to which any question arises in the proceedings;
  - b. the taking of samples of any such property as is mentioned in paragraph (a) and the carrying out of any experiment on or with any such property.
4. The preceding provisions of this section are without prejudice to the exercise by the High Court of any power to make orders which is exercisable apart from those provisions.
5. Subsections (2) and (3) apply in relation to the family court as they apply in relation to the High Court.

### **35. Provisions supplementary to ss. 33 and 34**

1. A court shall not make an order under section 33 or 34 if it considers that compliance with the order, if made, would be likely to be injurious to the public interest.

2. Rules of court may make provision as to the circumstances in which an order under section 33 or 34 can be made; and any rules making such provision may include such incidental, supplementary and consequential provisions as the rule-making authority may consider necessary or expedient.
3. Without prejudice to the generality of subsection (2), rules of court shall be made for the purpose of ensuring that the costs of and incidental to proceedings for an order under section 33(2) or 34 incurred by the person against whom the order is sought shall be awarded to that person unless the court otherwise directs.
4. Sections 33(2) and 34 and this section bind the Crown; and section 33(1) binds the Crown so far as it relates to property as to which it appears to the court that it may become the subject-matter of subsequent proceedings involving a claim in respect of personal injuries to a person or in respect of a person's death.  
In this subsection references to the Crown do not include references to Her Majesty in Her private capacity or to Her Majesty in right of Her Duchy of Lancaster or to the Duke of Cornwall.
5. In sections 32A, 33 and 34 and this section—
  - “property” includes any land, chattel or other corporeal property of any description;
  - “personal injuries” includes any disease and any impairment of a person's physical or mental condition.

### **35A. Power of High Court to award interest on debts and damages**

1. Subject to rules of court, in proceedings (whenever instituted) before the High Court for the recovery of a debt or damages there may be included in any sum for which judgment is given simple interest, at such rate as the court thinks fit or as rules of court may provide, on all or any part of the debt or damages in respect of which judgment is given, or payment is made before judgment, for all or any part of the period between the date when the cause of action arose and—
  - a. in the case of any sum paid before judgment, the date of the payment; and
  - b. in the case of the sum for which judgment is given, the date of the judgment.
2. In relation to a judgment given for damages for personal injuries or death which exceed £200 subsection (1) shall have effect—
  - a. with the substitution of “shall be included” for “may be included”; and
  - b. with the addition of “unless the court is satisfied that there are special reasons to the contrary” after “given”, where first occurring.
3. Subject to rules of court, where—
  - a. there are proceedings (whenever instituted) before the High Court for the recovery of a debt; and
  - b. the defendant pays the whole debt to the plaintiff (otherwise than in pursuance of a judgment in the proceedings),

the defendant shall be liable to pay the plaintiff simple interest at such rate as the court thinks fit or as rules of court may provide on all or any part of the debt for all or any part of the period between the date when the cause of action arose and the date of the payment.

4. Interest in respect of a debt shall not be awarded under this section for a period during which, for whatever reason, interest on the debt already runs.
5. Without prejudice to the generality of section 84, rules of court may provide for a rate of interest by reference to the rate specified in section 17 of the Judgments Act 1838 as that section has effect from time to time or by reference to a rate for which any other enactment provides.
6. Interest under this section may be calculated at different rates in respect of different periods.
7. In this section “plaintiff” means the person seeking the debt or damages and “defendant” means the person from whom the plaintiff seeks the debt or damages and “personal injuries” includes any disease and any impairment of a person’s physical or mental condition.
8. Nothing in this section affects the damages recoverable for the dishonour of a bill of exchange.

### **36. Subpoena issued by High Court to run throughout United Kingdom**

1. If in any cause or matter in the High Court it appears to the court that it is proper to compel the personal attendance at any trial of a witness who may not be within the jurisdiction of the court, it shall be lawful for the court, if in the discretion of the court it seems fit so to do, to order that a writ of subpoena ad testificandum or writ of subpoena duces tecum shall issue in special form commanding the witness to attend the trial wherever he shall be within the United Kingdom; and the service of any such writ in any part of the United Kingdom shall be as valid and effectual for all purposes as if it had been served within the jurisdiction of the High Court.
2. Every such writ shall have at its foot a statement to the effect that it is issued by the special order of the High Court, and no such writ shall issue without such a special order.
3. If any person served with a writ issued under this section does not appear as required by the writ, the High Court, on proof to the satisfaction of the court of the service of the writ and of the default, may transmit a certificate of the default under the seal of the court or under the hand of a judge of the court—
  - a. if the service was in Scotland, to the Court of Session at Edinburgh; or
  - b. if the service was in Northern Ireland, to the High Court of Justice in Northern Ireland at Belfast;
 and the court to which the certificate is sent shall thereupon proceed against and punish the person in default in like manner as if that person had neglected or refused to appear in obedience to process issued out of that court.
4. No court shall in any case proceed against or punish any person for having made such default as aforesaid unless it is shown to the court that a reasonable and sufficient sum of money to defray
  - a. the expenses of coming and attending to give evidence and of returning from giving evidence; and

- b. any other reasonable expenses which he has asked to be defrayed in connection with his evidence, was tendered to him at the time when the writ was served upon him.
5. Nothing in this section shall affect—
- a. the power of the High Court to issue a commission for the examination of witnesses out of the jurisdiction of the court in any case in which, notwithstanding this section, the court thinks fit to issue such a commission; or
  - b. the admissibility at any trial of any evidence which, if this section had not been enacted, would have been admissible on the ground of a witness being outside the jurisdiction of the court.
6. In this section references to attendance at a trial include references to attendance before an examiner or commissioner appointed by the High Court in any cause or matter in that court, including an examiner or commissioner appointed to take evidence outside the jurisdiction of the court.

### **37. Powers of High Court with respect to injunctions and receivers**

1. The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so.
2. Any such order may be made either unconditionally or on such terms and conditions as the court thinks just.
3. The power of the High Court under subsection (1) to grant an interlocutory injunction restraining a party to any proceedings from removing from the jurisdiction of the High Court, or otherwise dealing with, assets located within that jurisdiction shall be exercisable in cases where that party is, as well as in cases where he is not, domiciled, resident or present within that jurisdiction.
4. The power of the High Court to appoint a receiver by way of equitable execution shall operate in relation to all legal estates and interests in land; and that power—
  - a. may be exercised in relation to an estate or interest in land whether or not a charge has been imposed on that land under section 1 of the Charging Orders Act 1979 for the purpose of enforcing the judgment, order or award in question; and
  - b. shall be in addition to, and not in derogation of, any power of any court to appoint a receiver in proceedings for enforcing such a charge.
5. Where an order under the said section 1 imposing a charge for the purpose of enforcing a judgment, order or award has been, or has effect as if, registered under section 6 of the Land Charges Act 1972, subsection (4) of the said section 6 (effect of non-registration of writs and orders registrable under that section) shall not apply to an order appointing a receiver made either—
  - a. in proceedings for enforcing the charge; or

- b. by way of equitable execution of the judgment, order or award or, as the case may be, of so much of it as requires payment of moneys secured by the charge.
6. This section applies in relation to the family court as it applies in relation to the High Court.

### **38. Relief against forfeiture for non-payment of rent**

1. In any action in the High Court for the forfeiture of a lease for non-payment of rent, the court shall have power to grant relief against forfeiture in a summary manner, and may do so subject to the same terms and conditions as to the payment of rent, costs or otherwise as could have been imposed by it in such an action immediately before the commencement of this Act.
2. Where the lessee or a person deriving title under him is granted relief under this section, he shall hold the demised premises in accordance with the terms of the lease without the necessity for a new lease.

### **39. Execution of instrument by person nominated by High Court**

1. Where the High Court or family court has given or made a judgment or order directing a person to execute any conveyance, contract or other document, or to indorse any negotiable instrument, then, if that person—
  - a. neglects or refuses to comply with the judgment or order; or
  - b. cannot after reasonable inquiry be found,that court may, on such terms and conditions, if any, as may be just, order that the conveyance, contract or other document shall be executed, or that the negotiable instrument shall be indorsed, by such person as the court may nominate for that purpose.
2. A conveyance, contract, document or instrument executed or indorsed in pursuance of an order under this section shall operate, and be for all purposes available, as if it had been executed or indorsed by the person originally directed to execute or indorse it.

### **40. Attachment of debts**

1. Subject to any order for the time being in force under subsection (4), this section applies to any deposit account, and any withdrawable share account, with a deposit-taker.
2. In determining whether, for the purposes of the jurisdiction of the High Court to attach debts for the purpose of satisfying judgments or orders for the payment of money, a sum standing to the credit of a person in an account to which this section applies is a sum due or accruing to that person and, as such, attachable in accordance with rules of court, any condition mentioned in subsection (3) which applies to the account shall be disregarded.
3. Those conditions are—
  - a. any condition that notice is required before any money or share is withdrawn;



- b. any condition that a personal application must be made before any money or share is withdrawn;
  - c. any condition that a deposit book or share-account book must be produced before any money or share is withdrawn; or
  - d. any other prescribed condition.
4. The Lord Chancellor may by order make such provision as he thinks fit, by way of amendment of this section or otherwise, for all or any of the following purposes, namely—
- a. including in, or excluding from, the accounts to which this section applies accounts of any description specified in the order;
  - b. excluding from the accounts to which this section applies all accounts with any particular deposit-taker so specified or with any deposit-taker of a description so specified.
5. Any order under subsection (4) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
6. “Deposit-taker” means a person who may, in the course of his business, lawfully accept deposits in the United Kingdom.
7. Subsection (6) must be read with—
- a. section 22 of the Financial Services and Markets Act 2000;
  - b. any relevant order under that section; and
  - c. Schedule 2 to that Act.

#### **40A. Administrative and clerical expenses of garnishees**

1. Where an interim third party debt order made in the exercise of the jurisdiction mentioned in subsection (2) of the preceding section is served on a deposit-taker, it may, subject to the provisions of this section, deduct from the relevant debt or debts an amount not exceeding the prescribed sum towards its administrative and clerical expenses in complying with the order; and the right to make a deduction under this subsection shall be exercisable as from the time the interim third party debt order is served on it.
- 1A.** In subsection (1) “the relevant debt or debts”, in relation to an interim third party debt order served on a deposit-taker, means the amount, as at the time the order is served on it, of the debt or debts of which the whole or a part is expressed to be attached by the order.
- 1B.** A deduction may be made under subsection (1) in a case where the amount referred to in subsection (1A) is insufficient to cover both the amount of the deduction and the amount of the judgment debt and costs in respect of which the attachment was made, notwithstanding that the benefit of the attachment to the creditor is reduced as a result of the deduction.
2. An amount may not in pursuance of subsection (1) be deducted or, as the case may be, retained in a case where, by virtue of section 346 of the Insolvency Act 1986 or section 183 of the Insolvency Act 1986 or otherwise, the creditor is not entitled to retain the benefit of the attachment.

3. In this section—
  - “deposit-taker” has the meaning given by section 40(6); and
  - “prescribed” means prescribed by an order made by the Lord Chancellor.
4. An order under this section—
  - a. may make different provision for different cases;
  - b. without prejudice to the generality of paragraph (a) of this subsection, may prescribe sums differing according to the amount due under the judgment or order to be satisfied.
  - c. may provide for this section not to apply to deposit-takers of any prescribed description.
5. Any such order shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

## 41. Wards of court

1. Subject to the provisions of this section, no minor shall be made a ward of court except by virtue of an order to that effect made by the High Court.
2. Where an application is made for such an order in respect of a minor, the minor shall become a ward of court on the making of the application, but shall cease to be a ward of court at the end of such period as may be prescribed unless within that period an order has been made in accordance with the application.
- 2A. Subsection (2) does not apply with respect to a child who is the subject of a care order (as defined by section 105 of the Children Act 1989).
3. The High Court may, either upon an application in that behalf or without such an application, order that any minor who is for the time being a ward of court shall cease to be a ward of court.

## 42. Restriction of vexatious legal proceedings

1. If, on an application made by the Attorney General under this section, the High Court is satisfied that any person has habitually and persistently and without any reasonable ground—
  - a. instituted vexatious civil proceedings, whether in the High Court or the family court or any inferior court, and whether against the same person or against different persons; or
  - b. made vexatious applications in any civil proceedings, whether in the High Court or the family court or any inferior court, and whether instituted by him or another, or
  - c. instituted vexatious prosecutions (whether against the same person or different persons),the court may, after hearing that person or giving him an opportunity of being heard, make a civil proceedings order, a criminal proceedings order or an all proceedings order.

**1A.** In this section—

- “civil proceedings order” means an order that—
    - a. no civil proceedings shall without the leave of the High Court be instituted in any court by the person against whom the order is made;
    - b. any civil proceedings instituted by him in any court before the making of the order shall not be continued by him without the leave of the High Court; and
    - c. no application (other than one for leave under this section) shall be made by him, in any civil proceedings instituted in any court by any person, without the leave of the High Court;
  - “criminal proceedings order” means an order that—
    - a. no information shall be laid before a justice of the peace by the person against whom the order is made without the leave of the High Court; and
    - b. no application for leave to prefer a bill of indictment shall be made by him without the leave of the High Court; and
  - “all proceedings order” means an order which has the combined effect of the two other orders.
2. An order under subsection (1) may provide that it is to cease to have effect at the end of a specified period, but shall otherwise remain in force indefinitely.
  3. Leave for the institution or continuance of, or for the making of an application in, any civil proceedings by a person who is the subject of an order for the time being in force under subsection (1) shall not be given unless the High Court is satisfied that the proceedings or application are not an abuse of the process of the court in question and that there are reasonable grounds for the proceedings or application.
  - 3A.** Leave for the laying of an information or for an application for leave to prefer a bill of indictment by a person who is the subject of an order for the time being in force under subsection (1) shall not be given unless the High Court is satisfied that the institution of the prosecution is not an abuse of the criminal process and that there are reasonable grounds for the institution of the prosecution by the applicant.
  4. No appeal shall lie from a decision of the High Court refusing leave required by virtue of this section.
  5. A copy of any order made under subsection (1) shall be published in the London Gazette.

**43. Power of High Court to vary sentence on application for quashing order**

1. Where a person who has been sentenced for an offence—
  - a. by a magistrates’ court; or

- b. by the Crown Court after being convicted of the offence by a magistrates' court and committed to the Crown Court for sentence; or
  - c. by the Crown Court on appeal against conviction or sentence, applies to the High Court in accordance with section 31 for an a quashing order to remove the proceedings of the magistrates' court or the Crown Court into the High Court, then, if the High Court determines that the magistrates' court or the Crown Court had no power to pass the sentence, the High Court may, instead of quashing the conviction, amend it by substituting for the sentence passed any sentence which the magistrates' court or, in a case within paragraph (b), the Crown Court had power to impose.
2. Any sentence passed by the High Court by virtue of this section in substitution for the sentence passed in the proceedings of the magistrates' court or the Crown Court shall, unless the High Court otherwise directs, begin to run from the time when it would have begun to run if passed in those proceedings; but in computing the term of the sentence, any time during which the offender was released on bail in pursuance of section 37(1)(d) of the Criminal Justice Act 1948 shall be disregarded.
  3. Subsections (1) and (2) shall, with the necessary modifications, apply in relation to any order of a magistrates' court or the Crown Court which is made on, but does not form part of, the conviction of an offender as they apply in relation to a conviction and sentence.

### **43ZA. Power of High Court to vary committal in default**

1. Where the High Court quashes the committal of a person to prison or detention by a magistrates' court or the Crown Court for—
  - a. a default in paying a sum adjudged to be paid by a conviction; or
  - b. want of sufficient goods to satisfy such a sum, the High Court may deal with the person for the default or want of sufficient goods in any way in which the magistrates' court or Crown Court would have power to deal with him if it were dealing with him at the time when the committal is quashed.
2. If the High Court commits him to prison or detention, the period of imprisonment or detention shall, unless the High Court otherwise directs, be treated as having begun when the person was committed by the magistrates' court or the Crown Court (except that any time during which he was released on bail shall not be counted as part of the period).
3. In subsection (1) references to want of sufficient goods to satisfy a sum are references to circumstances where—
  - a. there is power to use the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 to recover the sum from a person, but
  - b. it appears, after an attempt has been made to exercise the power, that the person's goods are insufficient to pay the amount outstanding (as defined by paragraph 50(3) of that Schedule).

## 43A. Specific powers of arbitrator exercisable by High Court

In any cause or matter proceeding in the High Court in connection with any contract incorporating an arbitration agreement which confers specific powers upon the arbitrator, the High Court may, if all parties to the agreement agree, exercise any such powers.

## Subheading 5: Other provisions

### 44. Extraordinary functions of judges of High Court

1. Subject to the provisions of this Act, every judge of the High Court shall be—
  - a. liable to perform any duty not incident to the administration of justice in any court of law which a judge of the High Court was, as the successor of any judge formerly subject to that duty, liable to perform immediately before the commencement of this Act by virtue of any statute, law or custom; and
  - b. empowered to exercise any authority or power not so incident which a judge of the High Court was, as the successor of any judge formerly possessing that authority or power, empowered to exercise immediately before that commencement by virtue of any statute, law or custom.
2. Any such duty, authority or power which immediately before commencement of this Act was imposed or conferred by any statute, the law or custom on the Lord Chief Justice or the Master of the Rolls shall continue to be performed and exercised by them respectively.

## Heading 3: The Crown Court

### 45. General jurisdiction of Crown Court

1. The Crown Court shall be a superior court of record.
2. Subject to the provisions of this Act, there shall be exercisable by the Crown Court—
  - a. all such appellate and other jurisdiction as is conferred on it by or under this or any other Act; and
  - b. all such other jurisdiction as was exercisable by it immediately before the commencement of this Act.
3. Without prejudice to subsection (2), the jurisdiction of the Crown Court shall include all such powers and duties as were exercisable or fell to be performed by it immediately before the commencement of this Act.
4. Subject to section 8 of the Criminal Procedure (Attendance of Witnesses) Act 1965 (substitution in criminal cases of procedure in that Act for procedure by way of subpoena) and to any provision contained in or having effect under this Act, the Crown Court shall, in relation to the attendance and examination of witnesses, any contempt of court, the enforcement of its orders and all other matters incidental to its jurisdiction, have the like powers, rights, privileges and authority as the High Court.

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5. The specific mention elsewhere in this Act of any jurisdiction covered by subsections (2) and (3) shall not derogate from the generality of those subsections.

## **46. Exclusive jurisdiction of Crown Court in trial on indictment**

1. All proceedings on indictment shall be brought before the Crown Court.
2. The jurisdiction of the Crown Court with respect to proceedings on indictment shall include jurisdiction in proceedings on indictment for offences wherever committed, and in particular proceedings on indictment for offences within the jurisdiction of the Admiralty of England.

## **46A. Offences committed on ships and abroad**

1. Sections 280, 281 and 282 of the Merchant Shipping Act 1995 (offences on ships and abroad by British citizens and others) apply in relation to other offences under the law of England and Wales as they apply in relation to offences under that Act or instruments under that Act.

## **47. [Repealed]**

## **48. Appeals to Crown Court**

1. The Crown Court may, in the course of hearing any appeal, correct any error or mistake in the order or judgment incorporating the decision which is the subject of the appeal.
2. On the termination of the hearing of an appeal the Crown Court—
  - a. may confirm, reverse or vary any part of the decision appealed against, including a determination not to impose a separate penalty in respect of an offence; or
  - b. may remit the matter with its opinion thereon to the authority whose decision is appealed against; or
  - c. may make such other order in the matter as the court thinks just, and by such order exercise any power which the said authority might have exercised.
3. Subsection (2) has effect subject to any enactment relating to any such appeal which expressly limits or restricts the powers of the court on the appeal.
4. Subject to section 11(6) of the Criminal Appeal Act 1995, if the appeal is against a conviction or a sentence, the preceding provisions of this section shall be construed as including power to award any punishment, whether more or less severe than that awarded by the magistrates' court whose decision is appealed against, if that is a punishment which that magistrates' court might have awarded.
5. This section applies whether or not the appeal is against the whole of the decision.

6. In this section “sentence” includes any order made by a court when dealing with an offender, including—
  - a. a hospital order under Part III of the Mental Health Act 1983, with or without a restriction order, and an interim hospital order under that Act; and
  - b. a recommendation for deportation made when dealing with an offender.
7. The fact that an appeal is pending against an interim hospital order under the said Act of 1983 shall not affect the power of the magistrates’ court that made it to renew or terminate the order or to deal with the appellant on its termination; and where the Crown Court quashes such an order but does not pass any sentence or make any other order in its place the Court may direct the appellant to be kept in custody or released on bail pending his being dealt with by that magistrates’ court.
8. Where the Crown Court makes an interim hospital order by virtue of subsection (2)—
  - a. the power of renewing or terminating the order and of dealing with the appellant on its termination shall be exercisable by the magistrates’ court whose decision is appealed against and not by the Crown Court; and
  - b. that magistrates’ court shall be treated for the purposes of section 38(7) of the said Act of 1983 (absconding offenders) as the court that made the order.

## Heading 4: General Provisions

### Subheading 1: Law and equity

49. Concurrent administration of law and equity.
  1. Subject to the provisions of this or any other Act, every court exercising jurisdiction in England or Wales in any civil cause or matter shall continue to administer law and equity on the basis that, wherever there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail.
  2. Every such court shall give the same effect as hitherto—
    - a. to all equitable estates, titles, rights, reliefs, defences and counterclaims, and to all equitable duties and liabilities; and
    - b. subject thereto, to all legal claims and demands and all estates, titles, rights, duties, obligations and liabilities existing by the common law or by any custom or created by any statute, and,

subject to the provisions of this or any other Act, shall so exercise its jurisdiction in every cause or matter before it as to secure that, as far as possible, all matters in dispute between the parties are completely and finally determined, and all multiplicity of legal proceedings with respect to any of those matters is avoided.
  3. Nothing in this Act shall affect the power of the Court of Appeal or the High Court to stay any proceedings before it, where it thinks fit to do so, either of its own motion or on the application of any person, whether or not a party to the proceedings.

## 50. Power to award damages as well as, or in substitution for, injunction or specific performance

Where the Court of Appeal or the High Court has jurisdiction to entertain an application for an injunction or specific performance, it may award damages in addition to, or in substitution for, an injunction or specific performance.

### Subheading 2: Costs

## 51. Costs in civil division of Court of Appeal, High Court and county courts

1. Subject to the provisions of this or any other enactment and to rules of court, the costs of and incidental to all proceedings in—
  - a. the civil division of the Court of Appeal;
  - b. the High Court;
  - ba. the family court; and
  - c. the county court,  
shall be in the discretion of the court.
2. Without prejudice to any general power to make rules of court, such rules may make provision for regulating matters relating to the costs of those proceedings including, in particular, prescribing scales of costs to be paid to legal or other representatives or for securing that the amount awarded to a party in respect of the costs to be paid by him to such representatives is not limited to what would have been payable by him to them if he had not been awarded costs.
3. The court shall have full power to determine by whom and to what extent the costs are to be paid.
4. In subsections (1) and (2) “proceedings” includes the administration of estates and trusts.
5. Nothing in subsection (1) shall alter the practice in any criminal cause, or in bankruptcy.
6. In any proceedings mentioned in subsection (1), the court may disallow, or (as the case may be) order the legal or other representative concerned to meet, the whole of any wasted costs or such part of them as may be determined in accordance with rules of court.
7. In subsection (6), “wasted costs” means any costs incurred by a party—
  - a. as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative; or
  - b. which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay.
8. Where—
  - a. a person has commenced proceedings in the High Court; but



- b. those proceedings should, in the opinion of the court, have been commenced in the county court or family court in accordance with any provision made under section 1 of the Courts and Legal Services Act 1990 or by or under any other enactment,  
the person responsible for determining the amount which is to be awarded to that person by way of costs shall have regard to those circumstances.
- 9. Where, in complying with subsection (8), the responsible person reduces the amount which would otherwise be awarded to the person in question—
  - a. the amount of that reduction shall not exceed 25 per cent; and
  - b. on any taxation of the costs payable by that person to his legal representative, regard shall be had to the amount of the reduction.
- 10. The Lord Chancellor may by order amend subsection (9)(a) by substituting, for the percentage for the time being mentioned there, a different percentage.
- 11. Any such order shall be made by statutory instrument and may make such transitional or incidental provision as the Lord Chancellor considers expedient.
- 12. No such statutory instrument shall be made unless a draft of the instrument has been approved by both Houses of Parliament.
- 13. In this section “legal or other representative”, in relation to a party to proceedings, means any person exercising a right of audience or right to conduct litigation on his behalf.

## 52. Costs in Crown Court

- 1. Rules of court may authorise the Crown Court to award costs and may regulate any matters relating to costs of proceedings in that court, and in particular may make provision as to—
  - a. any discretion to award costs;
  - b. the taxation of costs, or the fixing of a sum instead of directing a taxation, and as to the officer of the court or other person by whom costs are to be taxed;
  - c. a right of appeal from any decision on the taxation of costs, whether to a Taxing Master of the Senior Courts or to any other officer or authority;
  - d. a right of appeal to the High Court, subject to any conditions specified in the rules, from any decision on an appeal brought by virtue of paragraph (c);
  - e. the enforcement of an order for costs; and
  - f. the charges or expenses or other disbursements which are to be treated as costs for the purposes of the rules.
- 2. The costs to be dealt with by rules made in pursuance of this section may, where an appeal is brought to the Crown Court from the decision of a magistrates’ court, or from the decision of any other court or tribunal, include costs in the proceedings in that court or tribunal.

- 2A. Subsection (6) of section 51 applies in relation to any civil proceedings in the Crown Court as it applies in relation to any proceedings mentioned in subsection (1) of that section
3. Nothing in this section authorises the making of rules about the payment of costs out of central funds, whether under the Part II of the Prosecution of Offences Act 1985 or otherwise, but rules made in pursuance of this section may make any such provision as in relation to costs of proceedings in the Crown Court, is contained in section 18 of that Act or in regulations made under section 19 of that Act (awards of party and party costs in criminal proceedings).
4. Rules made in pursuance of this section may amend or repeal all or any of the provisions of any enactment about costs between party and party in criminal or other proceedings in the Crown Court, being an enactment passed before, or contained in, the Part II of the Prosecution of Offences Act 1985.
5. Rules made in pursuance of this section shall have effect subject to the provisions of section 41 of, and Schedule 9 to, the Administration of Justice Act 1970 (method of enforcing orders for costs).

## **Part III: PRACTICE AND PROCEDURE**

### **Heading 1: The Court of Appeal**

#### **Subheading 1: Distribution of business**

#### **53. Distribution of business between civil and criminal divisions**

1. Rules of court may provide for the distribution of business in the Court of Appeal between the civil and criminal divisions, but subject to any such rules business shall be distributed in accordance with the following provisions of this section.
2. The criminal division of the Court of Appeal shall exercise—
  - a. all jurisdiction of the Court of Appeal under Parts I and II of the Criminal Appeal Act 1968;
  - b. the jurisdiction of the Court of Appeal under section 13 of the Administration of Justice Act 1960 (appeals in cases of contempt of court) in relation to appeals from orders and decisions of the Crown Court;
  - c. all other jurisdiction expressly conferred on that division by this or any other Act; and
  - d. the jurisdiction to order the issue of writs of venire de novo.
3. The civil division of the Court of Appeal shall exercise the whole of the jurisdiction of that court not exercisable by the criminal division.

4. Where any class of proceedings in the Court of Appeal is by any statutory provision assigned to the criminal division of that court, rules of court may provide for any enactment relating to—
  - a. appeals to the Court of Appeal under Part I of the Criminal Appeal Act 1968; or
  - b. any matter connected with or arising out of such appeals, to apply in relation to proceedings of that class or, as the case may be, to any corresponding matter connected with or arising out of such proceedings, as it applies in relation to such appeals or, as the case may be, to the relevant matter within paragraph (b), with or without prescribed modifications in either case.

## Subheading 2: Composition of court

### 54. Court of civil division

1. This section relates to the civil division of the Court of Appeal; and in this section “court”, except where the context otherwise requires, means a court of that division.
2. Subject as follows, a court shall be duly constituted for the purpose of exercising any of its jurisdiction if it consists of one or more judges.
3. The Master of the Rolls may, with the concurrence of the Lord Chancellor, give (or vary or revoke) directions about the minimum number of judges of which a court must consist if it is to be duly constituted for the purpose of any description of proceedings.
4. The Master of the Rolls, or any Lord Justice of Appeal designated by him, may (subject to any directions under subsection (3)) determine the number of judges of which a court is to consist for the purpose of any particular proceedings.
- 4A. The Master of the Rolls may give directions as to what is to happen in any particular case where one or more members of a court which has partly heard proceedings are unable to continue.
5. Where—
  - a. an appeal has been heard by a court consisting of an even number of judges; and
  - b. the members of the court are equally divided, the case shall, on the application of any part to the appeal, be re-argued before and determined by an uneven number of judges not less than three, before any appeal to the Senior Courts.
6. [Repealed]
7. [Repealed]
8. Subsections (1) and (2) of section 70 (assessors in the High Court) shall apply in relation to causes and matters before the civil division of the Court of Appeal as they apply in relation to causes and matters before the High Court.
9. Subsections (3) and (4) of section 70 (scientific advisers to assist the Patents Court in proceedings under the Patents Act 1949 and the Patents Act 1977) shall apply in relation to the civil division of the Court of Appeal and proceedings on appeal from any decision of the Patents Court in proceedings under those Acts as they apply in relation to the Patents Court and proceedings under those Acts.

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10. [Repealed]

## 55. Court of criminal division

1. This section relates to the criminal division of the Court of Appeal; and in this section “court” means a court of that division.
2. Subject to subsection (6), a court shall be duly constituted for the purpose of exercising any of its jurisdiction if it consists of an uneven number of judges not less than three.
3. Where—
  - a. part of any proceedings before a court has been heard by an uneven number of judges greater than three; and
  - b. one or more members of the court are unable to continue,  
the court shall remain duly constituted for the purpose of those proceedings so long as the number of members (whether even or uneven) is not reduced to less than three.
4. Subject to subsection (6), a court shall, if it consists of two judges, be duly constituted for every purpose except—
  - a. determining an appeal against—
    - i. conviction; or
    - ii. a verdict of not guilty by reason of insanity; or
    - iii. a finding under section 4 of the Criminal Procedure (Insanity) Act 1964 (unfitness to plead) that a person is under a disability;
  - aa. reviewing sentencing under Part IV of the Criminal Justice Act 1988;
  - b. determining an application for leave to appeal to the Senior Courts; and
  - c. refusing an application for leave to appeal to the criminal division against conviction or any such verdict or finding as is mentioned in paragraph (a)(ii) or (iii), other than an application which has been refused by a single judge.
5. Where an appeal has been heard by a court consisting of an even number of judges and the members of the court are equally divided, the case shall be re-argued before and determined by an uneven number of judges not less than three.
6. A court shall not be duly constituted if it includes more than one Circuit judge acting as a judge of the court under section 9.

## 56. Judges not to sit on appeal from their own judgments, etc

1. No judge shall sit as a member of the civil division of the Court of Appeal on the hearing of, or shall determine any application in proceedings incidental or preliminary to, an appeal from a judgment or order made in any case by himself or by any court of which he was a member.

2. No judge shall sit as a member of the criminal division of the Court of Appeal on the hearing of, or shall determine any application in proceedings incidental or preliminary to, an appeal against—
  - a. a conviction before himself or a court of which he was a member; or
  - b. a sentence passed by himself or such a court.

## **56A. Circuit judges not to sit on certain appeals**

[Repealed]

## **56B. Allocation of cases in criminal division**

1. The appeals or classes of appeals suitable for allocation to a court of the criminal division of the Court of Appeal in which a Circuit judge is acting under section 9 shall be determined in accordance with directions given by or on behalf of the Lord Chief Justice after consulting the Lord Chancellor.
2. In subsection (1) “appeal” includes the hearing of, or any application in proceedings incidental or preliminary to, an appeal.

## **Subheading 3: Sittings and vacations**

### **57. Sittings and vacations**

1. Sittings of the Court of Appeal may be held, and any other business of the Court of Appeal may be conducted, at any place in England or Wales.
2. Subject to rules of court—
  - a. the places at which the Court of Appeal sits outside the Royal Courts of Justice; and
  - b. the days and times at which the Court of Appeal sits at any place outside the Royal Courts of Justice,shall be determined in accordance with directions given by the Lord Chancellor after consulting the Lord Chief Justice.
3. Rules of court may make provision for regulating the vacations to be observed by the Court of Appeal and in the offices of that court.
4. Rules of court—
  - a. may provide for securing such sittings of the civil division of the Court of Appeal during vacation as the Master of the Rolls may with the concurrence of the Lord Chancellor determine;
  - b. without prejudice to paragraph (a), shall provide for the transaction during vacation by judges of the Court of Appeal of all such business in the civil division of that court as may require to be immediately or promptly transacted; and
  - c. shall provide for securing sittings of the criminal division of that court during vacation if necessary.

5. The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.

## **Subheading 4: Other provisions**

### **58. Calling into question of incidental decisions in civil division**

1. Rules of court may provide that decisions of the Court of Appeal which—
  - a. are taken by a single judge or any officer or member of staff of that court in proceedings incidental to any cause or matter pending before the civil division of that court; and
  - b. do not involve the determination of an appeal or of an application for permission to appeal,  
may be called into question in such manner as may be prescribed.
2. No appeal shall lie to the Senior Courts from a decision which may be called into question pursuant to rules under subsection (1).

### **59. Form of judgment of court of criminal division**

Any judgment of a court of the criminal division of the Court of Appeal on any question shall, except where the judge presiding over the court states that in his opinion the question is one of law on which it is convenient that separate judgments should be pronounced by members of the court, be pronounced by the judge presiding over the court or by such other member of the court as he directs and, except as aforesaid, no judgment shall be separately pronounced on any question by any member of the court.

### **60. Rules of court, and decisions of Court of Appeal, as to whether judgment or order is final or interlocutory**

1. Rules of court may provide for orders or judgments of any prescribed description to be treated for any prescribed purpose connected with appeals to the Court of Appeal as final or as interlocutory.
2. No appeal shall lie from a decision of the Court of Appeal as to whether a judgment or order is, for any purpose connected with an appeal to that court, final or interlocutory.

## **Heading 2: The High Court**

### **Subheading 1: Distribution of business**

#### **61. Distribution of business among Divisions**

1. Subject to any provision made by or under this or any other Act (and in particular to any rules of court made in pursuance of subsection (2) and any order under subsection (3)), business in the High Court of any description mentioned in Schedule 1, as for the time being in force, shall be distributed

among the Divisions in accordance with that Schedule.

2. Rules of court may provide for the distribution of business in the High Court among the Divisions; but any rules made in pursuance of this subsection shall have effect subject to any orders for the time being in force under subsection (3).
3. Subject to subsection (5), the Lord Chief Justice may, with the concurrence of the Lord Chancellor, by order—
  - a. direct that any business in the High Court which is not for the time being assigned by or under this or any other Act to any Division be assigned to such Division as may be specified in the order;
  - b. if at any time it appears to the Lord Chief Justice and the Lord Chancellor desirable to do so with a view to the more convenient administration of justice, direct that any business for the time being assigned by or under this or any other Act to any Division be assigned to such other Division as may be specified in the order; and
  - c. amend Schedule 1 so far as may be necessary in consequence of provision made by order under paragraph (a) or (b).
4. The powers conferred by subsection (2) and subsection (3) include power to assign business of any description to two or more Divisions concurrently.
5. No order under subsection (3)(b) relating to any business shall be made without the concurrence of the senior judge of—
  - a. the Division or each of the Divisions to which the business is for the time being assigned; and
  - b. the Division or each of the Divisions to which the business is to be assigned by the order.
6. Subject to rules of court, the fact that a cause or matter commenced in the High Court falls within a class of business assigned by or under this Act to a particular Division does not make it obligatory for it to be allocated or transferred to that Division.
7. Without prejudice to subsections (1) to (5) and section 63, rules of court may provide for the distribution of the business (other than business required to be heard by a divisional court) in any Division of the High Court among the judges of that Division.
8. Any order under subsection (3) shall be made by statutory instrument, which shall be laid before Parliament after being made.
9. The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under subsection (3).

## 62. Business of Patents, Admiralty and Commercial Courts

1. The Patents Court shall take such proceedings relating to patents as are within the jurisdiction conferred on it by the Patents Act 1977, and such other proceedings relating to patents or other matters as may be prescribed.
2. The Admiralty Court shall take Admiralty business, that is to say causes and matters assigned to the Queen's Bench Division and involving the exercise of the High Court's Admiralty jurisdiction or its jurisdiction as a prize court.

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3. The Commercial Court shall take such causes and matters as may in accordance with rules of court be entered in the commercial list.

### **63. Business assigned to specially nominated judges**

1. Any business assigned, in accordance with this or any other Act or rules of court, to one or more specially nominated judges of the High Court may—
  - a. during vacation; or
  - b. during the illness or absence of that judge or any of those judges; or
  - c. for any other reasonable cause,  
be dealt with by any judge of the High Court named for that purpose by the Lord Chief Justice after consulting the Lord Chancellor.
2. If at any time it appears to the Lord Chief Justice, after consulting the Lord Chancellor, to be desirable to do so with a view to the more convenient administration of justice, he may by order direct that business of any description which is for the time being assigned, in accordance with this or any other Act or rules of court, to one or more specially nominated judges of the High Court shall cease to be so assigned and may be dealt with by any one or more judges of the High Court.
3. An order under subsection (2) shall not be made in respect of any business without the concurrence of the senior judge of the Division to which the business is for the time being assigned.
4. The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under subsection (1) or (2).

### **64. Choice of Division by plaintiff**

1. Without prejudice to the power of transfer under section 65, the person by whom any cause or matter is commenced in the High Court shall in the prescribed manner allocate it to whichever Division he thinks fit.
2. Where a cause or matter is commenced in the High Court, all subsequent interlocutory or other steps or proceedings in the High Court in that cause or matter shall be taken in the Division to which the cause or matter is for the time being allocated (whether under subsection (1) or in consequence of its transfer under section 65).

### **65. Power of transfer**

1. Any cause or matter may at any time and at any stage thereof, and either with or without application from any of the parties, be transferred, by such authority and in such manner as rules of court may direct, from one Division or judge of the High Court to another Division or judge thereof.
2. The transfer of a cause or matter under subsection (1) to a different Division or judge of the High Court shall not affect the validity of any steps or proceedings taken or order made in that cause or matter before the transfer.



## Subheading 2: Divisional courts

### 66. Divisional courts of High Court

1. Divisional courts may be held for the transaction of any business in the High Court which is, by or by virtue of rules of court or any other statutory provision, required to be heard by a divisional court.
2. Any number of divisional courts may sit at the same time.
3. A divisional court shall be constituted of not less than two judges.
4. Every judge of the High Court shall be qualified to sit in any divisional court.
5. The judge who is, according to the order of precedence under this Act, the senior of the judges constituting a divisional court shall be the president of the court.

## Subheading 3: Mode of conducting business

### 67. Proceedings in court and in chambers

Business in the High Court shall be heard and disposed of in court except in so far as it may, under this or any other Act, under rules of court or in accordance with the practice of the court, be dealt with in chambers.

### 68. Exercise of High Court jurisdiction otherwise than by judges of that court

1. Provision may be made by rules of court as to the cases in which jurisdiction of the High Court may be exercised by—
  - a. such Circuit judges, deputy Circuit judges or Recorders as the Lord Chief Justice may, after consulting the Lord Chancellor, from time to time nominate to deal with official referees' business; or
  - b. special referees; or
  - c. masters, registrars, district registrars or other officers of the court.
2. Without prejudice to the generality of subsection (1), rules of court may in particular—
  - a. authorise the whole of any cause or matter, or any question or issue therein, to be tried before any such person as is mentioned in that subsection; or
  - b. authorise any question arising in any cause or matter to be referred to a special referee for inquiry and report.
3. Rules of court shall not authorise the exercise of powers of attachment and committal by a special referee or any officer or other staff of the court.
4. Subject to subsection (5), the decision of
  - a. any such person as is mentioned in subsection (1) or

- b. any officer or other staff of the court  
may be called in question in such manner as may be prescribed by rules of court, whether by appeal to the Court of Appeal, or by an appeal or application to a divisional court or a judge in court or a judge in chambers, or by an adjournment to a judge in court or a judge in chambers.
- 5. Rules of court may provide either generally or to a limited extent for decisions of persons nominated under subsection (1)(a) being called in question only by appeal on a question of law.
- 6. The cases in which jurisdiction of the High Court may be exercised by persons nominated under subsection (1)(a) shall be known as “official referees’ business”; and, subject to rules of court, the distribution of official referees’ business among persons so nominated shall be determined in accordance with directions given by the Lord Chief Justice after consulting the Lord Chancellor.
- 7. Any reference to an official referee in any enactment, whenever passed, or in rules of court or any other instrument or document, whenever made, shall, unless the context otherwise requires, be construed as, or (where the context requires) as including a reference to a person nominated under subsection (1)(a).
- 8. The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under subsections (1)(a) and (6).

## 69. Trial by jury

- 1. Where, on the application of any party to an action to be tried in the Queen’s Bench Division, the court is satisfied that there is in issue—
  - a. a charge of fraud against that party; or
  - b. a claim in respect of malicious prosecution or false imprisonment; or
  - c. any question or issue of a kind prescribed for the purposes of this paragraph,  
the action shall be tried with a jury, unless the court is of opinion that the trial requires any prolonged examination of documents or accounts or any scientific or local investigation which cannot conveniently be made with a jury or unless the court is of opinion that the trial will involve section 6 proceedings.
- 2. An application under subsection (1) must be made not later than such time before the trial as may be prescribed.
- 3. An action to be tried in the Queen’s Bench Division which does not by virtue of subsection (1) fall to be tried with a jury shall be tried without a jury unless the court in its discretion orders it to be tried with a jury.
- 3A. An action in the Queen’s Bench Division which by virtue of subsection (1) or (3) is being, or is to be, tried with a jury may, at any stage in the proceedings, be tried without a jury if the court concerned—
  - a. is of opinion that the action involves, or will involve, section 6 proceedings, and
  - b. in its discretion orders the action to be tried without a jury.
- 3B. Where the court makes an order under subsection (3A)(b), it may make such other orders as it considers appropriate (including an order dismissing the jury).

• Jury trials required

• Protection from false imprisonment

• Jury trials required

• Jury trials required

4. Nothing in subsections (1) to (3B) shall affect the power of the court to order, in accordance with rules of court, that different questions of fact arising in any action be tried by different modes of trial; and where any such order is made, subsection (1) shall have effect only as respects questions relating to any such charge, claim, question or issue as is mentioned in that subsection.
5. Where for the purpose of disposing of any action or other matter which is being tried in the High Court by a judge with a jury it is necessary to ascertain the law of any other country which is applicable to the facts of the case, any question as to the effect of the evidence given with respect to that law shall, instead of being submitted to the jury, be decided by the judge alone.
6. In this section “section 6 proceedings” has the meaning given by section 14(1) of the Justice and Security Act 2013 (certain civil proceedings in which closed material applications may be made).

## 70. Assessors and scientific advisers

1. In any cause or matter before the High Court the court may, if it thinks it expedient to do so, call in the aid of one or more assessors specially qualified, and hear and dispose of the cause or matter wholly or partially with their assistance.
2. The remuneration, if any, to be paid to an assessor for his services under subsection (1) in connection with any proceedings shall be determined by the court, and shall form part of the costs of the proceedings.
3. Rules of court shall make provision for the appointment of scientific advisers to assist the Patents Court in proceedings under the Patents Act 1949 and the Patents Act 1977 and for regulating the functions of such advisers.
4. The remuneration of any such adviser shall be determined by the Lord Chancellor with the concurrence of the Minister for the Civil Service and shall be defrayed out of money provided by Parliament.
5. Subsections (1) and (2) apply in relation to the family court as they apply in relation to the High Court.

## Subheading 4: Sittings and vacations

### 71. Sittings and vacations

1. Sittings of the High Court may be held, and any other business of the High Court may be conducted, at any place in England or Wales.
2. Subject to rules of court—
  - a. the places at which the High Court sits outside the Royal Courts of Justice; and
  - b. the days and times when the High Court sits at any place outside the Royal Courts of Justice,
 shall be determined in accordance with directions given by the Lord Chancellor after consulting the Lord Chief Justice.
3. Rules of court may make provision for regulating the vacations to be observed by the High Court and in the offices of that court.

4. Rules of court—
  - a. may provide for securing such sittings of any Division of the High Court during vacation as the senior judge of that Division may with the concurrence of the Lord Chancellor determine; and
  - b. without prejudice to paragraph (a), shall provide for the transaction during vacation by judges of the High Court of all such business in the High Court as may require to be immediately or promptly transacted.
5. Different provision may be made in pursuance of subsection (3) for different parts of the country.
6. The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.

## Subheading 5: Other provisions

### 72. Withdrawal of privilege against incrimination of self or spouse in certain proceedings

1. In any proceedings to which this subsection applies a person shall not be excused, by reason that to do so would tend to expose that person, or his or her spouse or civil partner, to proceedings for a related offence or for the recovery of a related penalty—
  - a. from answering any questions put to that person in the first-mentioned proceedings; or
  - b. from complying with any order made in those proceedings.
2. Subsection (1) applies to the following civil proceedings in the High Court, namely—
  - a. proceedings for infringement of rights pertaining to any intellectual property or for passing off;
  - b. proceedings brought to obtain disclosure of information relating to any infringement of such rights or to any passing off; and
  - c. proceedings brought to prevent any apprehended infringement of such rights or any apprehended passing off.
3. Subject to subsection (4), no statement or admission made by a person—
  - a. in answering a question put to him in any proceedings to which subsection (1) applies; or
  - b. in complying with any order made in any such proceedings, shall, in proceedings for any related offence or for the recovery of any related penalty, be admissible in evidence against that person or (unless they married or became civil partners after the making of the statement or admission) against the spouse or civil partner of that person.

• Protection from self-incrimination

• Provisions for intellectual property

4. Nothing in subsection (3) shall render any statement or admission made by a person as there mentioned inadmissible in evidence against that person in proceedings for perjury or contempt of court.
5. In this section—

• Provisions for intellectual property

- “intellectual property” means any patent, trade mark, copyright, design right, registered design, technical or commercial information or other intellectual property;
  - “related offence”, in relation to any proceedings to which subsection (1) applies, means—
    - a. in the case of proceedings within subsection (2)(a) or (b)—
      - i. any offence committed by or in the course of the infringement or passing off to which those proceedings relate; or
      - ii. any offence not within sub-paragraph (i) committed in connection with that infringement or passing off, being an offence involving fraud or dishonesty;
    - b. in the case of proceedings within subsection (2)(c), any offence revealed by the facts on which the plaintiff relies in those proceedings;
  - “related penalty”, in relation to any proceedings to which subsection (1) applies means—
    - a. in the case of proceedings within subsection (2)(a) or (b), any penalty incurred in respect of anything done or omitted in connection with the infringement or passing off to which those proceedings relate;
    - b. in the case of proceedings within subsection (2)(c), any penalty incurred in respect of any act or omission revealed by the facts on which the plaintiff relies in those proceedings.
6. Any reference in this section to civil proceedings in the High Court of any description includes a reference to proceedings on appeal arising out of civil proceedings in the High Court of that description.

### Heading 3: The Crown Court

#### Subheading 1: Composition of court

#### 73. General provisions

1. Subject to the provisions of section 8(1)(c), 74 and 75(2) as respects courts comprising justices of the peace, all proceedings in the Crown Court shall be heard and disposed of before a single judge of that court.

2. Rules of court may authorise or require a judge of the High Court, Circuit judge, Recorder or qualifying judge advocate, in such circumstances as are specified by the rules, at any stage to continue with any proceedings with a court from which any one or more of the justices initially constituting the court has withdrawn, or is absent for any reason.
3. Where a judge of the High Court, Circuit judge, Recorder or qualifying judge advocate sits with justices of the peace he shall preside, and—
  - a. the decision of the Crown Court may be a majority decision; and
  - b. if the members of the court are equally divided, the judge of the High Court, Circuit judge, Recorder or qualifying judge advocate shall have a second and casting vote.

## 74. Appeals and committals for sentence

1. On any hearing by the Crown Court—
  - a. of any appeal;
  - b. [Repealed]

the Crown Court shall consist of a judge of the High Court or a Circuit judge or a Recorder or a qualifying judge advocate who, subject to the following provisions of this section, shall sit with not less than two nor more than four justices of the peace.
2. Rules of court may, with respect to hearings falling within subsection (1)—
  - a. prescribe the number of justices of the peace constituting the court (within the limits mentioned in that subsection); and
  - b. prescribe the qualifications to be possessed by any such justices of the peace;

and the rules may make different provision for different descriptions of cases, different places of sitting or other different circumstances.
3. Rules of court may authorise or require a judge of the High Court, Circuit judge, Recorder or qualifying judge advocate, in such circumstances as are specified by the rules, to enter on, or at any stage to continue with, any proceedings with a court not comprising the justices required by subsections (1) and (2).
4. The Lord Chancellor may from time to time, having regard to the number of justices, or the number of justices with any prescribed qualifications, available for service in the Crown Court, give directions providing that, in such descriptions of proceedings as may be specified by the Lord Chancellor, the provisions of subsections (1) and (2) shall not apply.
5. Directions under subsection (4) may frame descriptions of proceedings by reference to the place of trial, or by reference to the time of trial, or in any other way.
- 5A. Before exercising any functions under subsection (4), the Lord Chancellor must consult the Lord Chief Justice.
6. No decision of the Crown Court shall be questioned on the ground that the court was not constituted as required by or under subsections (1) and (2) unless objection was taken by or on behalf of a party to the proceedings not later than the time when the proceedings were entered on, or when the alleged irregularity began.

7. Rules of court may make provision as to the circumstances in which—
  - a. a person concerned with a decision appealed against is to be disqualified from hearing the appeal;
  - b. [Repealed]
  - c. proceedings on the hearing of an appeal are to be valid notwithstanding that any person taking part in them is disqualified.
8. The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.

## **Subheading 2: Distribution of business**

### **75. Allocation of cases according to composition of court, etc**

1. The cases or classes of cases in the Crown Court suitable for allocation respectively to a judge of the High Court, Circuit judge, Recorder, qualifying judge advocate or District Judge (Magistrates' Courts), and all other matters relating to the distribution of Crown Court business, shall be determined in accordance with directions given by or on behalf of the Lord Chief Justice with the concurrence of the Lord Chancellor.
2. Subject to section 74(1), the cases or classes of cases in the Crown Court suitable for allocation to a court comprising justices of the peace (including those by way of trial on indictment which are suitable for allocation to such a court) shall be determined in accordance with directions given by or on behalf of the Lord Chief Justice with the concurrence of the Lord Chancellor.

### **76. Committal for trial: alteration of place of trial**

1. Without prejudice to the provisions of this Act about the distribution of Crown Court business, the Crown Court may give directions, or further directions, altering the place of any trial on indictment, whether by varying the decision of a magistrates' court under section 7 of the Magistrates' Courts Act 1980 or by substituting some other place for the place specified in a notice under a relevant transfer provision (notices of transfer from magistrates' court to Crown Court) or by varying a previous decision of the Crown Court.
2. Directions under subsection (1) may be given on behalf of the Crown Court by an officer of the court.
- 2A. Where a preparatory hearing has been ordered under section 7 of the Criminal Justice Act 1987, directions altering the place of trial may be given under subsection (1) at any time before the time when the jury are sworn.
- 2B. The reference in subsection (2A) to the time when the jury are sworn includes the time when the jury would be sworn but for the making of an order under Part 7 of the Criminal Justice Act 2003.
3. The defendant or the prosecutor, if dissatisfied with the place of trial as fixed by the magistrates' court, as specified in a notice under a relevant transfer provision or as fixed by the Crown Court, may apply to the Crown Court for a direction, or further direction, varying the place of trial; and the court shall take the matter into consideration and may comply with or refuse the application, or give a direction not in compliance with the application, as the court thinks fit.

4. [Repealed]
5. In this section “relevant transfer provision” means—
  - a. section 4 of the Criminal Justice Act 1987, or
  - b. section 53 of the Criminal Justice Act 1991.

## 77. Committal for trial: date of trial

1. Criminal Procedure Rules shall prescribe the minimum and the maximum period which may elapse between a person’s being sent for trial and the beginning of the trial; and such rules may make different provision for different places of trial and for other different circumstances.
2. The trial of a person sent for trial—
  - a. shall not begin until the prescribed minimum period has expired except with his consent and the consent of the prosecutor; and
  - b. shall not begin later than the expiry of the prescribed maximum period unless a judge of the Crown Court otherwise orders.
3. For the purposes of this section the prescribed minimum and maximum periods shall begin with the date when the defendant is sent for trial and the trial shall be taken to begin when the defendant is arraigned.
4. In this section “relevant transfer provision” means—
  - a. section 4 of the Criminal Justice Act 1987, or
  - b. section 53 of the Criminal Justice Act 1991.

## Subheading 3: Sittings

### 78. Sittings

1. Any Crown Court business may be conducted at any place in England or Wales, and the sittings of the Crown Court at any place may be continuous or intermittent or occasional.
2. Judges of the Crown Court may sit simultaneously to take any number of different cases in the same or different places, and may adjourn cases from place to place at any time.
3. The places at which the Crown Court sits, and the days and times at which the Crown Court sits at any place, shall be determined in accordance with directions given by the Lord Chancellor after consulting the Lord Chief Justice.
4. The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.



## Subheading 4: Other provisions

### 79. Practice and procedure in connection with indictable offences and appeals

1. All enactments and rules of law relating to procedure in connection with indictable offences shall continue to have effect in relation to proceedings in the Crown Court.
2. Without prejudice to the generality of subsection (1), that subsection applies in particular to—
  - a. the practice by which, on any one indictment, the taking of pleas, the trial by jury and the pronouncement of judgment may respectively be by or before different judges;
  - b. the release, after respite of judgment, of a convicted person on recognizance to come up for judgment if called on, but meanwhile to be of good behaviour;
  - c. the manner of trying any question relating to the breach of a recognizance;
  - d. the manner of execution of any sentence on conviction, or the manner in which any other judgment or order given in connection with trial on indictment may be enforced.
3. The customary practice and procedure with respect to appeals to the Crown Court, and in particular any practice as to the extent to which an appeal is by way of rehearing of the case, shall continue to be observed.

### 80. Process to compel appearance

1. Any direction to appear and any condition of a recognizance to appear before the Crown Court, and any summons or order to appear before that court, may be so framed as to require appearance at such time and place as may be directed by the Crown Court, and if a time or place is specified in the direction, condition, summons or order, it may be varied by any subsequent direction of the Crown Court.
2. Where an indictment has been signed although the person charged has not been sent for trial, the Crown Court may issue a summons requiring that person to appear before the Crown Court, or may issue a warrant for his arrest.
3. Section 4 of the Summary Jurisdiction (Process) Act 1881 (execution of process of English courts in Scotland) shall apply to process issued under this section as it applies to process issued under the Magistrates' Courts Act 1980 by a magistrates' court.

## 81. Bail

1. The Crown Court may, subject to section 25 of the Criminal Justice and Public Order Act 1994, grant bail to any person—
  - a. who has been committed in custody for appearance before the Crown Court or in relation to whose case a notice of transfer has been given under a relevant transfer provision or who has been sent in custody to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998; or
  - b. who is in custody pursuant to a sentence imposed by a magistrates' court, and who has appealed to the Crown Court against his conviction or sentence; or
  - c. who is in the custody of the Crown Court pending the disposal of his case by that court; or
  - d. who, after the decision of his case by the Crown Court, has applied to that court for the statement of a case for the High Court on that decision; or
  - e. who has applied to the High Court for a quashing order to remove proceedings in the Crown Court in his case into the High Court, or has applied to the High Court for leave to make such an application; or
  - f. to whom the Crown Court has granted a certificate under section 1(2) or 11(1A) of the Criminal Appeal Act 1968 or under subsection (1B) below; or
  - g. who has been remanded in custody by a magistrates' court on adjourning a case under section 11 of the Powers of Criminal Courts (Sentencing) Act 2000 (remand for medical examination) or—
    - i. section 5 (adjournment of inquiry into offence);
    - ii. section 10 (adjournment of trial); or
    - iii. section 18 (initial procedure on information against adult for offence triable either way);
    - iv. [Repealed]and the time during which a person is released on bail under any provision of this subsection shall not count as part of any term of imprisonment or detention under his sentence.
- 1A.** The power conferred by subsection (1)(f) does not extend to a case to which section 12 or 15 of the Criminal Appeal Act 1968 (appeal against verdict of not guilty by reason of insanity or against findings that the accused is under a disability and that he did the act or made the omission charged against him) applies.
- 1B.** A certificate under this subsection is a certificate that a case is fit for appeal on a ground which involves a question of law alone.

- 1C.** The power conferred by subsection (1)(f) is to be exercised—
- a. where the appeal is under section 1 or 9 of the Criminal Appeal Act 1968, by the judge who tried the case; and
  - b. where it is under section 10 of that Act, by the judge who passed the sentence.
- 1D.** The power may only be exercised within twenty-eight days from the date of the conviction appealed against, or in the case of appeal against sentence, from the date on which sentence was passed or, in the case of an order made or treated as made on conviction, from the date of the making of the order.
- 1E.** The power may not be exercised if the appellant has made an application to the Court of Appeal for bail in respect of the offence or offences to which the appeal relates.
- 1F.** It shall be a condition of bail granted in the exercise of the power that, unless a notice of appeal has previously been lodged in accordance with subsection (1) of section 18 of the Criminal Appeal Act 1968—
- a. such a notice shall be so lodged within the period specified in subsection (2) of that section; and
  - b. not later than 14 days from the end of that period, the appellant shall lodge with the Crown Court a certificate from the registrar of criminal appeals that a notice of appeal was given within that period.
- 1G.** If the Crown Court grants bail to a person in the exercise of the power, it may direct him to appear—
- a. if a notice of appeal is lodged within the period specified in section 18(2) of the Criminal Appeal Act 1968 at such time and place as the Court of Appeal may require; and
  - b. if no such notice is lodged within that period, at such time and place as the Crown Court may require.
- 1H.** Where the Crown Court grants a person bail under subsection (1)(g) it may direct him to appear at a time and place which the magistrates' court could have directed and the recognizance of any surety shall be conditioned accordingly.
- 1J.** The Crown Court may only grant bail to a person under subsection (1)(g) if the magistrates' court which remanded him in custody has certified under section 5(6A) of the Bail Act 1976 that it heard full argument on his application for bail before it refused the application.
- 2.** Provision may be made by rules of court as respects the powers of the Crown Court relating to bail, including any provision—
- a. except in the case of bail in criminal proceedings (within the meaning of the Bail Act 1976), allowing the court instead of requiring a person to enter into a recognizance, to consent to his giving other security;
  - b. allowing the court to direct that a recognizance shall be entered into or other security given before a magistrates' court or a justice of the peace, or, if the rules so provide, a person of such other description as is specified in the rules;

- c. prescribing the manner in which a recognizance is to be entered into or other security given, and the persons by whom and the manner in which the recognizance or security may be enforced;
  - d. authorising the recommitment, in such cases and by such courts or justices as may be prescribed by the rules, of persons released from custody in pursuance of the powers;
  - e. making provision corresponding to sections 118 and 119 of the Magistrates' Courts Act 1980 (varying or dispensing with requirements as to sureties, and postponement of taking recognizances).
3. Any reference in any enactment to a recognizance shall include, unless the context otherwise requires, a reference to any other description of security given instead of a recognizance, whether in pursuance of subsection (2)(a) or otherwise.
  4. The Crown Court, on issuing a warrant for the arrest of any person, may endorse the warrant for bail, and in any such case—
    - a. the person arrested under the warrant shall, unless the Crown Court otherwise directs, be taken to a police station; and
    - b. the officer in charge of the station shall release him from custody if he, and any sureties required by the endorsement and approved by the officer, enter into recognizances of such amount as may be fixed by the endorsement:
 

Provided that in the case of bail in criminal proceedings (within the meaning of the Bail Act 1976) the person arrested shall not be required to enter into a recognizance.
  5. A person in custody in pursuance of a warrant issued by the Crown Court with a view to his appearance before that court shall be brought forthwith before either the Crown Court or a magistrates' court.
  6. A magistrates' court shall have jurisdiction, and a justice of the peace may act, under or in pursuance of rules under subsection (2) whether or not the offence was committed, or the arrest was made, within the court's area, or the area for which he was appointed.
  7. In subsection (1) above "relevant transfer provision" means—
    - a. section 4 of the Criminal Justice Act 1987, or
    - b. section 53 of the Criminal Justice Act 1991.

## 82. Duties of officers of Crown Court

1. The officers of the Crown Court shall be responsible for the keeping of the records of the proceedings of the court, the signing of indictments, the notification to the parties or their legal advisers of the place and time appointed for any proceedings, and such other formal or administrative matters as may be specified by directions given by the Lord Chancellor after consulting the Lord Chief Justice.

2. Officers of the Crown Court shall in particular give effect to any orders or directions of the court for taking into custody, and detaining, any person committing contempt of court, and shall execute any order or warrant duly issued by the court for the committal of any person to prison for contempt of court.
3. The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.

## 83. [Repealed]

### Heading 4: Rules of Court

#### 84. Power to make rules of court

1. Rules of court may be made by the Lord Chief Justice for the purpose of regulating and prescribing , except in relation to any criminal cause or matter, the practice and procedure to be followed in the Crown Court.
2. Without prejudice to the generality of subsection (1), the matters about which rules of court may be made under this section include all matters of practice and procedure in the Senior Courts which were regulated or prescribed by rules of court immediately before the commencement of this Act.
3. No provision of this or any other Act, or contained in any instrument made under any Act, which—
  - a. authorises or requires the making of rules of court about any particular matter or for any particular purpose; or
  - b. provides (in whatever words) that the power to make rules of court under this section is to include power to make rules about any particular matter or for any particular purpose,shall be taken as derogating from the generality of subsection (1).
4. Rules made under this section shall have effect subject to any special rules for the time being in force in relation to proceedings in the Senior Courts of any particular kind.
5. Special rules may apply—
  - a. any rules made under this section,
  - b. Civil Procedure Rules,
  - c. Criminal Procedure Rules, or
  - d. Family Procedure Rules,to proceedings to which the special rules apply.
- 5A. Rules made under this section may apply—
  - a. any special rules,
  - b. Civil Procedure Rules,

- c. Criminal Procedure Rules, or
  - d. Family Procedure Rules,  
to proceedings to which rules made under this section apply.
6. Where rules may be applied under subsection (5) or (5A), they may be applied—
- a. to any extent,
  - b. with or without modification, and
  - c. as amended from time to time.
7. No rule which may involve an increase of expenditure out of public funds may be made under this section except with the concurrence of the Treasury, but the validity of any rule made under this section shall not be called in question in any proceedings in any court either by the court or by any party to the proceedings on the ground only that it was a rule as to the making of which the concurrence of the Treasury was necessary and that the Treasury did not concur or are not expressed to have concurred.
8. [Repealed]
9. In this section “special rules” means rules applying to proceedings of any particular kind in the Senior Courts, being rules made by an authority other than the Civil Procedure Rule Committee, the Family Procedure Rule Committee or the Criminal Procedure Rule Committee under any provision of this or any other Act which (in whatever words) confers on that authority power to make rules in relation to proceedings of that kind in the Senior Courts.
10. The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise the Lord Chief Justice’s functions under this section.

## 85. The Senior Courts Rule Committee

1. The power to make rules of court under section 84 in relation to the High Court and the civil division of the Court of Appeal shall be exercisable by the Lord Chancellor together with any four or more of the following persons, namely—
- a. the Lord Chief Justice,
  - b. the Master of the Rolls,
  - c. the President of the Family Division,
  - d. the Vice-Chancellor,
  - e. three other judges of the Senior Courts,
  - f. two persons who have a Senior Courts qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990); and

- g. two persons who have been granted by an authorised body, under Part II of that Act, the right to conduct litigation in relation to all proceedings in the Senior Courts.
- 2. The persons mentioned in subsection (1), acting in pursuance of that subsection, shall be known as “the Senior Courts Rule Committee”.
- 3. The persons to act in pursuance of subsection (1) with the Lord Chancellor, other than those eligible to act by virtue of their office, shall be appointed by the Lord Chancellor for such time as he may think fit.
- 4. Before appointing a person under paragraph (f) or (g) of subsection (1), the Lord Chancellor shall consult any authorised body with members who are eligible for appointment under that paragraph.

## 86. The Crown Court Rule Committee

[Repealed]

### 86A. Process for making rules of court under section 84

- 1. Crown Court rules must be submitted to the Lord Chancellor after being made by the Lord Chief Justice.
- 2. The Lord Chancellor may allow or disallow rules so made.
- 3. If the Lord Chancellor disallows rules, he must give the Lord Chief Justice written reasons for doing so.
- 4. Rules so made and allowed by the Lord Chancellor—
  - a. come into force on such day as the Lord Chancellor directs, and
  - b. are to be contained in a statutory instrument to which the Statutory Instruments Act 1946 applies as if the instrument contained rules made by a Minister of the Crown.
- 5. A statutory instrument containing Crown Court rules is subject to annulment in pursuance of a resolution of either House of Parliament.
- 6. In this section and section 86B “Crown Court rules” means rules of court made under section 84.

### 86B. Rules to be made if required by Lord Chancellor

- 1. This section applies if the Lord Chancellor gives the Lord Chief Justice written notice that he thinks it is expedient for Crown Court rules to include provision that would achieve a purpose specified in the notice.
- 2. The Lord Chief Justice must make such Crown Court rules as the Lord Chief Justice considers necessary to achieve the specified purpose.
- 3. Those rules must be—
  - a. made within a reasonable period after the Lord Chancellor gives notice to the Lord Chief Justice;
  - b. made in accordance with section 86A.

## 87. Particular matters for which rules of court may provide

1. Rules of court may make provision for regulating the means by which particular facts may be proved, and the mode in which evidence thereof may be given, in any proceedings in the High Court or in the civil division of the Court of Appeal or on any application in connection with or at any stage of any such proceedings.
2. Rules of court may make provision—
  - a. for enabling proceedings to be commenced in the High Court against the estate of a deceased person (whether by the appointment of a person to represent the estate or otherwise) where no grant of probate or administration has been made;
  - b. for enabling proceedings purporting to have been commenced in that court against a person to be treated, if he was dead at their commencement, as having been commenced against his estate, whether or not a grant of probate or administration was made before their commencement; and
  - c. for enabling any proceedings commenced or treated as commenced in that court against the estate of a deceased person to be maintained (whether by substitution of parties, amendment or otherwise) against a person appointed to represent the estate or, if a grant of probate or administration is or has been made, against the personal representatives.
3. Rules of court made under section 84 may amend or repeal any statutory provision relating to the practice and procedure of the Crown Court (except so far as relating to criminal causes or matters) so far as may be necessary in consequence of provision made by the rules.
4. Criminal Procedure Rules may require courts from which an appeal lies to the criminal division of the Court of Appeal to furnish that division with any assistance or information which it may request for the purpose of exercising its jurisdiction.
5. Rules of court made under section 84 may amend or repeal any statutory provision about appeals to the Crown Court so far as it relates to the practice and procedure with respect to such appeals (except so far as relating to criminal causes or matters).

## Part IV: OFFICERS AND OFFICES

### Subheading 1: Appointment of certain officers of Senior Courts

#### 88. Qualification for office

A person shall not be qualified for appointment to any office in the Senior Courts listed in column 1 of any Part of Schedule 2 unless he is a person of any description specified in relation to that office in column 2 of that Part.

#### 89. Masters and registrars

1. The power to make appointments to the offices in the Senior Courts listed in column 1 of Parts II and III of Schedule 2 shall be exercisable by Her Majesty.

• Eligibility for ordinary court judges

• Ordinary court selection



- 1A. The maximum number of appointments under subsection (1) is such as may be determined from time to time by the Lord Chancellor with the concurrence of the Treasury.
- 2. The person appointed to the office of Queen’s coroner and attorney and master of the Crown Office and Registrar of criminal appeals shall, by virtue of his appointment, be a master of the Queen’s Bench Division.
- 3. Her Majesty shall, on the recommendation of the Lord Chancellor, appoint a person to each office listed in the first column of the table in subsection (3C) (“a senior office”).
- 3A. A person may be appointed to a senior office only if—
  - a. he holds the office in the corresponding entry in the second column of that table (“the qualifying office”), or
  - b. he does not hold the qualifying office but could be appointed to it in compliance with section 88.
- 3B. Where a person who is to be appointed to a senior office meets the condition in subsection (3A)(b) he shall, when appointed to the senior office, also be appointed to the qualifying office.
- 3C. This is the table referred to in subsections (3) and (3A)—

• Ordinary court selection

• Eligibility for ordinary court judges

## Table

Key: Column 1 = Senior office; Column 2 = Qualifying office

### Row 1

#### Column 1

Senior Master of the Queen's Bench Division;

#### Column 2

Master of the Queen's Bench Division

### Row 2

#### Column 1

Chief Chancery Master;

#### Column 2

Master of the Chancery Division

### Row 3

#### Column 1

• Eligibility for ordinary court judges  
• Ordinary court selection

Chief Taxing Master;

## Column 2

Taxing master of the Senior Courts

## Row 4

## Column 1

Chief Bankruptcy Registrar;

## Column 2

Registrar in bankruptcy of the High Court

## Row 5

## Column 1

Senior District Judge of the Family Division;

## Column 2

Registrar of the Principal Registry of the Family Division

4. The person appointed Senior Master of the Queen's Bench Division shall hold and perform the duties of the offices of the Queen's Remembrancer and registrar of judgments.

5. [Repealed]

6. [Repealed]

7. [Repealed]

7A. A person appointed under subsection (1) is to be paid such salary, and a person appointed to a senior office is to be paid such additional salary, as may be determined by the Lord Chancellor with the concurrence of the Treasury.

7B. A salary payable under or by virtue of this section—

a. may in any case be increased, but

b. may not, in the case of a salary payable in respect of an office listed in column 1 of Part 2 of Schedule 2 or of a senior office, be reduced, by a determination or further determination under this section.

8. Salaries payable under or by virtue of this section shall be paid out of money provided by Parliament.

## 90. Official Solicitor

1. There shall continue to be an Official Solicitor to the Senior Courts, who shall be appointed by the Lord Chancellor.

2. There shall be paid to the Official Solicitor out of money provided by Parliament such salary as the Lord Chancellor may, with the concurrence of the Minister for the Civil Service, determine.
3. The Official Solicitor shall have such powers and perform such duties as may for the time being be conferred or imposed on the holder of that office—
  - a. by or under this or any other Act; or
  - b. by or in accordance with any direction given (before or after the commencement of this Act) by the Lord Chancellor.
- 3A. The holder for the time being of the office of Official Solicitor shall have the right to conduct litigation in relation to any proceedings.
- 3B. When acting as Official Solicitor a person who would otherwise have the right to conduct litigation by virtue of the fact that he is a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act) shall be treated as having acquired that right solely by virtue of subsection (3A).
4. If—
  - a. the Official Solicitor is not available because of his absence or for some other reason; or
  - b. his office is vacant,
 then, during such unavailability or vacancy, any powers or duties of the Official Solicitor shall be exercisable or fall to be performed by any person for the time being appointed by the Lord Chancellor as deputy to the Official Solicitor (and any property vested in the Official Solicitor may accordingly be dealt with by any such person in all respects as if it were vested in him instead).

## 91. Deputies and temporary appointments

1. If it appears to the Lord Chief Justice, after consulting the Lord Chancellor, that it is expedient to do so in order to facilitate the disposal of business in the Senior Courts or any other court or tribunal to which a person appointed under this subsection may be deployed, he may appoint a person—
  - a. to act as a deputy for any person holding an office listed in column 1 of Part II of Schedule 2; or
  - b. to act as a temporary additional officer in any such office, during such period or on such occasions as the Lord Chief Justice may, after consulting the Lord Chancellor, think fit.
- 1ZA. The Lord Chief Justice may not appoint a holder of relevant office under subsection (1) without the concurrence of the Lord Chancellor.
- 1A. If it appears to the Lord Chancellor that it is expedient to do so in order to facilitate the disposal of business in the Senior Courts, he may appoint a person—
  - a. to act as a deputy for any person holding an office listed in column 1 of Part 3 of Schedule 2; or

• Supreme/ordinary court judge removal  
• Eligibility for ordinary court judges

• Ordinary court selection

• Ordinary court selection

b. to act as a temporary additional officer in any such office, during such period or on such occasions as the Lord Chancellor may think fit.

2. Subject to subsection (3), a person shall not be qualified for appointment under this section if the office in which he would act by virtue of the appointment is one to which he is not qualified for permanent appointment.

3. A person may be appointed under this section if he would, but for his age, be qualified for permanent appointment to the office in question and he has previously held a permanent appointment to that office or—

a. where the office in question is listed in column 1 of Part II of Schedule 2, to any other office so listed; or

b. where the office in question is listed in column 1 of Part III of that Schedule, to any other office listed in column 1 of either Part II or Part III; or

c. (whatever the office in question) to the office of county court registrar, but no appointment by virtue of this subsection shall be such as to extend beyond the day on which the person in question attains the age of seventy-five years.

4. Every person, while acting under this section, shall have all the jurisdiction of a person permanently appointed to the office in which he is acting.

5. [Repealed]

6. The Lord Chancellor may, out of money provided by Parliament, pay to any person appointed under this section such remuneration and allowances as he may, with the concurrence of the Minister for the Civil Service, determine.

6A. A person appointed under subsection (1) may be removed from office—

a. only by the Lord Chancellor with the agreement of the Lord Chief Justice, and

b. only on—

i. the ground of inability or misbehaviour, or

ii. a ground specified in the person's terms of appointment.

6B. Subject to subsection (6C), the period of a person's appointment under subsection (1) (including a period already extended under this subsection) must be extended by the Lord Chancellor before its expiry; and for this purpose a person appointed under subsection (1) to act under this section on certain occasions is to be treated as having been appointed for a period that expires when the occasions end.

6C. Extension under subsection (6B)—

a. requires the person's agreement,

b. is to be for such period as the Lord Chancellor thinks fit, and

c. may be refused on—

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• Eligibility for ordinary court judges

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- i. the ground of inability or misbehaviour, or
- ii. a ground specified in the person's terms of appointment,

but only with any agreement of the Lord Chief Justice, or a nominee of the Lord Chief Justice, that may be required by those terms.

- 6D. Subject to the preceding provisions of this section (but subject in the first place to the Judicial Pensions and Retirement Act 1993), a person appointed under subsection (1) is to hold and vacate office in accordance with the terms of the person's appointment, which are to be such as the Lord Chancellor may determine.
- 7. The Lord Chief Justice may nominate a senior judge (as defined in section 109(5) of the Constitutional Reform Act 2005) to exercise his functions under subsection (1) or (6A)(a).

## Subheading 2: Other provisions relating to officers of Senior Courts

### 92. Tenure of office.

- 1. Subject to the following provisions of this section and to subsections (4) to (6) of section 26 of the Judicial Pensions and Retirement Act 1993 (Lord Chancellor's power to authorise continuance in office up to the age of 75), a person who holds an office to which this subsection applies shall vacate it on the day on which he attains the age of seventy years.
- 2. Subsection (1) applies to the offices listed in column 1 of Part II of Schedule 2.
- 2A. Subject to the following provisions of this section, a person who holds an office to which this subsection applies shall vacate it at the end of the completed year of service in the course of which he attains the age of sixty-two years.
- 2B. Subsection (2A) applies to the offices listed in column 1 of Part I of Schedule 2.
- 2C. [Repealed]
- 2D. [Repealed]
- 2E. [Repealed]
- 3. [Repealed]
- 3A. Where the Lord Chancellor considers it desirable in the public interest to retain in office a person who holds an office to which subsection (2A) applies after the time when he would otherwise retire in accordance with that subsection, the Lord Chancellor may from time to time authorise the continuance in office of that person until such date, not being later than the date on which he attains the age of sixty-five years, as he thinks fit.
- 4. A person appointed to an office listed in column 1 of Part 1 or 2 of Schedule 2 shall hold that office during good behaviour.
- 5. The power to remove such a person from his office on account of misbehaviour shall be exercisable by the Lord Chancellor with the concurrence of the Lord Chief Justice.
- 6. The Lord Chancellor may also, with the concurrence of the Lord Chief Justice, remove such a person from his office on account of inability to perform the duties of his office.
- 7. A person appointed to an office listed in column 1 of Part III of Schedule 2 shall hold that office during Her Majesty's pleasure.

8. It is for the Lord Chancellor to recommend to Her Majesty the exercise of any power under subsection (7).

### **93. Status of officers for purposes of salary and pension**

1. Subject to subsection (2), any person who holds an office listed in column 1 of any Part of Schedule 2 or the office of Accountant General of the Senior Courts and is not employed in the civil service of the State shall be deemed to be so employed for the purposes of salary and pension.
2. Subsection (1), so far as it relates to pension, shall not apply to a person holding qualifying judicial office, within the meaning of the Judicial Pensions and Retirement Act 1993.

### **94. [Repealed]**

### **95. Property held by officers**

Any property held in his official capacity by a person holding an office listed in column 1 of Part II of Schedule 2 or by the Official Solicitor shall, on his dying or ceasing to hold office, vest in the person appointed to succeed him without any conveyance, assignment or transfer.

## **Subheading 3: Central Office and Accountant General**

### **96. Central Office**

1. The Central Office of the Senior Courts shall perform such business as the Lord Chief Justice may, with the concurrence of the Lord Chancellor, direct.
2. Subject to any direction under subsection (1), the Central Office shall perform such business as it performed immediately before the commencement of this Act.
3. The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.

### **97. Accountant General**

1. There shall continue to be an Accountant General of, and an accounting department for, the Senior Courts.
2. The Lord Chancellor shall appoint such person as he thinks fit to the office in the Senior Courts of Accountant General of the Senior Courts and the person so appointed shall hold and vacate office in accordance with the terms of his appointment.
3. The Accountant General shall be paid such salary or fees as the Lord Chancellor determines with the consent of the Treasury.
4. If one person holds office both as the Accountant General and as the Public Trustee then, if he ceases to be the Public Trustee, he shall also cease to be the Accountant General unless the Lord Chancellor otherwise directs.

5. If a vacancy occurs in the office of Accountant General or the person appointed to hold the office is for any reason unable to act for any period such person as the Lord Chancellor appoints as deputy in that office shall, during the vacancy or that period, perform the functions of that office (and any property vested in the Accountant General may accordingly be dealt with by the deputy in all respects as if it were vested in him instead).

## Subheading 4: Judges' clerks and secretaries

### 98. Judges' clerks and secretaries

1. A clerk and a secretary shall be attached to each of the following judges of the Senior Courts, namely the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division and the Chancellor of the High Court.
2. A clerk shall be attached to each of the following judges of the Senior Courts, namely the Lords Justices of Appeal and the puisne judges of the High Court.
3. Any clerk or secretary attached as mentioned in subsection (1) or (2)—
  - a. shall be appointed by the Lord Chancellor; and
  - b. if not already employed in the civil service of the State shall be deemed for all purposes to be so employed.
4. If at any time it appears to any of the judges mentioned in subsection (1) desirable that there should be attached to him a legal secretary (that is to say a secretary with legal qualifications) in addition to the secretary provided for by that subsection, he may, with the concurrence of the Lord Chancellor, appoint a person who has a general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990) as his legal secretary.
5. An appointment under subsection (4) may be on either a full-time or a part-time basis; and a person appointed by a judge as his legal secretary shall, except as regards remuneration, hold and vacate that office in accordance with such terms as the judge may, with the concurrence of the Lord Chancellor, determine when making the appointment.
6. A person appointed under subsection (4)—
  - a. shall not be treated as employed in the civil service of the State by reason only of that appointment; and
  - b. if the Lord Chancellor so determines in his case, shall be paid out of money provided by Parliament such remuneration as the Lord Chancellor may, with the concurrence of the Minister for the Civil Service, determine.

## Subheading 5: District registries and district registrars

### 99. District registries

1. The Lord Chancellor may, after consulting the Lord Chief Justice, by order direct that there shall be district registries of the High Court at such places and for such districts as are specified in the order.
2. Any order under this section shall be made by statutory instrument, which shall be laid before Parliament after being made.

3. The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.

## 100. District judges

1. The Lord Chief Justice, after consulting the Lord Chancellor—
  - a. may assign a district judge to one or more district registries;
  - b. may change an assignment so as to assign the district judge to a different district registry or registries (or to no district registry).
2. A reference in any enactment or other instrument to the district judge of a district registry is a reference to any district judge assigned to the registry concerned.
3. Every district judge is, by virtue of his office, capable of acting in any district registry whether or not assigned to it, but may do so only in accordance with arrangements made by or on behalf of the Lord Chief Justice.
4. Whilst a district judge is assigned to one or more district registries in accordance with subsection (1) he is a district judge of the High Court.

## 101. [Repealed]

## 102. Deputy district registrars

1. If it appears to the Lord Chief Justice that it is expedient to do so in order to facilitate the disposal of business in the High Court or any other court or tribunal to which a person appointed under this subsection may be deployed, he may appoint a person to be a deputy district judge.
  - 1A. A person is qualified for appointment under subsection (1) only if the person—
    - a. is qualified for appointment as a district judge, or
    - b. holds, or has held, the office of district judge.
  - 1B. The Lord Chief Justice may not appoint a person under subsection (1) without the concurrence of the Lord Chancellor if the person—
    - a. holds the office of district judge, or
    - b. ceased to hold the office of district judge within two years ending with the date when the appointment takes effect.
  - 1C. Section 85 of the Constitutional Reform Act 2005 (c. 4) (selection of certain office holders) does not apply to an appointment to which subsection (1B) applies.
2. [Repealed]
3. No appointment to which subsection (1B) applies shall be such as to extend beyond the day on which the person in question attains the age of seventy-five years.



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- 4A.** The Lord Chief Justice, after consulting the Lord Chancellor—
- a. may assign a deputy district judge appointed under this section to one or more district registries;
  - b. may change an assignment so as to assign the deputy district judge to a different district registry or registries (or to no district registry).
- 4B.** A deputy district judge appointed under this section and assigned to a district registry has, while acting under his assignment, the same jurisdiction as a district judge assigned to that registry.
- 4C.** Every deputy district judge appointed under this section is, by virtue of his office, capable of acting as a district judge in any district registry to which he is not assigned, but may act in a district registry to which he is not assigned only in accordance with arrangements made by or on behalf of the Lord Chief Justice.
- 5.** Subsection (6) of section 91 applies in relation to a deputy district judge appointed under this section as it applies in relation to a person appointed under that section.

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- 5ZA.** A person appointed under this section may be removed from office as a deputy district judge—
- a. only by the Lord Chancellor with the agreement of the Lord Chief Justice, and
  - b. only on—
    - i. the ground of inability or misbehaviour, or
    - ii. a ground specified in the person's terms of appointment.
- 5ZB.** Subject to subsection (5ZC), the term of a person's appointment under this section (including a term already extended under this subsection) must be extended by the Lord Chancellor before its expiry.
- 5ZC.** Extension under subsection (5ZB)—
- a. requires the person's agreement,
  - b. is to be for such term as the Lord Chancellor thinks fit, and
  - c. may be refused on—
    - i. the ground of inability or misbehaviour, or
    - ii. a ground specified in the person's terms of appointment,

but only with any agreement of the Lord Chief Justice, or a nominee of the Lord Chief Justice, that may be required by those terms.
- 5ZD.** Subject to the preceding provisions of this section (but subject in the first place to the Judicial Pensions and Retirement Act 1993), a person appointed under this section is to hold and vacate office as a deputy district judge in accordance with the terms of the person's appointment, which are to be such as the Lord Chancellor may determine.

- 5ZE.** The Lord Chief Justice may nominate a senior judge (as defined in section 109(5) of the Constitutional Reform Act 2005) to exercise the Lord Chief Justice's functions under subsection (1) or (5ZA)(a).
- 5A.** The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under subsection (4A).
6. [Repealed]

## **103. [Repealed]**

### **Subheading 6: District probate registries**

#### **104. District probate registries**

1. The Lord Chancellor may , after consulting the Lord Chief Justice, by order direct that there shall be district probate registries of the High Court at such places and for such districts as are specified in the order.
2. Any order under this section shall be made by statutory instrument, which shall be laid before Parliament after being made.
3. The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.

### **Part V: PROBATE CAUSES AND MATTERS**

#### **Subheading 1: Procedure in probate registries in relation to grants of representation**

##### **105. Applications**

Applications for grants of probate or administration and for the revocation of grants may be made to—

- a. the Principal Registry of the Family Division (in this Part referred to as “the Principal Registry”); or
- b. a district probate registry.

##### **106. Grants by district probate registrars**

1. Any grant made by a district probate registrar shall be made in the name of the High Court under the seal used in the registry.
2. [Repealed]
3. [Repealed]
4. [Repealed]

## 107. No grant where conflicting applications

Subject to probate rules, no grant in respect of the estate, or part of the estate, of a deceased person shall be made out of the Principal Registry or any district probate registry on any application if, at any time before the making of a grant, it appears to the registrar concerned that some other application has been made in respect of that estate or, as the case may be, that part of it and has not been either refused or withdrawn.

## 108. Caveats

1. A caveat against a grant of probate or administration may be entered in the Principal Registry or in any district probate registry.
2. On a caveat being entered in a district probate registry, the district probate registrar shall immediately send a copy of it to the Principal Registry to be entered among the caveats in that Registry.

## 109. Refusal of grant where capital transfer tax unpaid

1. No grant shall be made, and no grant made outside the United Kingdom shall be resealed, except—
  - a. on the production of information or documents under regulations under section 256(1)(aa) of the Inheritance Tax Act 1984 (excepted estates); or
  - b. on the production of an account prepared in pursuance of that Act showing by means of such receipt or certification as may be prescribed by the Commissioners either—
    - i. that the inheritance tax payable on the delivery of the account has been paid; or
    - ii. that no such tax is so payable.
2. Arrangements may be made between the President of the Family Division and the Commissioners providing for the purposes of subsection (1)(b) in such cases as may be specified in the arrangements that the receipt of certification of an account may be dispensed with or that some other document may be substituted for the account required by the Capital Transfer Tax Act 1984.
- 2A. In this section and the following section, “the Commissioners” means the Commissioners of Inland Revenue
3. [Repealed]

## 110. Documents to be delivered to Commissioners of Inland Revenue

Subject to any arrangements which may from time to time be made between the President of the Family Division and the Commissioners, the Principal Registry and every district probate registry shall, within such period after a grant as the President may direct, deliver to the Commissioners or their proper officer the following documents—

- a. in the case of a grant of probate or of administration with the will annexed, a copy of the will;

- b. in every case, such certificate or note of the grant as the Commissioners may require.

## **111. Records of grants**

1. There shall continue to be kept records of all grants which are made in the Principal Registry or in any district probate registry.
2. Those records shall be in such form, and shall contain such particulars, as the President of the Family Division may direct.

## **Subheading 2: Powers of court in relation to personal representatives**

### **112. Summons to executor to prove or renounce**

The High Court may summon any person named as executor in a will to prove, or renounce probate of, the will, and to do such other things concerning the will as the court had power to order such a person to do immediately before the commencement of this Act.

### **113. Power of court to sever grant**

1. Subject to subsection (2), the High Court may grant probate or administration in respect of any part of the estate of a deceased person, limited in any way the court thinks fit.
2. Where the estate of a deceased person is known to be insolvent, the grant of representation to it shall not be severed under subsection (1) except as regards a trust estate in which he had no beneficial interest.

### **114. Number of personal representatives**

1. Probate or administration shall not be granted by the High Court to more than four persons in respect of the same part of the estate of a deceased person.
2. Where under a will or intestacy any beneficiary is a minor or a life interest arises, any grant of administration by the High Court shall be made either to a trust corporation (with or without an individual) or to not less than two individuals, unless it appears to the court to be expedient in all the circumstances to appoint an individual as sole administrator.
3. For the purpose of determining whether a minority or life interest arises in any particular case, the court may act on such evidence as may be prescribed.
4. If at any time during the minority of a beneficiary or the subsistence of a life interest under a will or intestacy there is only one personal representative (not being a trust corporation), the High Court may, on the application of any person interested or the guardian or receiver of any such person, and in accordance with probate rules, appoint one or more additional personal representatives to act while the minority or life interest subsists and until the estate is fully administered.
5. An appointment of an additional personal representative under subsection (4) to act with an executor shall not have the effect of including him in any chain of representation.

## 115. Grants to trust corporations

1. The High Court may—
  - a. where a trust corporation is named in a will as executor, grant probate to the corporation either solely or jointly with any other person named in the will as executor, as the case may require; or
  - b. grant administration to a trust corporation, either solely or jointly with another person;  
and the corporation may act accordingly as executor or administrator, as the case may be.
2. Probate or administration shall not be granted to any person as nominee of a trust corporation.
3. Any officer authorised for the purpose by a trust corporation or its directors or governing body may, on behalf of the corporation, swear affidavits, give security and do any other act which the court may require with a view to the grant to the corporation of probate or administration; and the acts of an officer so authorised shall be binding on the corporation.
4. Subsections (1) to (3) shall also apply in relation to any body which is exempt from the provisions of section 23(1) of the Solicitors Act 1974 (unqualified persons not to prepare papers for probate etc.) by virtue of any of paragraphs (e) to (h) of subsection (2) of that section.

## 116. Power of court to pass over prior claims to grant

1. If by reason of any special circumstances it appears to the High Court to be necessary or expedient to appoint as administrator some person other than the person who, but for this section, would in accordance with probate rules have been entitled to the grant, the court may in its discretion appoint as administrator such person as it thinks expedient.
2. Any grant of administration under this section may be limited in any way the court thinks fit.

## 117. Administration pending suit

1. Where any legal proceedings concerning the validity of the will of a deceased person, or for obtaining, recalling or revoking any grant, are pending, the High Court may grant administration of the estate of the deceased person in question to an administrator pending suit, who shall, subject to subsection (2), have all the rights, duties and powers of a general administrator.
2. An administrator pending suit shall be subject to the immediate control of the court and act under its direction; and, except in such circumstances as may be prescribed, no distribution of the estate, or any part of the estate, of the deceased person in question shall be made by such an administrator without the leave of the court.
3. The court may, out of the estate of the deceased, assign an administrator pending suit such reasonable remuneration as it thinks fit.

## 118. Effect of appointment of minor as executor

Where a testator by his will appoints a minor to be an executor, the appointment shall not operate to vest in the minor the estate, or any part of the estate, of the testator, or to constitute him a personal representative for any purpose, unless and

until probate is granted to him in accordance with probate rules.

### **119. Administration with will annexed**

1. Administration with the will annexed shall be granted, subject to and in accordance with probate rules, in every class of case in which the High Court had power to make such a grant immediately before the commencement of this Act.
2. Where administration with the will annexed is granted, the will of the deceased shall be performed and observed in the same manner as if probate of it had been granted to an executor.

### **120. Power to require administrators to produce sureties**

1. As a condition of granting administration to any person the High Court may, subject to the following provisions of this section and subject to and in accordance with probate rules, require one or more sureties to guarantee that they will make good, within any limit imposed by the court on the total liability of the surety or sureties, any loss which any person interested in the administration of the estate of the deceased may suffer in consequence of a breach by the administrator of his duties as such.
2. A guarantee given in pursuance of any such requirement shall enure for the benefit of every person interested in the administration of the estate of the deceased as if contained in a contract under seal made by the surety or sureties with every such person and, where there are two or more sureties, as if they had bound themselves jointly and severally.
3. No action shall be brought on any such guarantee without the leave of the High Court.
4. Stamp duty shall not be chargeable on any such guarantee.
5. This section does not apply where administration is granted to the Treasury Solicitor, the Official Solicitor, the Public Trustee, the Solicitor for the affairs of the Duchy of Lancaster or the Duchy of Cornwall or the Crown Solicitor for Northern Ireland, or to the consular officer of a foreign state to which section 1 of the Consular Conventions Act 1949 applies, or in such other cases as may be prescribed.

### **Subheading 3: Revocation of grants and cancellation of resealing at instance of court**

#### **121. Revocation of grants and cancellation of resealing at instance of court**

1. Where it appears to the High Court that a grant either ought not to have been made or contains an error, the court may call in the grant and, if satisfied that it would be revoked at the instance of a party interested, may revoke it.
2. A grant may be revoked under subsection (1) without being called in, if it cannot be called in.
3. Where it appears to the High Court that a grant resealed under the Colonial Probates Acts 1892 and 1927 ought not to have been resealed, the court may call in the relevant document and, if satisfied that the resealing would be cancelled at the instance of a party interested, may cancel the resealing. In this and the following subsection "the relevant document" means the original grant or, where some other document was sealed by the court under those Acts, that document.

4. A resealing may be cancelled under subsection (3) without the relevant document being called in, if it cannot be called in.

## **Subheading 4: Ancillary powers of court**

### **122. Examination of person with knowledge of testamentary document**

1. Where it appears that there are reasonable grounds for believing that any person has knowledge of any document which is or purports to be a testamentary document, the High Court may, whether or not any legal proceedings are pending, order him to attend for the purpose of being examined in open court.
2. The court may—
  - a. require any person who is before it in compliance with an order under subsection (1) to answer any question relating to the document concerned; and
  - b. if appropriate, order him to bring in the document in such manner as the court may direct.
3. Any person who, having been required by the court to do so under this section, fails to attend for examination, answer any question or bring in any document shall be guilty of contempt of court.

### **123. Subpoena to bring in testamentary document**

Where it appears that any person has in his possession, custody or power any document which is or purports to be a testamentary document, the High Court may, whether or not any legal proceedings are pending, issue a subpoena requiring him to bring in the document in such manner as the court may in the subpoena direct.

## **Subheading 5: Provisions as to documents**

### **124. Place for deposit of original wills and other documents**

All original wills and other documents which are under the control of the High Court in the Principal Registry or in any district probate registry shall be deposited and preserved in such places as may be provided for in directions given in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005; and any wills or other documents so deposited shall, subject to the control of the High Court and to probate rules, be open to inspection.

### **125. Copies of wills and grants**

An office copy, or a sealed and certified copy, of any will or part of a will open to inspection under section 124 or of any grant may, on payment of the fee prescribed by an order under section 92 of the Courts Act 2003 (fees), be obtained—

- a. from the registry in which in accordance with section 124 the will or documents relating to the grant are preserved; or
- b. where in accordance with that section the will or such documents are preserved in some place other than a registry, from the Principal Registry; or
- c. subject to the approval of the Senior Registrar of the Family Division, from the Principal Registry in any case where the will was proved in or the grant was issued from a district probate registry.

## **126. Depositories for wills of living persons**

1. There shall be provided, under the control and direction of the High Court, safe and convenient depositories for the custody of the wills of living persons; and any person may deposit his will in such a depository on payment of the fee prescribed by an order under section 92 of the Courts Act 2003 (fees) and subject to such conditions as may be prescribed by regulations made by the President of the Family Division with the concurrence of the Lord Chancellor.
2. Any regulations made under this section shall be made by statutory instrument which shall be laid before Parliament after being made; and the Statutory Instruments Act 1946 shall apply to a statutory instrument containing regulations under this section in like manner as if they had been made by a Minister of the Crown.

## **Subheading 6: Probate rules**

### **127. Probate rules**

1. Rules of court (in this Part referred to as “probate rules”) may be made in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005 for regulating and prescribing the practice and procedure of the High Court with respect to non-contentious or common form probate business.
2. Without prejudice to the generality of subsection (1), probate rules may make provision for regulating the classes of persons entitled to grants of probate or administration in particular circumstances and the relative priorities of their claims thereto.
3. [Repealed]



## Subheading 7: Interpretation of Part V and other probate provisions

### 128. Interpretation of Part V and other probate provisions

In this part, and in the other provisions of this Act relating to probate causes and matters, unless the context otherwise requires—

- “administration” includes all letters of administration of the effects of deceased persons, whether with or without a will annexed, and whether granted for general, special or limited purposes;
- “estate” means real and personal estate, and “real estate” includes—
  - a. chattels real and land in possession, remainder or reversion and every interest in or over land to which the deceased person was entitled at the time of his death, and
  - b. real estate held on trust or by way of mortgage or security, but not money secured or charged on land;
- “grant” means a grant of probate or administration;
- “non-contentious or common form probate business” means the business of obtaining probate and administration where there is no contention as to the right thereto, including—
  - a. the passing of probates and administrations through the High Court in contentious cases where the contest has been terminated,
  - b. all business of a non-contentious nature in matters of testacy and intestacy not being proceedings in any action, and
  - c. the business of lodging caveats against the grant of probate or administration;
- “Principal Registry” means the Principal Registry of the Family Division;
- “probate rules” means rules of court made under section 127;
- “trust corporation” means the Public Trustee or a corporation either appointed by the court in any particular case to be a trustee or authorised by rules made under section 4(3) of the Public Trustee Act 1906 to act as a custodian trustee;
- “will” includes a nuncupative will and any testamentary document of which probate may be granted.

## Part VI: MISCELLANEOUS AND SUPPLEMENTARY

### Subheading 1: Miscellaneous provisions

#### 129. Lords Commissioners to represent Lord Chancellor when Great Seal in commission

When the Great Seal is in commission, the Lords Commissioners shall represent the Lord Chancellor for the purposes of this Act; but the powers vested in him by this Act in relation to—

- a. the appointment of officers, and
- b. any act for which the concurrence or presence of the Lord Chancellor is required by this Act,

may be exercised by the senior Lord Commissioner for the time being.

#### 130. Fees to be taken in Supreme Court

[Repealed]

#### 131. Conveyancing counsel of Senior Courts

1. The conveyancing counsel of the Senior Courts shall be persons who have a 10 year High Court qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990.
2. The conveyancing counsel of the court shall be not more than six, not less than three, in number, and shall be appointed by the Lord Chancellor with the concurrence of the Lord Chief Justice.
3. The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.

#### 132. Proof of documents bearing seal or stamp of Senior Courts or any office thereof

Every document purporting to be sealed or stamped with the seal or stamp of the Senior Courts or of any office of the Senior Courts shall be received in evidence in all parts of the United Kingdom without further proof.

#### 133. Enrolment and engrossment of instruments

1. The Master of the Rolls may make regulations for authorising and regulating the enrolment or filing of instruments in the Senior Courts, and for prescribing the form in which certificates of enrolment or filing are to be issued.
2. Regulations under subsection (1) shall not affect the operation of any enactment requiring or authorising the enrolment of any instrument in the Senior Courts or prescribing the manner in which any instrument is to be enrolled there.

3. Any instrument which is required or authorised by or under this or any other Act to be enrolled or engrossed in the Senior Courts shall be deemed to have been duly enrolled or engrossed if it is written on material authorised or required by regulations under subsection (1) and has been filed or otherwise preserved in accordance with regulations under that subsection.
4. The Lord Chancellor may, with the concurrence of the Master of the Rolls and of the Treasury, make regulations prescribing the fees to be paid on the enrolment or filing of any instrument in the Senior Courts, including any additional fees payable on the enrolment or filing of any instrument out of time.
5. Any regulations under this section shall be made by statutory instrument, which shall be laid before Parliament after being made; and the Statutory Instruments Act 1946 shall apply to a statutory instrument containing regulations under subsection (1) in like manner as if the regulations had been made by a Minister of the Crown.

### **134. Powers of attorney deposited before October 1971**

1. This section applies to any instrument creating, or verifying the execution of, a power of attorney which was deposited in the Central Office of the Senior Courts before 1st October 1971.
2. A separate file of such instruments shall continue to be kept and, subject to payment of any the fee prescribed by an order under section 92 of the Courts Act 2003 (fees)—
  - a. any person may search that file, and may inspect any such instrument; and
  - b. an office copy of any such instrument shall be issued to any person on request.
3. A document purporting to be an office copy of any such instrument shall, in any part of the United Kingdom, without further proof be sufficient evidence of the contents of the instrument and of its having been deposited as mentioned in subsection (1).

### **135. Bonds given under order of court**

1. A bond to be given by any person under or for the purposes of any order of the High Court or the civil division of the Court of Appeal shall be given in such form and to such officer of the court as may be prescribed and, if the court so requires, with one or more sureties.
2. An officer of the court to whom a bond is given in accordance with subsection (1) shall as such have power to enforce it or to assign it, pursuant to an order of the court under subsection (4), to some other person.
3. Where by rules of court made for the purposes of this section another officer is at any time substituted for the officer previously prescribed as the officer to whom bonds of any class are to be given, the rules may provide that bonds of that class given before the rules come into operation shall have effect as if references in the bonds to the officer previously prescribed were references to the substituted officer.
4. Where it appears to the court that the condition of a bond given in accordance with subsection (1) has been broken, the court may, on an application in that behalf, order the bond to be assigned to such person as may be specified in the order.

5. A person to whom a bond is ordered to be assigned under subsection (4) shall be entitled by virtue of the order to sue on the bond in his own name as if it had been originally given to him, and to recover on it as trustee for all persons interested the full amount recoverable in respect of the breach of condition.

## **136. Production of documents filed in, or in custody of, Senior Courts**

1. Rules may be made in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005 for providing that, in any case where a document filed in, or in the custody of, any office of the Senior Courts is required to be produced to any court or tribunal (including an umpire or arbitrator) sitting elsewhere than at the Royal Courts of Justice—
  - a. it shall not be necessary for any officer, whether served with a subpoena in that behalf or not, to attend for the purpose of producing the document; but
  - b. the document may be produced to the court or tribunal by sending it to the court or tribunal, in the manner prescribed in the rules, together with a certificate, in the form so prescribed, to the effect that the document has been filed in, or is in the custody of, the office;  
and any such certificate shall be prima facie evidence of the facts stated in it.
2. Rules under this section may contain—
  - a. provisions for securing the safe custody and return to the proper office of the Senior Courts of any document sent to a court or tribunal in pursuance of the rules; and
  - b. such incidental and supplementary provisions as appear to the person making the rules to be necessary or expedient.
3. [Repealed]

## **137. Money paid into court under enactment subsequently repealed**

Where in pursuance of any enactment, whenever passed, any money has (before or after the commencement of this Act) been paid—

- a. into the Bank of England in the name of the Accountant General of the Senior Courts; or
- b. into the Senior Courts,

then, if that enactment has been or is subsequently repealed—

- i. the Accountant General may continue to deal with the money; and
- ii. any powers of the High Court with respect to the money shall continue to be exercisable,

in all respects as if that enactment had not been repealed.

## 138. Effect of writs of execution against goods

[Repealed]

### 138A. Sales under executions

[Repealed]

### 138B. Protection of officer selling goods under execution

[Repealed]

## 139. Attachment of National Savings Bank deposits

1. In section 27 of the Crown Proceedings Act 1947 (attachment of moneys payable by the Crown)—

a. in subsection (1), paragraph (c) of the proviso (which precludes the making of orders under that subsection by the High Court or a county court in respect of money payable on account of a deposit in the National Savings Bank) shall cease to have effect; and

b. after subsection (2) there shall be added—

"(3)In their application to England and Wales the preceding provisions of this section shall have effect subject to any order for the time being in force under section 139(2) of the Supreme Court Act 1981."

2. The Lord Chancellor may by order direct that section 27(1) and (2) of the Crown Proceedings Act 1947 (attachment of moneys payable by the Crown) shall not apply in relation to any money payable by the Crown to any person on account of—

a. any deposit in the National Savings Bank; or

b. a deposit in that Bank of any description specified in the order.

3. Any order under subsection (2) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

4. Without prejudice to section 153(4), this section extends to England and Wales only.

## 140. Enforcement of fines and forfeited recognizances

1. Payment of a fine imposed, or sum due under a recognizance forfeited, by the High Court or the civil division of the Court of Appeal may be enforced upon the order of the court—

a. in like manner as a judgment of the High Court for the payment of money; or

b. in like manner as a fine imposed by the Crown Court.

2. Where payment of a fine or other sum falls to be enforced as mentioned in paragraph (a) of subsection (1) upon an order of the High Court or the civil division of the Court of Appeal under that subsection—
  - a. the court shall, if the fine or the other sum is not paid in full forthwith or within such time as the court may allow, certify to Her Majesty's Remembrancer the sum payable; and
  - b. Her Majesty's Remembrancer shall thereupon proceed to enforce payment of that sum as if it were due to him as a judgment debt.
3. Where payment of a fine or other sum falls to be enforced as mentioned in paragraph (b) of subsection (1) upon an order of the High Court or the civil division of the Court of Appeal under that subsection, the provisions of sections 139 and 140 of the Powers of Criminal Courts (Sentencing) Act 2000 shall apply to that fine or other sum as they apply to a fine imposed by the Crown Court.
4. Where payment of a fine or other sum has become enforceable by Her Majesty's Remembrancer by virtue of this section or section 16 of the Contempt of Court Act 1981, any payment received by him in respect of that fine or other sum shall be dealt with by him in such manner as the Lord Chancellor may direct.
5. In this section, and in sections 139 and 140 of the Powers of Criminal Courts (Sentencing) Act 2000 as extended by this section, "fine" includes a penalty imposed in civil proceedings.

## 141. Abolition of certain writs

[Repealed]

## 142. Selection of judges for trial of election petitions

1. The judges to be placed on the rota for the trial of parliamentary election petitions in England and Wales under Part III of the Representation of the People Act 1983 in each year shall be selected, in such manner as may be provided by rules of court, from the judges of the Queen's Bench Division of the High Court exclusive of any who are members of the House of Lords.
2. Notwithstanding the expiry of the year for which a judge has been placed on the rota he may act as if that year had not expired for the purpose of continuing to deal with, giving judgment in, or dealing with ancillary matter relating to, any case with which he may have been concerned during that year.
3. Any judge placed on the rota shall be eligible to be placed on the rota again in the succeeding or any subsequent year.

## 143. [Repealed]

## 144. [Repealed]

## 145. Amendment of Courts-Martial (Appeals) Act 1968

1. The Courts-Martial (Appeals) Act 1968 shall be amended as follows.
2. In section 2(1)(a) (under which the judges of the Courts-Martial Appeal Court include such judges of the Queen's Bench Division of the High Court as may be nominated for that purpose by the Lord Chief Justice after consultation with the Master of the Rolls), the words "of the Queen's Bench Division" and "after consultation with the Master of the Rolls" shall be omitted.

3. In section 3(a) (under which the powers of the Courts-Martial Appeal Court may be exercised by any judge of the Queen's Bench Division of the High Court), the words "of the Queen's Bench Division" shall be omitted.
4. For section 5 (constitution of Appeal Court for particular sittings) there shall be substituted—
 

"5

(1) Subject to subsection (4) below, the Appeal Court shall be duly constituted if it consists of an uneven number of judges not less than three.

(2) Where—

(a) part of any proceedings before the Appeal Court has been heard by an uneven number of judges greater than three; and

(b) one or more members of the Court as constituted for the purpose of those proceedings are unable to continue,

then, subject to subsection (4) below, the Court shall remain duly constituted for the purpose of those proceedings so long as the number of members (whether even or uneven) is not reduced to less than three.

(3) Subject to subsection (4) below, the Appeal Court shall, if it consists of two judges, be duly constituted for every purpose except—

(a) determining an appeal against—

  - (i) conviction; or
  - (ii) a finding of not guilty by reason of insanity; or
  - (iii) a finding of unfitness to stand trial;

(b) determining an application for leave to appeal to the House of Lords; and

(c) refusing an application for leave to appeal to the Appeal Court against conviction or any such finding as is mentioned in paragraph (a)(ii) or (iii), other than an application which has been refused by a single judge.

(4) At least one of the judges of which the Appeal Court consists at any sitting must be a judge of the Court by virtue of section 2(1) of this Act, except that where the Court is directed to sit at a place outside the United Kingdom the Lord Chancellor may, if he thinks it expedient to do so, direct that this provision shall not apply to the Court while sitting at that place.

(5) Where an appeal has been heard by the Appeal Court and the Court as constituted for that purpose consists of an even number of judges, then, if those judges are equally divided, the case shall be re-argued before and determined by an uneven number of judges not less than three."
5. In section 36(2) (rights of appellant on refusal of single judge to exercise certain powers in his favour) for "for the hearing and determination of appeals" there shall be substituted "for the purpose in accordance with section 5 of this Act".

## 146. Amendment of Courts Act 1971

For section 24 of the Courts Act 1971 (deputy High Court and Circuit judges) there shall be substituted—

"24 Deputy Circuit judges and assistant Recorders.

(1) If it appears to the Lord Chancellor that it is expedient as a temporary measure to make an appointment under this section in order to facilitate the disposal of business in the Crown Court or a county court or official referees' business in the High Court, he may—

(a) appoint to be a deputy Circuit judge, during such period or on such occasions as he thinks fit, any person who has held office as a judge of the Court of Appeal or of the High Court or as a Circuit judge; or

(b) appoint to be an assistant Recorder, during such period or on such occasions as he thinks fit, any barrister or solicitor of at least ten years' standing.

(2) Except as provided by subsection (3) below, during the period or on the occasions for which a deputy Circuit judge or assistant Recorder is appointed under this section he shall be treated for all purposes as, and accordingly may perform any of the functions of, a Circuit judge or a Recorder, as the case may be.

(3) A deputy Circuit judge appointed under this section shall not be treated as a Circuit judge for the purpose of any provision made by or under any enactment and relating to the appointment, retirement, removal or disqualification of Circuit judges, the tenure of office and oaths to be taken by such judges, or the remuneration, allowances or pensions of such judges; and section 21 of this Act shall not apply to an assistant Recorder appointed under this section.

(4) Notwithstanding the expiry of any period for which a person is appointed under this section a deputy Circuit judge or an assistant Recorder, he may attend at the Crown Court or a county court or, as regards any official referees' business, at the High Court for the purpose of continuing to deal with, giving judgment in, or dealing with any ancillary matter relating to, any case which may have been begun before him when sitting as a deputy Circuit judge or an assistant Recorder, and for that purpose and for the purpose of any proceedings subsequent thereon he shall be treated as a Circuit judge or a Recorder, as the case may be.

(5) There shall be paid out of money provided by Parliament to deputy Circuit judges and assistant Recorders appointed under this section such remuneration and allowances as the Lord Chancellor may, with the approval of the Minister for the Civil Service, determine."

## **147. Amendment of Solicitors Act 1974**

In section 50 of the Solicitors Act 1974 (jurisdiction of Senior Courts over solicitors), after subsection (2) there shall be inserted—

"(3) An appeal shall lie to the Court of Appeal from any order made against a solicitor by the High Court or the Crown Court in the exercise of its jurisdiction in respect of solicitors under subsection (2)."

## **148. [Repealed]**

## **149. [Repealed]**

## **Subheading 2: Supplementary**

## **150. Admiralty jurisdiction: provisions as to Channel Islands, Isle of Man, colonies etc**

1. Her Majesty may by Order in Council—
  - a. direct that any of the provisions of sections 20 to 24 specified in the Order shall extend, with such exceptions, adaptations and modifications as may be so specified, to any of the Channel Islands or the Isle of Man; or



- b. make, for any of the Channel Islands or the Isle of Man, provision for any purposes corresponding to the purposes of any of the provisions of those sections.
2. Her Majesty may by order in Council direct, either generally or in relation to particular courts or territories, that the Colonial Courts of Admiralty Act 1890 shall have effect as if for the reference in section 2(2) of that Act to the Admiralty jurisdiction of the High Court in England there were substituted a reference to the Admiralty jurisdiction of that court as defined by section 20 of this Act, subject, however to such adaptations and modifications of section 20 as may be specified in the Order.
3. Her Majesty may by Order in Council direct that any of the provisions of sections 21 to 24 shall extend, with such exceptions, adaptations and modifications as may be specified in the Order, to any colony or to any country outside Her Majesty's dominions in which Her Majesty has jurisdiction in right of the government of the United Kingdom.
4. Subsections (1) and (3) shall each have effect as if the provisions there mentioned included section 2(2) of the Hovercraft Act 1968 (application of the law relating to maritime liens in relation to hovercraft and property connected with them).

## 151. Interpretation of this Act, and rules of construction for other Acts and documents

1. In this Act, unless the context otherwise requires—
  - “action” means any civil proceedings commenced by writ or in any other manner prescribed by rules of court;
  - “appeal”, in the context of appeals to the civil division of the Court of Appeal, includes—
    - a. an application for a new trial, and
    - b. an application to set aside a verdict, finding or judgment in any cause or matter in the High Court which has been tried, or in which any issue has been tried, by a jury;
  - “arbitration agreement” has the same meaning as it has in the Part I of the Arbitration Act 1996;
  - “cause” means any action or any criminal proceedings;
  - “Division”, where it appears with a capital letter, means a division of the High Court;
  - “judgment” includes a decree;
  - “jurisdiction” includes powers;
  - “matter” means any proceedings in court not in a cause;

- “party”, in relation to any proceedings, includes any person who pursuant to or by virtue of rules of court or any other statutory provision has been served with notice of, or has intervened in, those proceedings;
  - “prescribed” means—
    - a. except in relation to fees, prescribed by rules of court;
    - b. [Repealed]
  - “qualifying judge advocate” means—
    - a. the Judge Advocate General; or
    - b. a person appointed under section 30(1)(a) or (b) of the Courts-Martial (Appeals) Act 1951 (assistants to the Judge Advocate General);
  - “senior judge”, where the reference is to the senior judge of a Division, means the president of that Division;
  - “solicitor” means a solicitor of the Senior Courts;
  - “statutory provision” means any enactment, whenever passed, or any provision contained in subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978), whenever made;
  - “this or any other Act” includes an Act passed after this Act.
2. Section 128 contains definitions of expressions used in Part V and in the other provisions of this Act relating to probate causes and matters.
  3. Any reference in this Act to rules of court under section 84 includes a reference to rules of court under any provision of this or any other Act which confers on the Civil Procedure Rule Committee power to make rules of court in relation to the Senior Courts.
  4. Except where the context otherwise requires, in this or any other Act—
    - “divisional court” (with or without capital letters) means a divisional court constituted under section 66;
    - “judge of the Senior Courts” means—
      - a. a judge of the Court of Appeal other than an ex-officio judge within paragraph (b) or (c) of section 2(2), or
      - b. a judge of the High Court,
 and accordingly does not include, as such, a judge of the Crown Court;
    - “official referees’ business” has the meaning given by section 68(6);

- “Rules of the Senior Courts” means rules of court made by the Senior Courts Rules Committee.
5. The provisions of Schedule 4 (construction of references to superseded courts and officers) shall have effect.

## 152. Amendments of other Acts, transitional provisions, savings and repeals

1. The enactments specified in Schedule 5 shall have effect subject to the amendments there specified, being amendments consequential on the provisions of this Act.
2. [Repealed]
3. This Act shall have effect subject to the transitional provisions and savings contained in Schedule 6.
4. The enactments mentioned in Schedule 7 (which include certain obsolete or unnecessary provisions) are hereby repealed to the extent specified in the third column of that Schedule.
5. [Repealed]

[N.B. The text of s. 152(1) and (4) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991]

## 153. Citation, commencement and extent

1. This Act may be cited as the Senior Courts Act 1981.
2. This Act, except the provisions mentioned in subsection (3), shall come into force on 1st January 1982; and references to the commencement of this Act shall be construed as references to the beginning of that day.
3. Sections 72, 143 and 152(2) and this section shall come into force on the passing of this Act.
4. In this Act—
  - a. the following provisions extend to Scotland, namely—
    - section 80(3);
    - section 152(4) and Schedule 7, so far as they relate to the Admiralty Court Act 1861;
  - b. the following provisions extend to Northern Ireland so far as they relate to the Northern Ireland Assembly Disqualification Act 1975, namely—
    - section 152(1) and Schedule 5;
    - section 152(3) and paragraph 3(1) of Schedule 6;
  - c. the following provisions extend to Scotland and Northern Ireland, namely—
    - section 36;

- sections 132 and 134(3);
- section 152(1) and Schedule 5, so far as they amend—
  - i. references to section 49 of the Senior Courts of Judicature (Consolidation) Act 1925,
  - ii. the House of Commons Disqualification Act 1975, and
  - iii. section 4 of the Evidence (Proceedings in Other Jurisdictions) Act 1975;
- section 152(3) and paragraph 3(1) of Schedule 6, so far as they relate to the House of Commons Disqualification Act 1975;
- section 152(4) and Schedule 7, so far as they relate to—
  - i. provisions of the Senior Courts of Judicature (Consolidation) Act 1925 which extend throughout the United Kingdom,
  - ii. the Evidence and Powers of Attorney Act 1940, and
- section 57(3)(a) of the Courts Act 1971;
- d. section 145 extends to any place to which the Courts-Martial (Appeals) Act 1968 extends, and section 152(1) and (4) and Schedules 5 and 7, so far as they relate to any of the following enactments, namely—
  - Army Act 1955,
  - Air Force Act 1955,
  - section 9(2) of, and Part II of Schedule 1 to, the Criminal Appeal Act 1966,
  - Courts-Martial (Appeals) Act 1968,
  - Hovercraft Act 1968,

extend to any place to which that enactment extends;

but, save as aforesaid, the provisions of this Act, other than those mentioned in subsection (5), extend to England and Wales only.

5. The provisions of this Act whose extent is not restricted by subsection (4) are—

- section 27;
- section 150;

- section 151(1);
- section 152(4) and Schedule 7 as far as they relate to the Naval Prize Act 1864, the Prize Courts Act 1915 and section 56 of the Administration of Justice Act 1956;
- this section;
- paragraph 1 of Schedule 4.

## Northern Ireland Act 1998

### Part I: Preliminary

#### 1. Status of Northern Ireland

1. It is hereby declared that Northern Ireland in its entirety remains part of the United Kingdom and shall not cease to be so without the consent of a majority of the people of Northern Ireland voting in a poll held for the purposes of this section in accordance with Schedule 1.
2. But if the wish expressed by a majority in such a poll is that Northern Ireland should cease to be part of the United Kingdom and form part of a united Ireland, the Secretary of State shall lay before Parliament such proposals to give effect to that wish as may be agreed between Her Majesty's Government in the United Kingdom and the Government of Ireland.

#### 2. Previous enactments

The Government of Ireland Act 1920 is repealed; and this Act shall have effect notwithstanding any other previous enactment.

#### 3. Devolution order

1. If it appears to the Secretary of State that sufficient progress has been made in implementing the Belfast Agreement, he shall lay before Parliament the draft of an Order in Council appointing a day for the commencement of Parts II and III ("the appointed day").
2. If the draft Order laid before Parliament under subsection (1) is approved by resolution of each House of Parliament, the Secretary of State shall submit it to Her Majesty in Council and Her Majesty in Council may make the Order.

#### 4. Transferred, excepted and reserved matters

1. In this Act—
  - "excepted matter" means any matter falling within a description specified in Schedule 2;
  - "reserved matter" means any matter falling within a description specified in Schedule 3;

- “transferred matter” means any matter which is not an excepted or reserved matter.
2. If at any time after the appointed day it appears to the Secretary of State—
    - a. that any reserved matter should become a transferred matter; or
    - b. that any transferred matter should become a reserved matter, he may, subject to subsections (2A) to (3D), lay before Parliament the draft of an Order in Council amending Schedule 3 so that the matter ceases to be or, as the case may be, becomes a reserved matter with effect from such date as may be specified in the Order.
  - 2A. The Secretary of State shall not lay before Parliament under subsection (2) the draft of an Order amending Schedule 3 so that a policing and justice matter ceases to be a reserved matter unless—
    - a. a motion for a resolution praying that the matter should cease to be a reserved matter is tabled by the First Minister and the deputy First Minister acting jointly; and
    - b. the resolution is passed by the Assembly with the support of a majority of the members voting on the motion, a majority of the designated Nationalists voting and a majority of the designated Unionists voting.
  3. The Secretary of State shall not lay before Parliament under subsection (2) the draft of any other Order unless the Assembly has passed with cross-community support a resolution praying that the matter concerned should cease to be or, as the case may be, should become a reserved matter.
  - 3A. The Secretary of State shall not lay before Parliament under subsection (2) the draft of an Order amending paragraph 16 of Schedule 3 (Civil Service Commissioners for Northern Ireland) unless the Secretary of State has, at least three months before laying the draft, laid a report before Parliament.
  - 3B. The report under subsection (3A) must set out the Secretary of State's view of the effect (if any) that the Order would have on—
    - a. the independence of the Civil Service Commissioners for Northern Ireland;
    - b. the application of the principle that persons should be selected for appointment to the Northern Ireland Civil Service on merit on the basis of fair and open competition; and
    - c. the impartiality of the Northern Ireland Civil Service.
  - 3C. The Secretary of State shall not lay before Parliament under subsection (2) the draft of an Order amending paragraph 42(aa) of Schedule 3 (Northern Ireland Human Rights Commission) unless the Secretary of State has, at least three months before laying the draft, laid a report before Parliament.
  - 3D. The report under subsection (3C) must set out the Secretary of State's view of the effect (if any) that the Order would have on—
    - a. the independence of the Northern Ireland Human Rights Commission;

- b. the application of internationally accepted principles relating to national human rights institutions; and
  - c. the relationship between the Northern Ireland Human Rights Commission and the Assembly.
4. If the draft of an Order laid before Parliament under subsection (2) is approved by resolution of each House of Parliament, the Secretary of State shall submit it to Her Majesty in Council and Her Majesty in Council may make the Order.
5. In this Act—
- “the Assembly” means the New Northern Ireland Assembly, which after the appointed day shall be known as the Northern Ireland Assembly;
  - “cross-community support”, in relation to a vote on any matter, means—
    - a. the support of a majority of the members voting, a majority of the designated Nationalists voting and a majority of the designated Unionists voting; or
    - b. the support of 60 per cent of the members voting, 40 per cent of the designated Nationalists voting and 40 per cent of the designated Unionists voting;
  - “designated Nationalist” means a member designated as a Nationalist in accordance with standing orders of the Assembly and “designated Unionist” shall be construed accordingly.
- 5A. Standing orders of the Assembly shall provide that a member of the Assembly designated in accordance with the standing orders as a Nationalist, as a Unionist or as Other may change his designation only if—
- a. (being a member of a political party) he becomes a member of a different political party or he ceases to be a member of any political party;
  - b. (not being a member of any political party) he becomes a member of a political party.
6. In this section “policing and justice matter” means a matter falling within a description specified in—
- a. any of paragraphs 9 to 12, 14A to 15A and 17 of Schedule 3; or
  - b. any other provision of that Schedule designated for this purpose by an order made by the Secretary of State.

## Part II: Legislative Powers

### Subheading 1: General

#### 5. Acts of the Northern Ireland Assembly

1. Subject to sections 6 to 8, the Assembly may make laws, to be known as Acts.
2. A Bill shall become an Act when it has been passed by the Assembly and has received Royal Assent.
3. A Bill receives Royal Assent at the beginning of the day on which Letters Patent under the Great Seal of Northern Ireland signed with Her Majesty's own hand signifying Her Assent are notified to the Presiding Officer.
4. The date of Royal Assent shall be written on the Act by the Presiding Officer, and shall form part of the Act.
5. The validity of any proceedings leading to the enactment of an Act of the Assembly shall not be called into question in any legal proceedings.
6. This section does not affect the power of the Parliament of the United Kingdom to make laws for Northern Ireland, but an Act of the Assembly may modify any provision made by or under an Act of Parliament in so far as it is part of the law of Northern Ireland.

## 6. Legislative competence

1. A provision of an Act is not law if it is outside the legislative competence of the Assembly.
2. A provision is outside that competence if any of the following paragraphs apply—
  - a. it would form part of the law of a country or territory other than Northern Ireland, or confer or remove functions exercisable otherwise than in or as regards Northern Ireland;
  - b. it deals with an excepted matter and is not ancillary to other provisions (whether in the Act or previously enacted) dealing with reserved or transferred matters;
  - c. it is incompatible with any of the Convention rights;
  - d. it is incompatible with EU law;
  - e. it discriminates against any person or class of person on the ground of religious belief or political opinion;
  - f. it modifies an enactment in breach of section 7.
3. For the purposes of this Act, a provision is ancillary to other provisions if it is a provision—
  - a. which provides for the enforcement of those other provisions or is otherwise necessary or expedient for making those other provisions effective; or
  - b. which is otherwise incidental to, or consequential on, those provisions; and references in this Act to provisions previously enacted are references to provisions contained in, or in any instrument made under, other Northern Ireland legislation or an Act of Parliament.
4. Her Majesty may by Order in Council specify functions which are to be treated, for such purposes of this Act as may be specified, as being, or as not being, functions which are exercisable in or as regards Northern Ireland.

• International human rights treaties

• International organizations



5. No recommendation shall be made to Her Majesty to make an Order in Council under subsection (4) unless a draft of the Order has been laid before and approved by resolution of each House of Parliament.

## 7. Entrenched enactments

1. Subject to subsection (2), the following enactments shall not be modified by an Act of the Assembly or subordinate legislation made, confirmed or approved by a Minister or Northern Ireland department—
  - a. the European Communities Act 1972;
  - b. the Human Rights Act 1998;
  - c. section 43(1) to (6) and (8), section 67, sections 84 to 86B, section 95(3) and (4) and section 98; and
  - d. section 1 and section 84 of the Justice (Northern Ireland) Act 2002.
2. Subsection (1) does not prevent an Act of the Assembly or subordinate legislation modifying section 3(3) or (4) or 11(1) of the European Communities Act 1972.
3. In this Act “Minister”, unless the context otherwise requires, means the First Minister, the deputy First Minister or a Northern Ireland Minister.

## 7A. Cross-community support required for Bill altering size of Assembly

1. The Assembly shall not pass a relevant Bill without cross-community support.
2. In this section—
  - “pass”, in relation to a Bill, means pass at the stage in the Assembly's proceedings at which the Bill falls finally to be passed or rejected;
  - “relevant Bill” means a Bill containing a provision which deals with a matter falling within a description specified in paragraph 7A of Schedule 3 (size of Assembly).”

## 8. Consent of Secretary of State required in certain cases

The consent of the Secretary of State shall be required in relation to a Bill which contains—

- a. a provision which deals with an excepted matter and is ancillary to other provisions (whether in the Bill or previously enacted) dealing with reserved or transferred matters; or
- b. a provision which deals with a reserved matter.

## Subheading 2: Scrutiny and stages of Bills

### 9. Scrutiny by Ministers

1. A Minister in charge of a Bill shall, on or before introduction of it in the Assembly, make a statement to the effect that in his view the Bill would be within the legislative competence of the Assembly.
2. The statement shall be in writing and shall be published in such manner as the Minister making the statement considers appropriate.

### 10. Scrutiny by Presiding Officer

1. Standing orders shall ensure that a Bill is not introduced in the Assembly if the Presiding Officer decides that any provision of it would not be within the legislative competence of the Assembly.
2. Subject to subsection (3)—
  - a. the Presiding Officer shall consider a Bill both on its introduction and before the Assembly enters on its final stage; and
  - b. if he considers that the Bill contains—
    - i. any provision which deals with an excepted matter and is ancillary to other provisions (whether in the Bill or previously enacted) dealing with reserved or transferred matters; or
    - ii. any provision which deals with a reserved matter,he shall refer it to the Secretary of State; and
  - c. the Assembly shall not proceed with the Bill or, as the case may be, enter on its final stage unless—
    - i. the Secretary of State's consent to the consideration of the Bill by the Assembly is signified; or
    - ii. the Assembly is informed that in his opinion the Bill does not contain any such provision as is mentioned in paragraph (b)(i) or (ii).
3. Subsection (2)(b) and (c) shall not apply—
  - a. where, in the opinion of the Presiding Officer, each provision of the Bill which deals with an excepted or reserved matter is ancillary to other provisions (whether in the Bill or previously enacted) dealing with transferred matters only; or
  - b. on the introduction of a Bill, where the Bill has been endorsed with a statement that the Secretary of State has consented to the Assembly considering the Bill.
4. In this section and section 14 "final stage", in relation to a Bill, means the stage in the Assembly's proceedings at which the Bill falls finally to be passed or rejected.

## 11. Scrutiny by the Supreme Court

• Supreme court powers

1. The Attorney General for Northern Ireland may refer the question of whether a provision of a Bill would be within the legislative competence of the Assembly to the Supreme Court for decision.
2. Subject to subsection (3), he may make a reference in relation to a provision of a Bill at any time during—
  - a. the period of four weeks beginning with the passing of the Bill; and
  - b. the period of four weeks beginning with any subsequent approval of the Bill in accordance with standing orders made by virtue of section 13(6).
3. If he notifies the Presiding Officer that he does not intend to make a reference in relation to a provision of a Bill, he shall not make such a reference unless, after the notification, the Bill is approved as mentioned in subsection (2)(b).
4. If the Supreme Court decides that any provision of a Bill would be within the legislative competence of the Assembly, its decision shall be taken as applying also to that provision if contained in the Act when enacted.

• Supreme court powers

## 12. Reconsideration where reference made to ECJ

1. This section applies where—
  - a. a reference has been made under section 11 in relation to a provision of a Bill;
  - b. a reference for a preliminary ruling has been made by the Supreme Court in connection with that reference; and
  - c. neither of the references has been decided or otherwise disposed of.
2. If the Assembly resolves that it wishes to reconsider the Bill—
  - a. the Presiding Officer shall notify the Attorney General for Northern Ireland and the Attorney General of that fact; and
  - b. the Attorney General for Northern Ireland shall request the withdrawal of the reference under section 11.
3. In this section “reference for a preliminary ruling” means a reference of a question to the European Court of Justice under—
  - a. Article 267 of the Treaty on the Functioning of the European Union; or
  - b. [Repealed]
  - c. Article 150 of the Treaty establishing the European Atomic Energy Community.

## 13. Stages of Bills

1. Standing orders shall include provision—
  - a. for general debate on a Bill with an opportunity for members to vote on its general principles;
  - b. for the consideration of, and an opportunity for members to vote on, the details of a Bill; and
  - c. for a final stage at which a Bill can be passed or rejected but not amended.
2. Standing orders may, in relation to different types of Bill, modify provisions made in pursuance of subsection (1)(a) or (b).
3. Standing orders—
  - a. shall include provision for establishing such a committee as is mentioned in paragraph 11 of Strand One of the Belfast Agreement;
  - b. may include provision for the details of a Bill to be considered by the committee in such circumstances as may be specified in the orders.
4. Standing orders shall include provision—
  - a. requiring the Presiding Officer to send a copy of each Bill, as soon as reasonably practicable after introduction, to the Northern Ireland Human Rights Commission; and
  - b. enabling the Assembly to ask the Commission, where the Assembly thinks fit, to advise whether a Bill is compatible with human rights (including the Convention rights).
5. Standing orders shall provide for an opportunity for the reconsideration of a Bill after its passing if (and only if)—
  - a. the Supreme Court decides that any provision of the Bill would not be within the legislative competence of the Assembly;
  - b. a reference made in relation to a provision of the Bill under section 11 has been withdrawn following a request for withdrawal under section 12;
  - c. a decision is made in relation to the Bill under section 14(4) or (5); or
  - d. a motion under section 15(1) is passed by either House of Parliament.
6. Standing orders shall, in particular, ensure that any Bill amended on reconsideration is subject to a final stage at which it can be approved or rejected but not amended.
7. References in subsection (5) and other provisions of this Act to the passing of a Bill shall, in the case of a Bill which has been amended on reconsideration, be read as references to the approval of the Bill.

## Subheading 3: Royal Assent

### 14. Submission by Secretary of State

1. It shall be the Secretary of State who submits Bills for Royal Assent.
2. The Secretary of State shall not submit a Bill for Royal Assent at any time when—
  - a. the Attorney General for Northern Ireland is entitled to make a reference in relation to a provision of the Bill under section 11; or
  - b. any such reference has been made but has not been decided or otherwise disposed of by the Supreme Court.
3. If—
  - a. the Supreme Court has decided that any provision of a Bill would not be within the legislative competence of the Assembly; or
  - b. a reference made in relation to a provision of the Bill under section 11 has been withdrawn following a request for withdrawal under section 12, the Secretary of State shall not submit the Bill in its unamended form for Royal Assent.
- 3A. The Secretary of State shall not submit a Bill for Royal Assent if the Assembly has passed the Bill in contravention of section 7A (cross-community support required for Bill altering size of Assembly).
4. The Secretary of State may, unless he consents to it, decide not to submit for Royal Assent a Bill containing a provision—
  - a. which the Secretary of State considers deals with an excepted matter and is ancillary to other provisions (whether in the Bill or previously enacted) dealing with reserved or transferred matters; or
  - b. which the Secretary of State considers deals with a reserved matter, if the Bill has not been referred to him under subsection (2) of section 10 (whether by virtue of subsection (3)(a) of that section or otherwise) before the Assembly enters on its final stage.
5. The Secretary of State may decide not to submit for Royal Assent a Bill which contains a provision which he considers—
  - a. would be incompatible with any international obligations, with the interests of defence or national security or with the protection of public safety or public order; or
  - b. would have an adverse effect on the operation of the single market in goods and services within the United Kingdom.

• International law

## 15. Parliamentary control where consent given

1. Subject to subsections (2) and (3), a Bill to which the Secretary of State has consented under this Part shall not be submitted by him for Royal Assent unless he has first laid it before Parliament and either—
  - a. the period of 20 days beginning with the date on which it is laid has expired without notice having been given in either House of a motion that the Bill shall not be submitted for Royal Assent; or
  - b. if notice of such a motion is given within that period, the motion has been rejected or withdrawn.
2. Subsection (1) shall not apply to a Bill if the Secretary of State considers that it contains no provision which deals with an excepted or reserved matter except a provision which is ancillary to other provisions (whether in the Bill or previously enacted) dealing with transferred matters only.
3. Subsection (1) shall not apply to a Bill if the Secretary of State considers that by reason of urgency it should be submitted for Royal Assent without first being laid before Parliament.
4. Any Bill submitted by virtue of subsection (3) shall, if given Royal Assent, be laid before Parliament by the Secretary of State after Royal Assent, and if—
  - a. within the period of 20 days beginning with the date on which it is laid notice is given in either House of a motion praying that the Act of the Assembly shall cease to have effect; and
  - b. that motion is carried, Her Majesty may by Order in Council repeal that Act with effect from such date as may be specified in the Order.
5. An Order in Council under subsection (4) may make such consequential and transitional provisions and such savings in connection with the repeal as appear to Her Majesty to be necessary or expedient.
6. Any notice of motion for the purposes of subsection (1) or (4) must be signed by not less than 20 members of the House in which it is given; and the period mentioned in that subsection shall be computed, in relation to each House, by reference only to days on which that House sits.

## Part III: Executive Authorities

### Subheading 1: Authorities

#### 16A. Appointment of First Minister, deputy First Minister and Northern Ireland Ministers following Assembly election

1. This section applies where an Assembly is elected under section 31 or 32.
2. All Northern Ireland Ministers shall cease to hold office.
3. Within a period of seven days beginning with the first meeting of the Assembly—
  - a. the offices of First Minister and deputy First Minister shall be filled by applying subsections (4) to (7); and

- b. the Ministerial offices to be held by Northern Ireland Ministers shall be filled by applying section 18(2) to (6).
4. The nominating officer of the largest political party of the largest political designation shall nominate a member of the Assembly to be the First Minister.
5. The nominating officer of the largest political party of the second largest political designation shall nominate a member of the Assembly to be the deputy First Minister.
6. If the persons nominated do not take up office within a period specified in standing orders, further nominations shall be made under subsections (4) and (5).
7. Subsections (4) to (6) shall be applied as many times as may be necessary to secure that the offices of First Minister and deputy First Minister are filled.
8. But no person may take up office as First Minister, deputy First Minister or Northern Ireland Minister by virtue of this section after the end of the period mentioned in subsection (3) (see further section 32(3)).
9. The persons nominated under subsections (4) and (5) shall not take up office until each of them has affirmed the terms of the pledge of office.
10. Subject to the provisions of this Part, the First Minister and the deputy First Minister shall hold office until immediately before those offices are next filled by virtue of this section.
11. The holder of the office of First Minister or deputy First Minister may by notice in writing to the Presiding Officer designate a Northern Ireland Minister to exercise the functions of that office—
  - a. during any absence or incapacity of the holder; or
  - b. during any vacancy in that office arising otherwise than under section 16B(2),  
but a person shall not have power to act by virtue of paragraph (a) for a continuous period exceeding six weeks.
12. This section shall be construed in accordance with, and is subject to, section 16C.

## **16B. Vacancies in the office of First Minister or deputy First Minister**

1. The First Minister or the deputy First Minister—
  - a. may at any time resign by notice in writing to the Presiding Officer; and
  - b. shall cease to hold office if he ceases to be a member of the Assembly otherwise than by virtue of a dissolution.
2. If either the First Minister or the deputy First Minister ceases to hold office at any time, whether by resignation or otherwise, the other—
  - a. shall also cease to hold office at that time; but
  - b. may continue to exercise the functions of his office until immediately before those offices are filled in accordance with this section.

3. Where the offices of the First Minister and the deputy First Minister become vacant at any time, they shall be filled by applying subsections (4) to (7) within a period of seven days beginning with that time.
4. The nominating officer of the largest political party of the largest political designation shall nominate a member of the Assembly to be the First Minister.
5. The nominating officer of the largest political party of the second largest political designation shall nominate a member of the Assembly to be the deputy First Minister.
6. If the persons nominated do not take up office within a period specified in standing orders, further nominations shall be made under subsections (4) and (5).
7. Subsections (4) to (6) shall be applied as many times as may be necessary to secure that the offices of First Minister and deputy First Minister are filled.
8. But no person may take up office as First Minister or deputy First Minister under this section after the end of the period mentioned in subsection (3) (see further section 32(3)).
9. The persons nominated under subsections (4) and (5) shall not take up office until each of them has affirmed the terms of the pledge of office.
10. This section shall be construed in accordance with, and is subject to, section 16C.

### **16C. Sections 16A and 16B: supplementary**

1. In sections 16A and 16B and this section “nominating officer”, in relation to a party, means—
  - a. the person registered under Part 2 of the Political Parties, Elections and Referendums Act 2000 as the party's nominating officer; or
  - b. a member of the Assembly nominated by him for the purposes of this section.
2. For the purposes of sections 16A and 16B and this section—
  - a. the size of a political party is to be determined by reference to the number of seats in the Assembly which were held by members of the party on the day on which the Assembly first met following its election; but
  - b. if two or more parties are taken by virtue of paragraph (a) to be of the same size, the respective sizes of those parties is to be determined by reference to the number of first preference votes cast for the parties at the last general election of members of the Assembly;  
(this is subject to subsections (7) and (8)).
3. For the purposes of sections 16A and 16B and this section, a political party to which one or more members of the Assembly belong is to be taken—
  - a. to be of the political designation “Nationalist” if, at the relevant time (see subsection (11)), more than half of the members of the Assembly who belonged to the party were designated Nationalists;
  - b. to be of the political designation “Unionist” if, at the relevant time, more than half of the members of the Assembly who belonged to the party were designated Unionists;



- c. otherwise, to be of the political designation "Other".
4. For the purposes of sections 16A and 16B and this section—
  - a. the size of the political designation "Nationalist" is to be taken to be equal to the number of members of the Assembly who, at the relevant time, were designated Nationalists;
  - b. the size of the political designation "Unionist" is to be taken to be equal to the number of members of the Assembly who, at the relevant time, were designated Unionists;
  - c. the size of the political designation "Other" is to be taken to be equal to the number of members of the Assembly who, at the relevant time, were neither designated Nationalists nor designated Unionists.
5. But if two or more political designations are taken by virtue of subsection (4) to be of the same size, the respective sizes of those designations is to be determined by reference to the aggregate number of first preference votes cast, at the last general election of members of the Assembly, for members of the Assembly who, at the relevant time, were—
  - a. designated Nationalists (in the case of the political designation "Nationalist");
  - b. designated Unionists (in the case of the political designation "Unionist"); or
  - c. neither designated Nationalists nor designated Unionists (in the case of the political designation "Other").
6. If at any time the party which is the largest political party of the largest political designation is not the largest political party—
  - a. any nomination to be made at that time under section 16A(4) or 16B(4) shall instead be made by the nominating officer of the largest political party; and
  - b. any nomination to be made at that time under section 16A(5) or 16B(5) shall instead be made by the nominating officer of the largest political party of the largest political designation.
7. Where—
  - a. the Assembly has resolved under section 30(2) that a political party does not enjoy its confidence; and
  - b. the party's period of exclusion (see subsection (12)) under that provision has not come to an end,  
subsection (2)(a) above shall have effect as if the number of seats in the Assembly which were held by members of the party on the day on which the Assembly first met following its election was nil.
8. [Omitted]

9. Where—
  - a. a person nominated by the nominating officer of a political party ceased to hold office as First Minister or deputy First Minister as a result of a resolution of the Assembly under section 30(2); and
  - b. the party's period of exclusion under section 30(2) subsequently comes to an end otherwise than by virtue of the dissolution of the Assembly, the First Minister and the deputy First Minister shall cease to hold office when the party's period of exclusion under that provision comes to an end.
10. [Omitted]
11. In this section “the relevant time” means the end of the day on which the Assembly first met following its election.
12. In this section, a reference to a period of exclusion is, in the case of a period of exclusion which has been extended, a reference to that period as extended.
13. Standing orders may make further provision in connection with the making of nominations under sections 16A and 16B.
14. In this Act “the pledge of office” means the pledge of office which, together with the code of conduct to which it refers, is set out in Schedule 4.

## 17. Ministerial offices

1. The First Minister and the deputy First Minister acting jointly may at any time, and shall where subsection (2) applies, determine—
  - a. the number of Ministerial offices to be held by Northern Ireland Ministers; and
  - b. the functions to be exercisable by the holder of each such office.
2. This subsection applies where provision is made by an Act of the Assembly for establishing a new Northern Ireland department or dissolving an existing one.
3. In making a determination under subsection (1), the First Minister and the deputy First Minister shall ensure that the functions exercisable by those in charge of the different Northern Ireland departments existing at the date of the determination are exercisable by the holders of different Ministerial offices.
4. The number of Ministerial offices shall not exceed 10 or such greater number as the Secretary of State may by order provide.
5. A determination under subsection (1) shall not have effect unless it is approved by a resolution of the Assembly passed with cross-community support.

## 18. Northern Ireland Ministers

1. Where—
  - a. [Omitted]
  - b. a determination under section 17(1) takes effect;
  - c. a resolution which causes one or more Ministerial offices to become vacant is passed under section 30(2);

- d. [Omitted]
- da. a period of exclusion under section 30(2) comes to an end; or.
- e. such other circumstances obtain as may be specified in standing orders, all Northern Ireland Ministers shall cease to hold office and the Ministerial offices shall be filled by applying subsections (2) to (6) within a period so specified.
2. The nominating officer of the political party for which the formula in subsection (5) gives the highest figure may select a Ministerial office and nominate a person to hold it who is a member of the party and of the Assembly.
3. If—
- a. the nominating officer does not exercise the power conferred by subsection (2) within a period specified in standing orders; or
- b. the nominated person does not take up the selected Ministerial office within that period,
- that power shall become exercisable by the nominating officer of the political party for which the formula in subsection (5) gives the next highest figure.
4. Subsections (2) and (3) shall be applied as many times as may be necessary to secure that each of the Ministerial offices is filled.
5. The formula is—  
$$S/(1+M)$$
where—
- S = the number of seats in the Assembly which were held by members of the party on the day on which the Assembly first met following its election;
  - M = the number of Ministerial offices (if any) which are held by members of the party.
6. Where the figures given by the formula for two or more political parties are equal, each of those figures shall be recalculated with S being equal to the number of first preference votes cast for the party at the last general election of members of the Assembly.
7. The holding of office as First Minister or deputy First Minister shall not prevent a person being nominated to hold a Ministerial office.
8. A Northern Ireland Minister shall not take up office until he has affirmed the terms of the pledge of office.
9. A Northern Ireland Minister shall cease to hold office if—
- a. he resigns by notice in writing to the First Minister and the deputy First Minister;
- b. he ceases to be a member of the Assembly otherwise than by virtue of a dissolution; or
- c. he is dismissed by the nominating officer who nominated him (or that officer's successor) and the Presiding Officer is notified of his dismissal.

10. Where a Ministerial office is vacant otherwise than by virtue of subsection (1), the nominating officer of the party on whose behalf the previous incumbent was nominated may nominate a person to hold the office who is a member of the party and of the Assembly.
11. If—
  - a. the nominating officer does not exercise the power conferred by subsection (10) within a period specified in standing orders; or
  - b. the nominated person does not take up the office within that period, the vacancy shall be filled by applying subsections (2) to (6) within a period specified in standing orders.
12. Where—
  - a. the Assembly has resolved under section 30(2) that a political party does not enjoy its confidence; and
  - b. the party's period of exclusion under that provision has not come to an end, the party shall be disregarded for the purposes of any application of subsections (2) to (6).
- 12A. [Omitted]
- 12B. [Omitted]
13. In this section "nominating officer", in relation to a party, means—
  - a. the person registered under Part 2 of the Political Parties, Elections and Referendums Act 2000 as the party's nominating officer; or
  - b. a member of the Assembly nominated by him for the purposes of this section.
14. In this section, a reference to a period of exclusion is, in the case of a period of exclusion which has been extended, a reference to that period as extended.

## 19. Junior Ministers

1. The First Minister and the deputy First Minister acting jointly may at any time determine—
  - a. that a number of members of the Assembly specified in the determination shall be appointed as junior Ministers in accordance with such procedures for their appointment as are so specified; and
  - b. that the functions exercisable by virtue of each junior Ministerial office shall be those specified in relation to that office in the determination.
2. Procedures specified in a determination under this section may apply such formulae or other rules as the First Minister and the deputy First Minister consider appropriate.
3. A determination under this section shall—
  - a. make provision as to the circumstances in which a junior Minister shall cease to hold office, and for the filling of vacancies; and

- b. provide that a junior Minister shall not take up office until he has affirmed the terms of the pledge of office.
- 4. A determination under this section shall not take effect until it has been approved by a resolution of the Assembly.
- 5. Where a determination under this section takes effect—
  - a. any junior Ministers previously appointed shall cease to hold office; and
  - b. the procedures specified in the determination shall be applied within a period specified in standing orders.

## **19A. Disqualification for certain offices which may be held by members of the Assembly**

- 1. No person may—
  - a. be nominated to hold the office of First Minister or deputy First Minister or a Ministerial office to be held by a Northern Ireland Minister,
  - b. [Repealed]
  - c. be appointed as a junior Minister, or
  - d. be nominated under paragraph 7 of Schedule 1 to the Police (Northern Ireland) Act 2000 (members of the Northern Ireland Policing Board drawn from the Northern Ireland Assembly),  
if he is the holder of a disqualifying office.
- 2. A Minister or junior Minister ceases to hold that office on becoming the holder of a disqualifying office.
- 3. A person holding office as a member of the Northern Ireland Policing Board in accordance with paragraph 7 of Schedule 1 to the Police (Northern Ireland) Act 2000 ceases to hold that office on becoming the holder of a disqualifying office.
- 4. In this section “disqualifying office” means—
  - a. Minister of the Government of Ireland; or
  - b. chairman or deputy chairman of—
    - i. a committee of the Dáil Éireann (House of Representatives of Ireland);
    - ii. a committee of the Seanad Éireann (Senate of Ireland); or
    - iii. a joint committee of the Oireachtas (National Parliament of Ireland).

## **20. The Executive Committee**

- 1. There shall be an Executive Committee of each Assembly consisting of the First Minister, the deputy First Minister and the Northern Ireland Ministers.

2. The First Minister and the deputy First Minister shall be chairmen of the Committee.
3. The Committee shall have the functions set out in paragraphs 19 and 20 of Strand One of the Belfast Agreement.
4. The Committee shall also have the function of discussing and agreeing upon—
  - a. significant or controversial matters that are clearly outside the scope of the agreed programme referred to in paragraph 20 of Strand One of that Agreement;
  - b. significant or controversial matters that the First Minister and deputy First Minister acting jointly have determined to be matters that should be considered by the Executive Committee.
5. Subsections (3) and (4) are subject to subsection (6).
6. Quasi-judicial decisions may be made by the Department of Justice or the Minister in charge of that Department without recourse to the Executive Committee.

## 21. Northern Ireland departments

1. Subject to subsection (2), the Northern Ireland departments existing on the appointed day shall be the Northern Ireland departments for the purposes of this Act.
2. Provision may be made by Act of the Assembly for establishing new Northern Ireland departments or dissolving existing ones.
3. If an Act of the Assembly which establishes a new Northern Ireland department provides for it to be in the charge of the First Minister and the deputy First Minister acting jointly—
  - a. the department shall not be regarded as a Northern Ireland department for the purposes of subsection (2) or (3) of section 17; and
  - b. the office held by those Ministers as the head of the department shall not be regarded as a Ministerial office for the purposes of subsection (4) of that section or section 18.

### 21A. Northern Ireland department with policing and justice functions

1. An Act of the Assembly that—
  - a. establishes a new Northern Ireland department; and
  - b. provides that the purpose of the department is to exercise functions consisting wholly or mainly of devolved policing and justice functions, may (but need not) make provision of the kind mentioned in subsection (3), (3A), (4), (5) or (5A).
3. The Act may provide for the department to be in the charge of a Northern Ireland Minister appointed by virtue of a nomination—
  - a. made by the First Minister and the deputy First Minister acting jointly; and



- d. provides for Part 3A of Schedule 4A to apply in relation to the department (with any necessary modifications).
- 7B. The draft of an Order laid before Parliament under subsection (7A) may contain supplementary, incidental, consequential, transitional or saving provision.
- 7C. If the draft of an Order laid before Parliament under subsection (7A) is approved by resolution of each House of Parliament, the Secretary of State shall submit it to Her Majesty in Council and Her Majesty in Council may make the Order.
- 7D. No more than one department may be established by virtue of an Order under subsection (7C).
- 8. In this section “devolved policing and justice function” means a function relating to a matter which—
  - a. is a transferred matter by virtue of an Order under section 4; and
  - b. immediately before the matter became a transferred matter, was a policing and justice matter (within the meaning given by section 4(6)).

## 21B. Section 21A(5A) and (7C): transitional provision

1. This section has effect in relation to—
  - a. the first Act of the Assembly to establish a new Northern Ireland department the purpose of which is to exercise functions consisting wholly or mainly of devolved policing and justice functions but only if the Act makes provision of the kind mentioned in section 21A(5A) (other than by virtue of paragraph 8(5) of Schedule 1 to the Northern Ireland Act 2009); or
  - b. an Order in Council under section 21A(7C) establishing a new Northern Ireland department.
2. The Act or the Order may include provision for or in connection with securing that the department is to be treated, for the purposes of section 17, as not having been established until the time at which devolved policing and justice functions are first transferred to, or conferred on, the department (“the time of devolution”).
3. The Act or the Order may include provision for or in connection with applying paragraph 11E(3) to (6) of Schedule 4A (with any necessary modifications) to enable elections to be held, before the time of devolution, to select—
  - a. a member of the Assembly (“the relevant Minister designate”) to be the person who is to hold the relevant Ministerial office as from the time of devolution; and
  - b. a member of the Assembly (“the deputy Minister designate”) to be the person who is to hold the deputy Ministerial office as from that time.
4. Where the Act or the Order includes provision by virtue of subsection (3), it shall secure that (notwithstanding paragraph 11E(1) of Schedule 4A)—
  - a. if the relevant Minister designate affirms the terms of the pledge of office within a specified period after the time of devolution, he shall become the relevant Minister;



- b. if the deputy Minister designate affirms the terms of the pledge of office within that period, he shall (subject to paragraph (c)) become the deputy Minister;
- c. if the relevant Minister designate does not affirm the terms of the pledge of office within that period—
  - i. he shall not become the relevant Minister; and
  - ii. paragraph 11E(10) and (11) of Schedule 4A shall apply as if the relevant Minister had ceased to hold office at the end of that period otherwise than by virtue of section 16A(2);
- d. if the deputy Minister designate does not affirm the terms of the pledge of office within that period—
  - i. he shall not become the deputy Minister; and
  - ii. paragraph 11E(10) of Schedule 4A shall apply as if the deputy Minister had ceased to hold office at the end of that period otherwise than by virtue of section 16A(2).
- 5. In this section “devolved policing and justice function” has the same meaning as in section 21A (see subsection (8) of that section).
- 6. In this section “relevant Minister”, “relevant Ministerial office”, “deputy Minister” and “deputy Ministerial office” have the same meaning as in Part 3A of Schedule 4A.

### **21C. Section 21A(5A) and (7C): power of Assembly to secure retention or abolition of deputy Ministerial office**

1. This section applies if the first Northern Ireland department the purpose of which is to exercise functions consisting wholly or mainly of devolved policing and justice functions (as defined in section 21A(8)) is established—
  - a. by an Act of the Assembly which makes provision of the kind mentioned in section 21A(5A) (other than by virtue of paragraph 8(5) of Schedule 1 to the Northern Ireland Act 2009); or
  - b. by an Order in Council under section 21A(7C).
2. Standing orders shall require the committee established by virtue of section 29A to consider the operation of the Ministerial arrangements provided for by Part 3A of Schedule 4A.
3. The committee shall, by no later than two years and ten months after the time at which devolved policing and justice functions are first transferred to, or conferred on, the department (“the time of devolution”), make a report on the operation of the Ministerial arrangements provided for by Part 3A of Schedule 4A—
  - a. to the Assembly; and



10. An order under this section—
  - a. shall be made by statutory instrument; and
  - b. may contain supplementary, incidental, consequential, transitional or saving provision.

## Subheading 2: Functions

### 22. Statutory functions

1. An Act of the Assembly or other enactment may confer functions on a Minister (but not a junior Minister) or a Northern Ireland department by name.
2. Functions conferred on a Northern Ireland department by an enactment passed or made before the appointed day shall, except as provided by an Act of the Assembly or other subsequent enactment, continue to be exercisable by that department.

### 23. Prerogative and executive powers

1. The executive power in Northern Ireland shall continue to be vested in Her Majesty.
2. As respects transferred matters, the prerogative and other executive powers of Her Majesty in relation to Northern Ireland shall, subject to subsections (2A) and (3), be exercisable on Her Majesty's behalf by any Minister or Northern Ireland department.
- 2A. So far as the Royal prerogative of mercy is exercisable on Her Majesty's behalf under subsection (2), it is exercisable only by the Minister in charge of the Department of Justice.
3. As respects the Northern Ireland Civil Service and the Commissioner for Public Appointments for Northern Ireland, the prerogative and other executive powers of Her Majesty in relation to Northern Ireland shall be exercisable on Her Majesty's behalf by the First Minister and the deputy First Minister acting jointly.
4. The First Minister and deputy First Minister acting jointly may by prerogative order under subsection (3) direct that such of the powers mentioned in that subsection as are specified in the order shall be exercisable on Her Majesty's behalf by a Northern Ireland Minister or Northern Ireland department so specified.

### 24. EU law, Convention rights etc

1. A Minister or Northern Ireland department has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act—
  - a. is incompatible with any of the Convention rights;
  - b. is incompatible with EU law;
  - c. discriminates against a person or class of person on the ground of religious belief or political opinion;

• Head of state powers

• International human rights treaties

• International organizations

- d. in the case of an act, aids or incites another person to discriminate against a person or class of person on that ground; or
  - e. in the case of legislation, modifies an enactment in breach of section 7.
2. Subsection (1)(c) and (d) does not apply in relation to any act which is unlawful by virtue of the Fair Employment and Treatment (Northern Ireland) Order 1998, or would be unlawful but for some exception made by virtue of Part VIII of that Order.

## 25. Excepted and reserved matters

1. If any subordinate legislation made, confirmed or approved by a Minister or Northern Ireland department contains a provision dealing with an excepted or reserved matter, the Secretary of State may by order revoke the legislation.
2. An order made under subsection (1) shall recite the reasons for revoking the legislation and may make provision having retrospective effect.

## 26. International obligations

1. If the Secretary of State considers that any action proposed to be taken by a Minister or Northern Ireland department would be incompatible with any international obligations, with the interests of defence or national security or with the protection of public safety or public order, he may by order direct that the proposed action shall not be taken.
2. If the Secretary of State considers that any action capable of being taken by a Minister or Northern Ireland department is required for the purpose of giving effect to any international obligations, of safeguarding the interests of defence or national security or of protecting public safety or public order, he may by order direct that the action shall be taken.
3. In subsections (1) and (2), "action" includes making, confirming or approving subordinate legislation and, in subsection (2), includes introducing a Bill in the Assembly.
4. If any subordinate legislation made, confirmed or approved by a Minister or Northern Ireland department contains a provision which the Secretary of State considers-
  - a. would be incompatible with any international obligations, with the interests of defence or national security or with the protection of public safety or public order; or
  - b. would have an adverse effect on the operation of the single market in goods and services within the United Kingdom, the Secretary of State may by order revoke the legislation.
5. An order under this section shall recite the reasons for making the order and may make provision having retrospective effect.

## 27. Quotas for purposes of international etc obligations

1. A Minister of the Crown may make an order containing provision such as is specified in subsection (2) where—
  - a. an international obligation or an obligation under EU law is an obligation to achieve a result defined by reference to a quantity (whether expressed as an amount, proportion or ratio or otherwise); and
  - b. the quantity relates to the United Kingdom (or to an area including the United Kingdom or to an area consisting of a part of the United Kingdom which is or includes the whole or part of Northern Ireland).
2. The provision referred to in subsection (1) is provision for the achievement by a Minister or Northern Ireland department (in the exercise of his or its functions) of so much of the result to be achieved under the international obligation or obligation under EU law as is specified in the order.
3. The order may specify the time by which any part of the result to be achieved by the Minister or department is to be achieved.
4. Where an order under subsection (1) is in force in relation to an international obligation or an obligation under EU law, the obligation shall have effect for the purposes of this Act as if it were an obligation to achieve so much of the result to be achieved under the obligation as is specified in the order by the time or times so specified.
5. No order shall be made by a Minister of the Crown under subsection (1) unless he has consulted the Minister or department concerned.

## 28. Agency arrangements between UK and NI departments

1. Arrangements may be made between—
  - a. any department of the Government of the United Kingdom or any public body, or holder of a public office, in the United Kingdom; and
  - b. any Northern Ireland department,  
for any functions of one of them to be discharged by, or by officers of, the other.
2. No such arrangements shall affect the responsibility of the person on whose behalf any functions are discharged.
3. In this section—
  - a. references to a department of the Government of the United Kingdom include references to any Minister of the Crown; and
  - b. references to a Northern Ireland department include references to a Minister.

### 28A. Ministerial Code

1. Without prejudice to the operation of section 24, a Minister or junior Minister shall act in accordance with the provisions of the Ministerial Code.

2. In this section “the Ministerial Code” means—
  - a. the Ministerial Code that becomes the Ministerial Code for the purposes of this section by virtue of paragraph 4 of Schedule 1 to the Northern Ireland (St Andrews Agreement) Act 2006 (as from time to time amended in accordance with this section); or
  - b. any replacement Ministerial Code prepared and approved in accordance with this section (as from time to time amended in accordance with this section).
3. If at any time the Executive Committee—
  - a. prepares draft amendments to the Ministerial Code; or
  - b. prepares a draft Ministerial Code to replace the Ministerial Code, the First Minister and deputy First Minister acting jointly shall lay the draft amendments or the draft Code before the Assembly for approval.
4. A draft Ministerial Code or a draft amendment to the Code—
  - a. shall not be approved by the Assembly without cross-community support; and
  - b. shall not take effect until so approved.
5. The Ministerial Code must include provision for requiring Ministers or junior Ministers to bring to the attention of the Executive Committee any matter that ought, by virtue of section 20(3) or (4), to be considered by the Committee.
6. The Ministerial Code must include provision for a procedure to enable any Minister or junior Minister to ask the Executive Committee to determine whether any decision that he is proposing to take, or has taken, relates to a matter that ought, by virtue of section 20(3) or (4), to be considered by the Committee.
7. The Ministerial Code must also include provision as to the procedures of the Executive Committee with respect to—
  - a. the taking of decisions; and
  - b. consideration by the Committee of decision papers that are to be considered by the North-South Ministerial Council or the British-Irish Council.
8. The Ministerial Code must in particular provide—
  - a. that it is the duty of the chairmen of the Executive Committee to seek to secure that decisions of the Executive Committee are reached by consensus wherever possible;
  - b. that, if consensus cannot be reached, a vote may be taken; and

- c. that, if any three members of the Executive Committee require the vote on a particular matter which is to be voted on by the Executive Committee to require cross-community support, any vote on that matter in the Executive Committee shall require cross-community support in the Executive Committee.
9. The Ministerial Code may include such other provisions as the Executive Committee thinks fit.
10. Without prejudice to the operation of section 24, a Minister or junior Minister has no Ministerial authority to take any decision in contravention of a provision of the Ministerial Code made under subsection (5).

### **Subheading 3: Power to refer Ministerial decision to Executive Committee**

#### **28B. Power to refer Ministerial decision to Executive Committee**

1. This section applies if 30 members petition the Assembly expressing concern that a decision taken by a Minister or junior Minister (“the Ministerial decision”)—
  - a. may have been taken in contravention of section 28A(1); or
  - b. relates to a matter of public importance.
2. But this section does not apply if the Ministerial decision has previously been the subject of a reference under this section.
3. If the Presiding Officer, after consulting the political parties whose members hold seats in the Assembly, certifies that the Ministerial decision relates to a matter of public importance, he shall refer the decision to the Executive Committee for its consideration.
4. Having considered the reference, the Executive Committee shall notify the Presiding Officer—
  - a. whether or not the decision was, in its view, taken in contravention of section 28A(1);
  - b. whether or not the decision relates, in its view, to a significant or controversial matter; and
  - c. as to any action that the Executive Committee proposes to take, or has taken, in relation to the decision.
5. No reference may be made under this section after the end of the period of seven days beginning with—
  - a. the day on which the Ministerial decision was taken; or
  - b. if appropriate, the day on which the decision was notified to the Assembly.

6. Any consideration by the Executive Committee of a Ministerial decision under this section must be completed before the end of the period of seven days beginning with the day on which the reference is made.
7. Standing orders shall make provision with respect to the procedure to be followed—
  - a. in petitioning the Assembly under subsection (1); and
  - b. in making a reference under this section.
8. The periods mentioned in subsections (5) and (6) shall be computed by reference only to days on which the Assembly sits.

#### **Subheading 4: Executive Committee: further provisions**

### **28C. Power of Executive Committee to call for witnesses and documents**

Section 44 applies to the Executive Committee as it applies to the Assembly, but as if—

- a. in subsection (1), for “any person” there were substituted a senior officer of a Northern Ireland department (within the meaning given by Article 2(3) of the Departments (Northern Ireland) Order 1999);
- b. at the end of that subsection there were inserted but only in so far as they are matters in relation to which the Executive Committee's functions under section 20(3) or (4) are exercisable;
- c. subsection (6) were omitted; and
- d. in subsection (7), for “The Presiding Officer” there were substituted The First Minister and the deputy First Minister acting jointly.

### **28D. Strategies relating to Irish language and Ulster Scots language etc**

1. The Executive Committee shall adopt a strategy setting out how it proposes to enhance and protect the development of the Irish language.
2. The Executive Committee shall adopt a strategy setting out how it proposes to enhance and develop the Ulster Scots language, heritage and culture.
3. The Executive Committee—
  - a. must keep under review each of the strategies; and
  - b. may from time to time adopt a new strategy or revise a strategy.



## 28E. Strategy relating to poverty, social exclusion etc

1. The Executive Committee shall adopt a strategy setting out how it proposes to tackle poverty, social exclusion and patterns of deprivation based on objective need.
2. The Executive Committee—
  - a. must keep under review the strategy; and
  - b. may from time to time adopt a new strategy or revise the strategy.

## Subheading 5: Miscellaneous

### 29. Statutory committees

1. Standing orders shall make provision—
  - a. for establishing committees of members of the Assembly (“statutory committees”)
    - i. to advise and assist the First Minister and the deputy First Minister in the formulation of policy with respect to matters within their responsibilities as Ministers jointly in charge of the Office of the First Minister and deputy First Minister, and
    - ii. to advise and assist each Northern Ireland Minister in the formulation of policy with respect to matters within his responsibilities as a Minister;
  - b. for enabling a committee to be so established either in relation to a single Northern Ireland Minister or in relation to more than one; and
  - c. conferring on the committees the powers described in paragraph 9 of Strand One of the Belfast Agreement.
2. Standing orders shall provide that—
  - a. the nominating officer of the political party for which the formula in subsection (3) gives the highest figure may select a statutory committee and nominate as its chairman or deputy chairman a person who is a member of the party and of the Assembly;
  - b. if the nominating officer does not exercise the power conferred by paragraph (a) within a period specified in standing orders, or the nominated person does not take up the selected office within that period, that power shall be exercisable instead by the nominating officer of the political party for which the formula in subsection (3) gives the next highest figure; and
  - c. paragraphs (a) and (b) shall be applied as many times as may be necessary to secure that a chairman and deputy chairman are nominated for each of the statutory committees.

3. The formula is—  
 $S/(1+C)$   
where—
  - S = the number of seats in the Assembly which were held by members of the party on the day on which the Assembly first met following its election;
  - C = the number of chairmen and deputy chairmen of statutory committees (if any) who are members of the party.
4. Standing orders shall provide that, where the figures given by the formula for two or more political parties are equal, each of those figures shall be recalculated with S being equal to the number of first preference votes cast for the party at the last general election of members of the Assembly.
5. Standing orders shall provide that—
  - a. a Minister or junior Minister may not be the chairman or deputy chairman of a statutory committee; and
  - b. in making a selection under the provision made by virtue of subsection (2)(a), a nominating officer shall prefer a committee in which he does not have a party interest to one in which he does.
- 5A. A member of the Assembly who is—
  - a. a Minister of the Government of Ireland, or
  - b. chairman or deputy chairman of—
    - i. a committee of the Dáil ĩireann (House of Representatives of Ireland),
    - ii. a committee of the Seanad ĩireann (Senate of Ireland), or
    - iii. a joint committee of the Oireachtas (National Parliament of Ireland),may not be the chairman or deputy chairman of a statutory committee.
6. For the purposes of subsection (5) a nominating officer has a party interest in a committee if
  - a. it is established to advise and assist the First Minister and the deputy First Minister and either of those Ministers is a member of his party; or
  - b. it is established to advise and assist a Northern Ireland Minister and that Minister is a member of his party.
7. Standing orders shall provide that a chairman or deputy chairman shall cease to hold office if—
  - a. he resigns by notice in writing to the Presiding Officer;
  - b. he ceases to be a member of the Assembly; or
  - c. he is dismissed by the nominating officer who nominated him (or that officer's successor) and the Presiding Officer is notified of his dismissal.

8. Standing orders shall provide that, where an office of chairman or deputy chairman is vacant, the nominating officer of the party on whose behalf the previous incumbent was nominated may nominate a person to hold the office who is a member of the party and of the Assembly.
9. Standing orders shall provide that if—
  - a. the nominating officer does not exercise the power conferred by subsection (8) within a period specified in standing orders; or
  - b. the nominated person does not take up the selected office within that period,  
the vacancy shall be filled by applying the provision made by virtue of subsections (2) to (5).
10. In this section “nominating officer” has the same meaning as in section 18.

## **29A. Committee to review functioning of Assembly and Executive Committee**

1. Standing orders shall make provision—
  - a. for establishing a committee to examine such matters relating to the functioning of the Assembly and the Executive Committee as may be specified in the standing orders;
  - b. in relation to the membership of the committee; and
  - c. for regulating proceedings of the committee.
2. Standing orders shall provide for the committee to make reports—
  - a. to the Assembly; and
  - b. to the Executive Committee.
3. The committee shall, by no later than 1 May 2015, make a report on the operation of the provisions of Parts 3 and 4 of this Act—
  - a. to the Secretary of State;
  - b. to the Assembly; and
  - c. to the Executive Committee.

## **29B. Review of operation of sections 16A to 16C**

1. Standing orders shall require the committee established by virtue of section 29A to consider—
  - a. the operation of sections 16A to 16C; and

- b. in particular, whether to recommend that the Secretary of State should make an order amending this Act and any other enactment so far as may be necessary to secure that they have effect, as from the date of the election of the 2011 Assembly, as if the executive selection amendments had not been made.
2. In subsection (1)–
- “the 2011 Assembly” means the Assembly due to be elected under section 31 in 2011;
  - “the executive selection amendments” means the amendments made by section 8 of, and paragraphs 1, 2(1) and (2) and 3 to 14 of Schedule 5 to, the Northern Ireland (St Andrews Agreement) Act 2006.

### **29C. Review of functions relating to judicial appointments and removals**

Standing orders shall require one of the committees established by virtue of section 29 or the committee established by virtue of section 29A–

- a. to review the operation of the amendments made by Schedules 2 to 5 to the Northern Ireland Act 2009,
- b. to report on its review by a specified date that is before 1 May 2012, and
- c. to include in its report any recommendations it has for changes to the way in which judicial office holders are appointed and removed.

### **30. Exclusion of Ministers from office**

1. If the Assembly resolves that a Minister or junior Minister no longer enjoys the confidence of the Assembly–
  - a. because he is not committed to non-violence and exclusively peaceful and democratic means; or
  - b. because of any failure of his to observe any other terms of the pledge of office,  
he shall be excluded from holding office as a Minister or junior Minister for such period of not less than three months, and not more than twelve months, beginning with the date of the resolution as the resolution may provide.
- 1A. The Assembly may, before a period of exclusion under subsection (1) comes to an end, by resolution extend it until the end of such period of not less than three months, and not more than twelve months, beginning with the date of the resolution as the resolution may provide.
2. If the Assembly resolves that a political party does not enjoy the confidence of the Assembly–
  - a. because it is not committed to non-violence and exclusively peaceful and democratic means; or

- b. because it is not committed to such of its members as are or might become Ministers or junior Ministers observing the other terms of the pledge of office, members of that party shall be excluded from holding office as Ministers or junior Ministers for such period of not less than six months, and not more than twelve months, beginning with the date of the resolution as the resolution may provide.
3. The Assembly may, before a period of exclusion under subsection (2) comes to an end, by resolution extend it until the end of such period of not less than six months, and not more than twelve months, beginning with the date of the resolution as the resolution may provide.
4. A period of exclusion under subsection (1) or (2) shall come to an end if the Assembly—
  - a. is dissolved; or
  - b. resolves to bring the exclusion to an end.
5. A motion for a resolution under this section shall not be moved unless—
  - a. it is supported by at least 30 members of the Assembly;
  - b. it is moved by the First Minister and the deputy First Minister acting jointly; or
  - c. it is moved by the Presiding Officer in pursuance of a notice under subsection (6).
6. If the Secretary of State is of the opinion that the Assembly ought to consider a resolution under this section, he shall serve a notice on the Presiding Officer requiring him to move a motion for such a resolution.
7. In forming an opinion under subsection (6), the Secretary of State shall in particular take into account each of the following—
  - a. whether the person or party concerned is committed to the use now and in the future of only democratic and peaceful means to achieve his or its objectives;
  - b. whether he or it has ceased to be involved in any acts of violence or of preparation for violence;
  - c. whether he or it is directing or promoting acts of violence by other persons;
  - d. whether he or it is co-operating fully with any Commission of the kind referred to in section 7 of the Northern Ireland Arms Decommissioning Act 1997 in implementing the Decommissioning section of the Belfast Agreement;
  - e. [omitted]
8. A resolution under this section shall not be passed without cross-community support.

9. In this section a reference to a period of exclusion under any provision is, in the case of a period of exclusion under that provision which has been extended, a reference to that period as extended.

### **30A. [Repealed]**

### **30B. Secretary of State's powers in exceptional circumstances**

1. Under exceptional circumstances the Secretary of State may by direction temporarily exclude a Minister or junior Minister.
2. An exclusion under subsection (1) shall only remain in effect until either—
  - a. [Omitted]
  - b. the Assembly has considered a resolution under section 30(1) or (2); or
  - c. a period of two weeks has elapsed.
3. In subsection (1) "exceptional circumstances" include where—
  - a. [Omitted]
  - b. there is insufficient time for the Assembly to consider a resolution under section 30(1) or (2).
4. A direction made under this section shall be in writing and shall be laid before Parliament after the direction is given.]

## **Part IV: The Northern Ireland Assembly**

### **Subheading 1: Elections etc**

#### **31. Dates of elections and dissolutions**

1. Subject to subsection (2), the date of the poll for the election of each Assembly shall be the first Thursday in May in the fifth calendar year following that in which its predecessor was elected; and the predecessor shall be dissolved at the beginning of the minimum period which ends with that date.
2. The date of the poll for the election of the Assembly next following the Assembly elected at the poll on 26 November 2003 shall be 7 March 2007; and the Assembly elected on 26 November 2003 shall be dissolved on 30 January 2007.
3. The Secretary of State may at any time by order direct that the date of the poll for the election of the next Assembly shall, instead of being that specified in subsection (1), be a date specified in the order being a date falling not more than two months before or after the date specified in that subsection.
4. An Assembly elected under this section or section 32 shall meet within the period of eight days beginning with the day of the poll at which it is elected.
5. For the purposes of subsection (4), a Saturday, a Sunday, Christmas Day, Good Friday and any day which is a bank holiday in Northern Ireland shall be disregarded, as shall any day on which section 1 of the Northern Ireland Act 2000 is in force.

6. In this section “minimum period” means a period determined in accordance with an order of the Secretary of State.

## 32. Extraordinary elections

1. If the Assembly passes a resolution that it should be dissolved the Secretary of State shall propose a date for the poll for the election of the next Assembly.
2. A resolution under subsection (1) shall not be passed without the support of a number of members of the Assembly which equals or exceeds two thirds of the total number of seats in the Assembly.
3. If—
  - a. the period mentioned in section 16A(3) ends without the offices of First Minister and deputy First Minister and the Ministerial offices to be held by Northern Ireland Ministers having been filled; or
  - b. the period mentioned in section 16B(3) ends without the offices of First Minister and deputy First Minister having been filled,  
the Secretary of State shall propose a date for the poll for the election of the next Assembly.
4. If the Secretary of State proposes a date under subsection (1) or (3), Her Majesty may by Order in Council—
  - a. direct that the date of the poll for the election of the next Assembly shall, instead of being determined in accordance with section 31, be the date proposed; and
  - b. provide for the Assembly to be dissolved on a date specified in the Order.

## 33. Constituencies and numbers of members

1. The members of the Assembly shall be returned for the parliamentary constituencies in Northern Ireland.
2. Each constituency shall return six members.
3. An Order in Council under the Parliamentary Constituencies Act 1986 changing a parliamentary constituency in Northern Ireland shall have effect for the purposes of this Act in relation to—
  - a. the first election under section 31 or 32 which takes place after the Order comes into force; and
  - b. later elections under that section and by-elections.

## 34. Elections and franchise

1. This section applies to elections of members of the Assembly, including by-elections.
2. Each vote in the poll at an election shall be a single transferable vote.
3. A single transferable vote is a vote—
  - a. capable of being given so as to indicate the voter’s order of preference for the candidates for election as members for the constituency; and

- b. capable of being transferred to the next choice when the vote is not needed to give a prior choice the necessary quota of votes or when a prior choice is eliminated from the list of candidates because of a deficiency in the number of votes given for him.
4. The Secretary of State may by order make provision about elections or any matter relating to them.
5. In particular, an order under subsection (4) may make—
  - a. provision as to the persons entitled to vote at an election and the registration of such persons;
  - b. provision for securing that no person stands as a candidate for more than one constituency at a general election;
  - c. provision for determining the date of the poll at a by-election;
  - d. provision about deposits.
6. An order under subsection (4) may apply (with or without modifications) any provision of, or made under, any enactment.
7. An order under subsection (4) may make different provision for different areas about the conduct of elections, including different provision about the registration of persons entitled to vote at an election.

## 35. Vacancies

1. The Secretary of State may by order make provision for the filling of vacancies occurring in the Assembly's membership.
2. Such provision may be made by reference to by-elections or substitutes or such other method of filling vacancies as the Secretary of State thinks fit.
3. If a seat becomes vacant, the Presiding Officer shall as soon as reasonably practicable inform the Chief Electoral Officer for Northern Ireland.
4. The validity of any proceedings of the Assembly is not affected by any vacancy in its membership.
5. An order under subsection (1) may apply (with or without modifications) any provision of, or made under, any enactment.

## Subheading 2: Disqualification

### 36. Disqualification

1. The Northern Ireland Assembly Disqualification Act 1975 shall have effect as if any reference to the Assembly established under section 1 of the Northern Ireland Assembly Act 1973 were a reference to the Assembly.
2. No recommendation shall be made to Her Majesty to make an Order in Council under section 3(1) of the Northern Ireland Assembly Disqualification Act 1975 (power to amend Schedule 1) without the consent of the Secretary of State.
3. A person who is Her Majesty's Lord-Lieutenant or Lieutenant for a county or county borough in Northern Ireland is disqualified for membership of the Assembly for a constituency comprising the whole or part of the county or county borough.



4. A person is disqualified for membership of the Assembly if he is disqualified for membership of the House of Commons otherwise than under the House of Commons Disqualification Act 1975.
5. [Repealed]
6. A person is not disqualified for membership of the Assembly by virtue of subsection (4) by reason only that—
  - a. he is a peer; or
  - b. he is a Lord Spiritual.
7. A person is not disqualified for membership of the Assembly by virtue of subsection (4) by reason only that he is disqualified under section 3 of the Act of Settlement (certain persons born out of the Kingdom) if he is a citizen of the European Union.

### **37. Effect of disqualification and provision for relief**

1. Subject to any order made by the Assembly under this section—
  - a. if any person disqualified by virtue of the Northern Ireland Assembly Disqualification Act 1975 or section 36 is returned as a member of the Assembly, his return shall be void; and
  - b. if any person being a member of the Assembly becomes disqualified by virtue of that act or that section, his seat shall be vacated.
2. If, in a case which falls or is alleged to fall within subsection (1) otherwise than by virtue of section 36(4), it appears to the Assembly—
  - a. that the grounds of disqualification or alleged disqualification which subsisted or arose at the material time have been removed; and
  - b. that it is otherwise proper so to do,  
the Assembly may by order direct that any such disqualification incurred on those grounds at that time shall be disregarded for the purposes of this section.
3. No order under subsection (2) shall affect the proceedings on any election petition or any determination of an election court.
4. Subsection (1)(b) has effect subject to section 427 of the Insolvency Act 1986 (bankruptcy etc); and where, in consequence of that section, the seat of a disqualified member of the Assembly has not been vacated—
  - a. he shall not participate in any proceedings of the Assembly; and
  - b. any of his other rights and privileges as a member of the Assembly may be withdrawn by a resolution of the Assembly.
5. The validity of any proceedings of the Assembly is not affected by the disqualification of any person from being a member of the Assembly or from being a member for the constituency for which he purports to sit.

### 38. Disqualification: judicial proceedings

1. Any person who claims that a person purporting to be a member of the Assembly—
  - a. is disqualified; or
  - b. was disqualified when, or at any time since, he was returned, may apply to the High Court of Justice in Northern Ireland for a declaration to that effect.
2. On an application—
  - a. the person in respect of whom the application is made shall be the respondent;
  - b. the applicant shall give such security for costs, not exceeding £5,000, as the court may direct; and
  - c. the decision of the court shall be final.
3. A declaration made in accordance with this section shall be certified in writing to the Secretary of State by the court.
4. No such declaration shall be made in respect of a person on any grounds if an order has been made by the Assembly under subsection (2) of section 37 directing that any disqualification incurred by him on those grounds shall be disregarded for the purposes of that section.
5. No declaration shall be made in respect of any person on grounds which subsisted when he was elected if an election petition is pending or has been tried in which his disqualification on those grounds is or was in issue.
6. The Secretary of State may by order substitute for the amount specified in subsection (2)(b) such other amount as may be specified in the order.

### Subheading 3: Presiding Officer and Commission

#### 39. Presiding Officer

1. Each Assembly shall as its first business elect from among its members a Presiding Officer and deputies.
2. A person elected Presiding Officer or deputy shall hold office until the conclusion of the next election for Presiding Officer under subsection (1) unless—
  - a. he previously resigns;
  - b. he ceases to be a member of the Assembly otherwise than by virtue of a dissolution; or
  - c. the Assembly elects from among its members a person to hold office as Presiding Officer or deputy in his place.
3. If the Presiding Officer or a deputy ceases to hold office (otherwise than under subsection (2)(c)) before the Assembly is dissolved, the Assembly shall elect another from among its members to fill his place.

4. The Presiding Officer's functions may be exercised by a deputy if the office of Presiding Officer is vacant or the Presiding Officer is for any reason unable to act.
5. The Presiding Officer may (subject to standing orders) authorise a deputy to exercise functions on his behalf.
6. Standing orders may include provision as to the participation (including voting) of the Presiding Officer and deputies in the proceedings of the Assembly.
7. A person shall not be elected under subsections (1) to (3) without cross-community support.

## 40. Commission

1. There shall be a body corporate, to be known as the Northern Ireland Assembly Commission ("the Commission"), to perform—
  - a. the functions conferred on the Commission by virtue of any enactment; and
  - b. any functions conferred on the Commission by resolution of the Assembly.
2. The members of the Commission shall be—
  - a. the Presiding Officer; and
  - b. the prescribed number of members of the Assembly appointed in accordance with standing orders.
3. In subsection (2) "the prescribed number" means 5 or such other number as may be prescribed by standing orders.
- 3A. A member of the Assembly who is—
  - a. a Minister of the Government of Ireland, or
  - b. chairman or deputy chairman of—
    - i. a committee of the Dáil Éireann (House of Representatives of Ireland),
    - ii. a committee of the Seanad Éireann (Senate of Ireland), or
    - iii. a joint committee of the Oireachtas (National Parliament of Ireland),may not be appointed as a member of the Commission.
4. The Commission shall provide the Assembly, or ensure that the Assembly is provided, with the property, staff and services required for the Assembly's purposes.
5. The Assembly may give special or general directions to the Commission for the purpose of or in connection with the exercise of the Commission's functions.
6. Proceedings by or against the Assembly (other than proceedings on the Crown side of the Queen's Bench Division) shall be instituted by or against the Commission on behalf of the Assembly.
7. Any property or liabilities acquired or incurred in relation to matters within the general responsibility of the Commission to which (apart from this subsection) the Assembly would be entitled or subject shall be treated for all purposes as property or liabilities of the Commission.

8. Any expenses of the Commission shall be defrayed out of money appropriated by Act of the Assembly.
9. Any sums received by the Commission shall be paid into the Consolidated Fund of Northern Ireland, subject to any provision made by Act of the Assembly for the disposal of or accounting for such sums.
10. Schedule 5 (which makes further provision about the Commission) shall have effect.

## **Subheading 4: Proceedings etc**

### **41. Standing orders**

1. The proceedings of the Assembly shall be regulated by standing orders.
2. Standing orders shall not be made, amended or repealed without cross-community support.
3. Schedule 6 (which makes provision as to how certain matters are to be dealt with by standing orders) shall have effect.

### **42. Petitions of concern**

1. If 30 members petition the Assembly expressing their concern about a matter which is to be voted on by the Assembly, the vote on that matter shall require cross-community support.
2. Standing orders shall make provision with respect to the procedure to be followed in petitioning the Assembly under this section, including provision with respect to the period of notice required.
3. Standing orders shall provide that the matter to which a petition under this section relates may be referred, in accordance with paragraphs 11 and 13 of Strand One of the Belfast Agreement, to the committee established under section 13(3)(a).

### **43. Members' interests**

1. Standing orders shall include provision for a register of interests of members of the Assembly, and for—
  - a. registrable interests (as defined in standing orders) to be registered in it; and
  - b. the register to be published and made available for public inspection.
2. Standing orders shall include provision requiring that any member of the Assembly who has—
  - a. a financial interest (as defined in standing orders) in any matter; or
  - b. any other interest, or an interest of any other kind, specified in standing orders in any matter, declares that interest before taking part in any proceedings of the Assembly relating to that matter.
3. Standing orders made in pursuance of subsection (1) or (2) may include provision for preventing or restricting the participation in proceedings of the Assembly of a member with a registrable interest, or an interest mentioned in subsection (2), in a matter to which the proceedings relate.

4. Standing orders shall include provision prohibiting a member of the Assembly from—
  - a. advocating or initiating any cause or matter on behalf of any person, by any means specified in standing orders, in consideration of any payment or benefit in kind of a description so specified; or
  - b. urging, in consideration of any such payment or benefit in kind, any other member of the Assembly to advocate or initiate any cause or matter on behalf of any person by any such means.
5. Standing orders may include provision—
  - a. for excluding from proceedings of the Assembly any member who fails to comply with, or contravenes, any provision made in pursuance of subsections (1) to (4); and
  - b. for withdrawing his rights and privileges as a member for the period of his exclusion.
6. Any member of the Assembly who—
  - a. takes part in any proceedings of the Assembly without having complied with, or in contravention of, any provision made in pursuance of subsections (1) to (3); or
  - b. contravenes any provision made in pursuance of subsection (4), is guilty of an offence.
7. A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
8. Proceedings for an offence under subsection (6) shall not be taken without the consent of the Director of Public Prosecutions for Northern Ireland.

#### **44. Power to call for witnesses and documents**

1. The Assembly may require any person—
  - a. to attend its proceedings for the purpose of giving evidence; or
  - b. to produce documents in his custody or under his control, relating to any of the matters mentioned in subsection (2).
2. Those matters are—
  - a. transferred matters concerning Northern Ireland;
  - b. other matters in relation to which statutory functions are exercisable by Ministers or the Northern Ireland departments.
3. The power in subsection (1) is exercisable in relation to a person outside Northern Ireland only in connection with the discharge by him of functions relating to matters within subsection (2).

4. That power is not exercisable in relation to a person who is or has been a Minister of the Crown, or a person who is or has been in Crown employment within the meaning of Article 236 of the Employment Rights (Northern Ireland) Order 1996, in connection with the discharge of any functions prior to the appointed day or during a period when section 1 of the Northern Ireland Act 2000 was in force.
- 4A. That power is not exercisable in relation to a person mentioned in subsection (4) in connection with the discharge, during a relevant period, of a function which relates to a matter which is a transferred matter by virtue of an Order under section 4. For this purpose "relevant period" means a period when the matter was not a transferred matter.
- 4B. That power is not exercisable in relation to a person mentioned in subsection (4) in connection with the discharge, during a relevant period, of a statutory function which—
  - a. is exercisable by a Minister or a Northern Ireland department; but
  - b. was at any time exercisable by a Minister of the Crown.  
For this purpose "relevant period" means a period when the statutory function was exercisable by a Minister of the Crown.
5. That power is not exercisable in relation to—
  - a. a person discharging functions of any body whose functions relate to excepted matters, in connection with the discharge by him of those functions;
  - b. a person discharging functions of any body whose functions relate to reserved matters, in connection with the discharge by him of those functions;
  - c. a judge of any court or a member of any tribunal which exercises the judicial power of the State.
6. That power may be exercised by a committee of the Assembly only if the committee is expressly authorised to do so by standing orders.
7. The Presiding Officer shall give the person in question notice in writing specifying—
  - a. the time and place at which the person is to attend and the particular matters relating to which he is required to give evidence; or
  - b. the documents, or types of documents, which he is to produce, the date by which he is to produce them and the particular matters to which they are to relate.
8. Such notice shall be given—
  - a. in the case of an individual, by sending it, by registered post or the recorded delivery service, addressed to him at his usual or last known address or, where he has given an address for service, at that address;
  - b. in any other case, by sending it, by registered post or the recorded delivery service, addressed to the person at the person's registered or principal office.

9. A person is not obliged under this section to answer any question or produce any document which he would be entitled to refuse to answer or produce in proceedings in a court in Northern Ireland.
10. In this section “statutory functions” means functions conferred by virtue of any enactment.

## 45. Witnesses and documents: offences

1. Subject to subsection (9) of section 44, any person to whom a notice under subsection (7) of that section has been given who—
  - a. refuses or fails to attend proceedings as required by the notice;
  - b. refuses or fails, when attending proceedings as required by the notice, to answer any question relating to the matters specified in the notice;
  - c. deliberately alters, suppresses, conceals or destroys any document which he is required to produce by the notice; or
  - d. refuses or fails to produce any such document,  
is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a period not exceeding three months.
2. It is a defence for a person charged with an offence under subsection (1)(a), (b) or (d) to prove that he had a reasonable excuse for the refusal or failure.
3. Where an offence under this section which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
  - a. a director, manager, secretary or other similar officer of the body corporate; or
  - b. any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and liable to be proceeded against accordingly.
4. Proceedings for an offence under this section shall not be taken without the consent of the Director of Public Prosecutions for Northern Ireland.
5. For the purposes of section 44 and this section, a person shall be taken to comply with a requirement to produce a document if he produces a copy of, or an extract of the relevant part of, the document.

## 46. Witnesses: oaths

1. The Presiding Officer or such other person as may be authorised by standing orders may—
  - a. administer an oath to any person giving evidence in proceedings of the Assembly; and
  - b. require him to take the oath.
2. Any person who refuses to take an oath when required to do so under subsection (1)(b) is guilty of an offence.

3. A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a period not exceeding three months.

## Subheading 5: Remuneration and pensions

### 47. Remuneration of members

1. The Assembly shall pay to members of the Assembly such salaries as may from time to time be determined.
2. The Assembly may pay to members of the Assembly such allowances as may from time to time be determined.
- 2A. The Assembly may make provision—
  - a. determining the salaries or allowances payable to members of the Assembly under this section, or
  - b. providing for those salaries or allowances to be determined by a person other than the Assembly in accordance with the provision.
- 2B. Different provision may be made for different cases (for example, provision for higher salaries to be payable to Ministers or other office holders).
3. [Omitted]
4. Provision under subsection (2A) must ensure that, if a salary is payable to a member of the Assembly (“M”) as a member of the House of Lords or as a member of the European Parliament—
  - a. if M does not hold an office within subsection (9A), no salary is payable to M under this section;
  - b. if M holds an office within subsection (9A), the salary which would otherwise be payable to M under this section is reduced by the appropriate amount.
- 4A. The appropriate amount is the amount of the salary payable under this section to members of the Assembly generally.
5. [Omitted]
6. [Omitted]
7. [Omitted]
8. Standing orders must include provision for the publication of every determination of salaries or allowances by provision under subsection (2A)(a).
- 8A. Provision under subsection (2A)(b) must include provision for the publication of every determination of salaries or allowances under that provision.
9. For the purposes of this section—
  - a. a person’s membership of the Assembly begins on the day on which he takes his seat in accordance with standing orders; and
  - b. a person’s holding of an office within subsection (9A) begins on the day on which he takes up office.
- 9A. An office is within this subsection if the salary payable under this section to a member of the Assembly holding the office is higher than the salary payable under this section to members of the Assembly generally.



10. For the purposes of this section, a person who is a member of the Assembly immediately before the Assembly is dissolved shall be treated—
  - a. if he continues to hold office as a Minister or junior Minister, as Presiding Officer or deputy or as a member of the Northern Ireland Assembly Commission, as if he were a member of the Assembly until the end of the day on which he ceases to hold the office; and
  - b. if he does not fall within paragraph (a) but is nominated as a candidate at the subsequent general election, as if he were a member of the Assembly until the end of the day of the poll for that election.
- 10A. The provision which may be made by the Assembly for the purposes of this section includes provision—
  - a. by a resolution of the Assembly conferring functions on the Northern Ireland Assembly Commission, or
  - b. by an Act of the Assembly (which may include provision establishing an office or body, provision conferring functions on an office-holder or body and ancillary provision).
11. Any expenditure incurred by the Assembly under this section shall be defrayed out of money appropriated by Act of the Assembly.

#### **47A. Resolutions about reduction of remuneration**

1. If, in relation to the salary payable under section 47 to a Minister or junior Minister, the Assembly resolves that the whole or a specified part of the salary payable for a specified period shall not be payable—
  - a. because he is not committed to non-violence and exclusively peaceful and democratic means, or
  - b. because of any failure of his to observe any other terms of the pledge of office,  
the salary payable to him under that section shall be reduced accordingly.
2. If, in relation to the salaries payable under section 47 to members of the Assembly who are members of a particular political party, the Assembly resolves that the whole or a specified part of the salaries payable for a specified period shall not be payable—
  - a. because that party is not committed to non-violence and exclusively peaceful and democratic means, or
  - b. because it is not committed to such of its members as are or might become Ministers or junior Ministers observing the other terms of the pledge of office, the salaries payable to them under that section shall be reduced accordingly.
3. The Assembly may, before the end of the period by reference to which a reduction under subsection (1) or (2) falls to be made, by resolution extend that period.
4. [Omitted]

5. The period by reference to which a reduction under subsection (1) or (2) falls to be made shall come to an end if the Assembly—
  - a. is dissolved; or
  - b. resolves to bring the reduction to an end.
6. A motion for a resolution under this section shall not be moved unless—
  - a. it is supported by at least 30 members of the Assembly;
  - b. it is moved by the First Minister and the deputy First Minister acting jointly; or
  - c. it is moved by the Presiding Officer in pursuance of a notice under subsection (7).
7. If the Secretary of State is of the opinion that the Assembly ought to consider a resolution under this section, he shall serve a notice on the Presiding Officer requiring him to move a motion for such a resolution.
8. In forming an opinion under subsection (7), the Secretary of State shall in particular take into account the matters listed in section 30(7).
9. A resolution under this section shall not be passed without cross-community support.
10. In this section a reference to—
  - a. the period by reference to which a reduction under subsection (1) or (2) falls to be made
  - b. [Omitted]is, where the period has been extended, a reference to the period as extended.

## **47B. [Repealed]**

## **47C. Sections 47A and 47B: specified periods and extensions**

1. A period specified under section 47A(1) or (2)—
  - a. shall begin no earlier than the end of the day when the resolution or direction specifying it is passed or given;
  - b. shall begin no later than the end of the period of one month beginning with that day; and
  - c. shall not be longer than 12 months.
2. The power under section 47A(3) to extend a period is a power to extend it until the end of such period of not more than 12 months beginning with the date of the resolution, by which the power is exercised as the resolution may provide.

## 48. Pensions of members

1. The Assembly may make provision for the payment of pensions, gratuities or allowances to, or in respect of, any person who—
  - a. has ceased to be a member of the Assembly; or
  - b. has ceased to hold an office within subsection (1A) but continues to be a member of the Assembly.
- 1A. An office is within this subsection if the salary payable under section 47 to a member of the Assembly holding the office is higher than the salary payable under that section to members of the Assembly generally.
2. Such provision may, in particular, include provision for—
  - a. contributions or payments towards provision for such pensions, gratuities or allowances;
  - b. the establishment and administration (whether by the Commission or otherwise) of one or more pension schemes.
- 2A. Where any salary payable to a person under section 47 is not payable because of section 47A, any provision made under this section for the payment of pensions which has effect in relation to him shall apply as if the salary were payable.
3. In this section—
  - “the Commission” means the Northern Ireland Assembly Commission;
  - “provision” includes provision—
    - a. by an Act of the Assembly (which may include provision establishing an office or body, provision conferring functions on an office-holder or body and ancillary provision); or
    - b. by a resolution of the Assembly conferring functions on the Commission.
4. Any expenditure incurred by the Assembly under this section shall be defrayed out of money appropriated by Act of the Assembly.

## Subheading 6: Miscellaneous

### 49. Letters Patent etc

1. Her Majesty may by Order in Council make provision as to—
  - a. the form and manner of preparation; and
  - b. the publication,  
of Letters Patent signed with Her Majesty’s own hand signifying Her Assent to a Bill passed by the Assembly.

2. If the First Minister and the deputy First Minister acting jointly so direct, impressions with the same device as the Great Seal of Northern Ireland shall be taken in such manner, of such size and on such material as is specified in the direction.
3. Each such impression—
  - a. shall be known as a Wafer Great Seal of Northern Ireland; and
  - b. shall be kept in accordance with directions of the First Minister and the deputy First Minister acting jointly.
4. If a Wafer Great Seal of Northern Ireland has been applied to Letters Patent mentioned in subsection (1), the document has the same validity as if it had passed under the Great Seal of Northern Ireland.

## 50. Privilege

1. For the purposes of the law of defamation, absolute privilege shall attach to—
  - a. the making of a statement in proceedings of the Assembly; and
  - b. the publication of a statement under the Assembly's authority.
2. A person is not guilty of contempt of court under the strict liability rule as the publisher of any matter—
  - a. in the course of proceedings of the Assembly which relate to a Bill or subordinate legislation; or
  - b. to the extent that it consists of a fair and accurate report of such proceedings which is made in good faith.
3. In this section—
  - “statement” has the same meaning as in the Defamation Act 1996;
  - “the strict liability rule” has the same meaning as in the Contempt of Court Act 1981.

## 51. Resignation of members

A member of the Assembly may at any time resign his seat by notice in writing to the Presiding Officer.

### 51A. Resolutions about reduction of financial assistance

1. If the Assembly resolves that the whole or a specified part of any financial assistance payable for a specified period under the Financial Assistance for Political Parties Act (Northern Ireland) 2000 to a particular political party shall not be payable—
  - a. because it is not committed to non-violence and exclusively peaceful and democratic means, or

- b. because it is not committed to such of its members as are or might become Ministers or junior Ministers observing the other terms of the pledge of office, the financial assistance payable to it under that Act shall be reduced accordingly.
- 2. The Assembly may, before the end of the period by reference to which a reduction under subsection (1) falls to be made, by resolution extend that period.
- 3. [Omitted]
- 4. The period by reference to which a reduction under subsection (1) falls to be made shall come to an end if the Assembly—
  - a. is dissolved; or
  - b. resolves to bring the reduction to an end.
- 5. A motion for a resolution under this section shall not be moved unless—
  - a. it is supported by at least 30 members of the Assembly;
  - b. it is moved by the First Minister and the deputy First Minister acting jointly; or
  - c. it is moved by the Presiding Officer in pursuance of a notice under subsection (6).
- 6. If the Secretary of State is of the opinion that the Assembly ought to consider a resolution under this section, he shall serve a notice on the Presiding Officer requiring him to move a motion for such a resolution.
- 7. In forming an opinion under subsection (6), the Secretary of State shall in particular take into account the matters listed in section 30(7).
- 8. A resolution under this section shall not be passed without cross-community support.
- 9. In this section a reference to—
  - a. the period by reference to which a reduction under subsection (1) falls to be made
  - b. [Omitted]
 is, where the period has been extended, a reference to the period as extended.

## **51B. [Repealed]**

## **51C. Sections 51A and 51B: specified periods and extensions**

- 1. A period specified under section 51A(1)—
  - a. shall begin no earlier than the end of the day when the resolution or direction specifying it is passed or given;

- b. shall begin no later than the end of the financial year in which that day falls;  
and
  - c. shall not be longer than 12 months.
2. The power under section 51A(2) to extend a period is a power to extend it until the end of such period of not more than 12 months beginning with the date of the resolution, by which the power is exercised as the resolution may provide.

## 51D. Censure resolutions

1. This section applies to the following resolutions of the Assembly—
- a. a resolution censuring a Minister or junior Minister—
    - i. because he is not committed to non-violence and exclusively peaceful and democratic means; or
    - ii. because of any failure of his to observe any other terms of the pledge of office;
  - b. a resolution censuring a political party—
    - i. because it is not committed to non-violence and exclusively peaceful and democratic means; or
    - ii. because it is not committed to such of its members as are or might become Ministers or junior Ministers observing the other terms of the pledge of office.
2. A motion for a resolution to which this section applies shall not be moved unless—
- a. it is supported by at least 30 members of the Assembly;
  - b. it is moved by the First Minister and the deputy First Minister acting jointly;  
or
  - c. it is moved by the Presiding Officer in pursuance of a notice under subsection (3).
3. If the Secretary of State is of the opinion that the Assembly ought to consider a resolution to which this section applies, he shall serve a notice on the Presiding Officer requiring him to move a motion for such a resolution.
4. In forming an opinion under subsection (3), the Secretary of State shall in particular take into account the matters listed in section 30(7).
5. A resolution to which this section applies shall not be passed without cross-community support.

## Part V: NSMC, BIC, BIIC etc

### 52A. North-South Ministerial Council and British-Irish Council

1. The First Minister and the deputy First Minister acting jointly shall, as far in advance of each meeting of the North-South Ministerial Council or the British-Irish Council as is reasonably practicable, give to the Executive Committee and to the Assembly the following information in relation to the meeting—
  - a. the date;
  - b. the agenda; and
  - c. (once determined under this section) the names of the Ministers or junior Ministers who are to attend the meeting.
2. Each Minister or junior Minister who has responsibility (whether or not with another Minister or junior Minister) in relation to any matter included in the agenda for a meeting of either Council (“appropriate Minister”) shall be entitled—
  - a. to attend the meeting; and
  - b. to participate (see section 52C) in the meeting so far as it relates to that matter.
3. An appropriate Minister may nominate another Minister or junior Minister—
  - a. to attend the meeting in place of the appropriate Minister; and
  - b. to participate in the meeting so far as it relates to matters for which the appropriate Minister has responsibility, but a person may not be nominated under this subsection without his consent.
4. Each appropriate Minister shall notify the First Minister and the deputy First Minister, as soon as reasonably practicable and in any event no later than 10 days before the date of the meeting, that—
  - a. he intends to attend the meeting;
  - b. he does not intend to attend the meeting but has nominated another person under subsection (3) to attend in his place; or
  - c. he does not intend to attend the meeting and he does not intend, or has not been able, to make such a nomination,and a notification under paragraph (b) shall include the name of the person nominated.

5. If the appropriate Minister gives a notification under subsection (4)(c) (or if the First Minister and the deputy First Minister receive no notification from him under subsection (4)), the First Minister and the deputy First Minister acting jointly shall nominate a Minister or junior Minister—
  - a. to attend the meeting in place of the appropriate Minister; and
  - b. to participate in the meeting so far as it relates to matters for which the appropriate Minister has responsibility.
6. In relation to a matter for which the First Minister and the deputy First Minister are the appropriate Ministers—
  - a. the notification to be made by each of them under subsection (4) shall be made to the other; and
  - b. if either of them (“A”) gives a notification under subsection (4)(c) (or if the other (“B”) receives no notification from A under subsection (4)), B (acting alone) shall make the nomination under subsection (5) in relation to A.
7. The First Minister and the deputy First Minister acting jointly shall make such nominations (or further nominations) of Ministers and junior Ministers (including where appropriate alternative nominations) as they consider necessary to ensure such cross-community participation in either Council as is required by the Belfast Agreement.
8. Subsection (9) applies in relation to any matter included in the agenda for a meeting of either Council if—
  - a. the First Minister and the deputy First Minister are not the appropriate Ministers in relation to the matter; but
  - b. the matter is one that ought, by virtue of section 20(3) or (4), to be considered by the Executive Committee.
9. The First Minister and the deputy First Minister acting jointly shall also be entitled—
  - a. to attend the meeting; and
  - b. to participate in the meeting so far as it relates to that matter.
10. In this section “day” does not include a Saturday, a Sunday, Christmas Day, Good Friday and any day which is a bank holiday in Northern Ireland.

## **52B. Section 52A: duty to attend Council meetings etc**

1. It shall be a Ministerial responsibility of—
  - a. each appropriate Minister; or
  - b. if a Minister or junior Minister is nominated under section 52A(3) or (5) to attend a meeting of the North-South Ministerial Council or the British-Irish Council in place of an appropriate Minister, that Minister or junior Minister, to participate in the meeting so far as it relates to matters for which the appropriate Minister has responsibility.



2. It shall be a Ministerial responsibility of a Minister or junior Minister nominated to attend a meeting of either Council under section 52A(7) to participate in the meeting so far as specified in the nomination.
3. Each appropriate Minister shall give to—
  - a. a person nominated under section 52A(3) or (5) to attend a meeting of either Council in his place; or
  - b. a person nominated under section 52A(7) to participate in a meeting of either Council so far as specified in the nomination, such information as may be necessary to enable the person's full participation in the meeting.
4. But if the appropriate Minister does not give sufficient information under subsection (3) to enable the person's full participation in the meeting—
  - a. the First Minister and the deputy First Minister acting jointly may request the necessary information; and
  - b. if they do so, the appropriate Minister must give that information to the person nominated.
5. A person nominated under section 52A(3) or (5) may enter into agreements or arrangements in respect of matters for which the appropriate Minister is (or the appropriate Ministers are) responsible.
6. Without prejudice to the operation of section 24, a Minister or junior Minister attending a meeting of either Council by virtue of any provision of section 52A or this section shall act in accordance with any decisions of the Assembly or the Executive Committee (by virtue of section 20) which are relevant to his participation in the Council concerned.
7. In this section "appropriate Minister", in relation to a meeting of the North-South Ministerial Council or the British-Irish Council, has the same meaning as in section 52A.

## 52C. Sections 52A and 52B: supplementary

1. If any question arises under section 52A or 52B as to which Minister or junior Minister has responsibility for any matter, the First Minister and the deputy First Minister acting jointly shall determine that question.
2. A Minister or junior Minister who participates in a meeting of either the North-South Ministerial Council or the British-Irish Council by virtue of any provision of section 52A or 52B shall, as soon as reasonably practicable after the meeting, make a report—
  - a. to the Executive Committee; and
  - b. to the Assembly.
3. A report under subsection (2)(b) shall be made orally unless standing orders authorise it to be made in writing.
4. The Northern Ireland contributions towards the expenses of the Councils shall be defrayed as expenses of the Office of the First Minister and deputy First Minister.

5. In sections 52A and 52B and this section “participate” shall be construed—
  - a. in relation to the North-South Ministerial Council, in accordance with paragraphs 5 and 6 of Strand Two of the Belfast Agreement;
  - b. in relation to the British-Irish Council, in accordance with the first paragraph 5 of Strand Three of that Agreement.

## **52. [Repealed]**

## **53. Agreements etc. by persons participating in Councils**

1. This section applies to any agreement or arrangement entered into by a Minister or junior Minister participating, by reason of any provision of section 52A or 52B, in a meeting of the North-South Ministerial Council or the British-Irish Council.
2. Provision may be made by Act of the Assembly for giving effect to any agreement or arrangement to which this section applies, including provision—
  - a. for transferring to any body designated by or constituted under the agreement or arrangement any functions which would otherwise be exercisable by any Minister or Northern Ireland department;
  - b. for transferring to a Minister or Northern Ireland department any functions which would otherwise be exercisable by any authority outside Northern Ireland.
3. Subsection (2) has effect notwithstanding anything in subsection (2)(a) of section 6; but it does not affect—
  - a. the operation of subsection (2)(b) to (f) of that section; or
  - b. the operation of section 7A, 8 or 15 in relation to the enactment of any Act of the Assembly.
4. No agreement or arrangement to which this section applies entered into for the establishment after the appointed day of an implementation body shall come into operation without the approval of the Assembly.
5. In subsection (4) “implementation body” means a body for implementing, on the basis mentioned in paragraph 11 of Strand Two of the Belfast Agreement, policies agreed in the North-South Ministerial Council.

## **54. British-Irish Intergovernmental Conference**

1. This section applies where excepted or reserved matters relating to Northern Ireland are to be discussed at a meeting of the British-Irish Intergovernmental Conference.
2. The First Minister and the deputy First Minister acting jointly shall ensure that there is such cross-community attendance by Ministers and junior Ministers at the meeting as is required by the Belfast Agreement.

## 55. Implementation bodies

1. The Secretary of State may make an order about any body—
  - a. which he considers to be an implementation body; and
  - b. which is, or is to be, established on or before the appointed day.
2. An order under this section may make any such provision as may be made (after the appointed day) by Act of the Assembly and may in particular—
  - a. confer on the body the legal capacities of a body corporate;
  - b. confer on the body any function which the Secretary of State considers necessary or expedient for the purpose for which it is, or is to be, established;
  - c. confer on a Northern Ireland department power to make grants to the body out of money appropriated by Act of the Assembly;
  - d. make provision as to the accounting and audit arrangements which are to apply in relation to the body; and
  - e. make consequential or supplementary provisions, including provisions amending or repealing any Northern Ireland legislation, or any instrument made under such legislation.
3. In this section “implementation body” means a body for implementing, on the basis mentioned in paragraph 11 of Strand Two of the Belfast Agreement, policies agreed in the North-South Ministerial Council.

## 56. Civic Forum

1. The First Minister and the deputy First Minister acting jointly shall make arrangements for obtaining from the Forum its views on social, economic and cultural matters.
2. The arrangements so made shall not take effect until after they have been approved by the Assembly.
3. The expenses of the Forum shall be defrayed as expenses of the Department of Finance and Personnel.
4. In this section “the Forum” means the consultative Civic Forum established in pursuance of paragraph 34 of Strand One of the Belfast Agreement by the First Minister and the deputy First Minister acting jointly.

## Part VI: Financial Provisions

### Subheading 1: Consolidated Fund

## 57. Consolidated Fund of Northern Ireland

1. The Consolidated Fund of Northern Ireland shall continue to exist.

2. Sums forming part of the Fund—
  - a. shall be appropriated to the public service of Northern Ireland by Act of the Assembly; and
  - b. shall not be applied for any purpose for which they are not appropriated.
3. Subsection (2) is subject to section 59 and to any provision which charges sums on the Fund and is made—
  - a. by or under an Act of Parliament; or
  - b. by an Act of the Assembly or other Northern Ireland legislation.

## 58. Payments into the Fund

The Secretary of State shall from time to time make payments into the Consolidated Fund of Northern Ireland out of money provided by Parliament of such amounts as he may determine.

## 59. Payments out of Fund without appropriation Act

1. If an Act is not passed at least three working days before the end of a financial year ("year 1") authorising the issue out of the Consolidated Fund of Northern Ireland of sums for the service of the next financial year ("year 2")—
  - a. the authorised officer of the Department of Finance and Personnel may, subject to any Act subsequently passed, authorise the issue of sums out of that Fund for the service of year 2; and
  - b. the sums so issued shall be appropriated for such services and purposes as the officer may direct.
2. The aggregate of the sums issued under subsection (1) for the service of year 2 shall not exceed 75 per cent of the total amount appropriated by Act for the service of year 1.
3. If an Act is not passed before the end of July in any financial year authorising the issue out of the Consolidated Fund of Northern Ireland of sums for the service of the year—
  - a. the authorised officer of the Department of Finance and Personnel may, subject to any Act subsequently passed, authorise the issue of sums out of that Fund for the service of the year; and
  - b. the sums so issued shall be appropriated for such services and purposes as the officer may direct.
4. The aggregate of the sums issued under subsection (3), and (where applicable) the sums issued under subsection (1), for the service of any financial year shall not exceed 95 per cent of the total amount appropriated by Act for the service of the preceding financial year.

5. In this section—
- “Act” means an Act of the Assembly or, in relation to any time before the appointed day, an Order in Council under Schedule 1 to the Northern Ireland Act 1974;
  - “authorised officer”, in relation to the Department of Finance and Personnel, means the Permanent Secretary or such other officer as may be nominated by him for the purpose.

## 60. Financial control, accounts and audit

1. In so far as such provision has not been made, an Act of the Assembly or other Northern Ireland legislation shall make provision—
- a. for proper accounts to be prepared by the Northern Ireland departments, and by other persons to whom sums are paid directly out of the Consolidated Fund of Northern Ireland, of their expenditure and receipts;
  - b. for the Department of Finance and Personnel to prepare an account of payments into and out of the Fund;
  - c. for the Comptroller and Auditor General for Northern Ireland to exercise, or ensure the exercise by other persons of, the functions mentioned in subsection (2);
  - d. for access by persons exercising those functions to such documents as they may reasonably require;
  - e. for members of the Northern Ireland Civil Service designated for the purpose to be answerable to the Assembly in respect of the expenditure and receipts of each of the Northern Ireland departments; and
  - f. for the publication of accounts prepared in pursuance of paragraphs (a) and (b), and of reports on such accounts, and for the laying of such accounts and reports before the Assembly.
2. The functions referred to in subsection (1)(c) are—
- a. issuing credits for the payment of sums out of the Fund;
  - b. examining accounts prepared in pursuance of subsection (1)(a) and (b) (which includes determining whether sums paid out of the Fund have been paid out and applied in accordance with section 57), and certifying and reporting on them;
  - c. carrying out examinations into the economy, efficiency and effectiveness with which the Northern Ireland departments have used their resources in discharging their functions; and

- d. carrying out examinations into the economy, efficiency and effectiveness with which other persons determined under Northern Ireland legislation to whom sums are paid directly out of the Fund have used those sums in discharging their functions.
3. Standing orders shall make provision for establishing a committee of members of the Assembly to consider accounts, and reports on accounts, laid before the Assembly in pursuance of this section or any other enactment.
4. Persons (other than the Comptroller and Auditor General for Northern Ireland) charged with the exercise of any function under subsection (2) or other like function conferred by Northern Ireland legislation shall not, in the exercise of that or any ancillary function, be subject to the direction or control of any Minister or Northern Ireland department or of the Assembly.
5. Subsection (2)(b) does not apply to accounts prepared by the Comptroller and Auditor General for Northern Ireland.

## Subheading 2: Advances

### 61. Advances by Secretary of State

1. The Secretary of State may advance to the Department of Finance and Personnel sums required for the purpose of—
  - a. meeting a temporary excess of sums to be paid out of the Consolidated Fund of Northern Ireland over sums paid into the Fund; or
  - b. providing a working balance in the Fund.
2. The Treasury may issue to the Secretary of State out of the National Loans Fund any sum which he requires for the making of an advance under this section.
3. The aggregate at any time outstanding in respect of the principal of sums advanced under this section shall not exceed £250 million.
4. Sums advanced under this section shall be repaid to the Secretary of State at such times and by such methods, and interest on them shall be paid to him at such rates and at such times, as the Treasury may determine.
5. Sums received by the Secretary of State under subsection (4) shall be paid into the National Loans Fund.
6. Amounts required for the repayment of, or the payment of interest on, sums advanced under this section shall be charged on the Consolidated Fund of Northern Ireland.
7. The Secretary of State may by order, with the consent of the Treasury, substitute for the amount specified in subsection (3) such increased amount as may be specified in the order.

### 62. Accounts

1. The Secretary of State shall, for each financial year—
  - a. prepare, in such form and manner as the Treasury may direct, an account of sums paid and received by him under section 61; and
  - b. send the account to the Comptroller and Auditor General not later than the end of November in the following financial year.

2. The Comptroller and Auditor General shall—
  - a. examine, certify and report on the account; and
  - b. lay copies of it and his report before each House of Parliament.

### **Subheading 3: Miscellaneous**

#### **63. Financial acts of the Assembly**

1. The Assembly may not pass a vote, resolution or Act to which this subsection applies except in pursuance of a recommendation which—
  - a. is made by the Minister of Finance and Personnel; and
  - b. is signified to the Assembly by him or on his behalf.
2. Subsection (1) applies to a vote, resolution or Act which—
  - a. imposes or increases a charge on the Consolidated Fund of Northern Ireland;
  - b. appropriates a sum out of that Fund or increases a sum to be appropriated;
  - c. releases or compounds a debt owed to the Crown; or
  - d. imposes or increases a tax.
3. Standing orders shall provide that a vote, resolution or Act which—
  - a. appropriates a sum out of the Consolidated Fund of Northern Ireland or increases a sum to be appropriated; or
  - b. imposes or increases a tax, shall not be passed without cross-community support.

#### **64. Draft budgets**

1. The Minister of Finance and Personnel shall, before the beginning of each financial year, lay before the Assembly a draft budget, that is to say, a programme of expenditure proposals for that year which has been agreed by the Executive Committee in accordance with paragraph 20 of Strand One of the Belfast Agreement.
2. The Assembly may, with cross-community support, approve a draft budget laid before them with or without modification.

#### **65. Audit**

1. The Comptroller and Auditor General for Northern Ireland shall be appointed by Her Majesty on the nomination of the Assembly.

2. A recommendation shall not be made to Her Majesty for the removal from office of the Comptroller and Auditor General for Northern Ireland unless—
  - a. the Assembly so resolves; and
  - b. the resolution is passed with the support of a number of members of the Assembly which equals or exceeds two thirds of the total number of seats in the Assembly.
3. The Comptroller and Auditor General for Northern Ireland shall not, in the exercise of any of his functions, be subject to the direction or control of any Minister or Northern Ireland department or of the Assembly; but this subsection does not apply in relation to any function conferred on him of preparing accounts.
4. The accounts of the Consolidated Fund of Northern Ireland shall be audited by the Comptroller and Auditor General for Northern Ireland in accordance with the Exchequer and Audit Act Northern Ireland) 1921.
5. Subsection (4) is subject to any provision of an Act of the Assembly or other Northern Ireland legislation.
6. The Assembly shall not have power under Article 4(1) of the Audit (Northern Ireland) Order 1987 to pass at any time a resolution which reduces the salary payable to a person holding the office of Comptroller and Auditor General for Northern Ireland at that time.

## **66. Expenses of Northern Ireland Audit Office**

1. Standing orders shall make provision for establishing a committee of members of the Assembly to exercise, in place of the Department of Finance and Personnel, the functions conferred on that Department by Article 6(2) of the Audit (Northern Ireland) Order 1987 (expenses of Northern Ireland Audit Office).
2. No more than one member of the committee established under subsection (3) of section 60 may be a member of the committee established under this section.
3. The committee established under this section shall, in discharging its functions, have regard to the advice of the committee established under that subsection and of the Department of Finance and Personnel.

## **67. Provision of information to Treasury**

1. The Treasury may require the Northern Ireland Ministers and departments to provide, within such period as the Treasury may specify, such information, in such form and prepared in such manner, as the Treasury may specify.
2. If the information is not in their possession or under their control, their duty under subsection (1) is to take all reasonable steps to comply with the requirement.

## **Part VII: Human Rights and Equal Opportunities**

### **Subheading 1: Human rights**

## **68. The Northern Ireland Human Rights Commission**

1. There shall be a body corporate to be known as the Northern Ireland Human Rights Commission.



2. The Commission shall consist of a Chief Commissioner and other Commissioners appointed by the Secretary of State.
3. In making appointments under this section, the Secretary of State shall as far as practicable secure that the Commissioners, as a group, are representative of the community in Northern Ireland.
4. Schedule 7 (which makes supplementary provision about the Commission) shall have effect.

## 69. The Commission's functions

1. The Commission shall keep under review the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights.
2. The Commission shall, before the end of the period of two years beginning with the commencement of this section, make to the Secretary of State such recommendations as it thinks fit for improving—
  - a. its effectiveness;
  - b. the adequacy and effectiveness of the functions conferred on it by this Part; and
  - c. the adequacy and effectiveness of the provisions of this Part relating to it.
3. The Commission shall advise the Secretary of State and the Executive Committee of the Assembly of legislative and other measures which ought to be taken to protect human rights—
  - a. as soon as reasonably practicable after receipt of a general or specific request for advice; and
  - b. on such other occasions as the Commission thinks appropriate.
4. The Commission shall advise the Assembly whether a Bill is compatible with human rights—
  - a. as soon as reasonably practicable after receipt of a request for advice; and
  - b. on such other occasions as the Commission thinks appropriate.
5. The Commission may—
  - a. give assistance to individuals in accordance with section 70; and
  - b. bring proceedings involving law or practice relating to the protection of human rights.
6. The Commission shall promote understanding and awareness of the importance of human rights in Northern Ireland; and for this purpose it may undertake, commission or provide financial or other assistance for—
  - a. research; and
  - b. educational activities.

7. The Secretary of State shall request the Commission to provide advice of the kind referred to in paragraph 4 of the Human Rights section of the Belfast Agreement.
- 8A. The Commission shall publish a report of its findings on an investigation.
8. For the purpose of exercising its functions under this section the Commission may conduct such investigations as it considers necessary or expedient.
9. The Commission may decide to publish its advice and the outcome of its research.
10. The Commission shall do all that it can to ensure the establishment of the committee referred to in paragraph 10 of that section of that Agreement.
11. In this section—
  - a. a reference to the Assembly includes a reference to a committee of the Assembly;
  - b. “human rights” includes the Convention rights.

### **69A. Investigations: evidence**

1. For the purpose of an investigation under section 69(8) the Commission may by notice in writing require a person—
  - a. to provide information in his possession,
  - b. to produce documents in his possession, or
  - c. to give oral evidence.
2. A notice may include provision about—
  - a. the form of information, documents or evidence;
  - b. timing.
3. A notice—
  - a. may not require a person to provide information that he is prohibited from disclosing by virtue of an enactment,
  - b. may not require a person to do anything that he could not be compelled to do in proceedings before the High Court, and
  - c. may not require a person to attend at a place unless the Commission undertakes to pay the expenses of his journey.
4. The Commission may issue a notice under subsection (1) only if it has—
  - a. considered whether the matter to which the notice relates has already been sufficiently investigated by another person, and
  - b. concluded that it has not.

5. The recipient of a notice may apply to a county court to have the notice cancelled on the grounds that the requirement imposed by the notice—
  - a. is unnecessary having regard to the purpose of the investigation to which the notice relates,
  - b. contravenes subsection (4) or section 69D, or
  - c. is otherwise unreasonable.
6. Subsection (7) applies where the Commission thinks that a person—
  - a. has failed without reasonable excuse to comply with a notice, or
  - b. is likely to fail without reasonable excuse to comply with a notice.
7. The Commission may apply to a county court for an order requiring a person to take such steps as may be specified in the order to comply with the notice.
8. A person commits an offence if without reasonable excuse he—
  - a. fails to comply with a notice,
  - b. fails to comply with an order under subsection (7),
  - c. falsifies anything provided or produced in accordance with a notice or order, or
  - d. makes a false statement in giving oral evidence in accordance with a notice.
9. A person who is guilty of an offence under subsection (8) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
10. A notice under this section may not require the Public Prosecution Service for Northern Ireland to supply documents or evidence about a decision whether or not to institute or continue criminal proceedings.

## **69B. Investigations: national security**

1. Where a person is given a notice under section 69A(1) he shall disregard it, and notify the Commission that he is disregarding it, in so far as he thinks it would require him—
  - a. to disclose sensitive information within the meaning of paragraph 5 of Schedule 1 to the Justice and Security Act 2013 (Intelligence and Security Committee of Parliament),
  - b. to disclose information which might lead to the identification of an employee or agent of an intelligence service (other than one whose identity is already known to the Commission),
  - c. to disclose information which might provide details of processes used in recruiting, selecting or training employees or agents of an intelligence service,

- d. to disclose information which might provide details of, or cannot practicably be separated from, information falling within any of paragraphs (a) to (c),
  - e. to make a disclosure of information relating to an intelligence service which would prejudice the interests of national security, or
  - f. to make a disclosure of information relating to the Police Service of Northern Ireland which would prejudice the interests of national security.
2. Where in response to a notice under section 69A(1) a person gives a notice to the Commission under subsection (1) above—
- a. section 69A(7) and (8) shall not apply in relation to that part of the notice under section 69A(1) to which the notice under subsection (1) above relates,
  - b. the Commission may apply to the tribunal established by section 65 of the Regulation of Investigatory Powers Act 2000 (c. 23) for an order requiring the person to take such steps as may be specified in the order to comply with the notice,
  - c. the following provisions of that Act shall apply in relation to proceedings under this subsection as they apply in relation to proceedings under that Act (with any necessary modifications)—
    - i. section 67(7), (8) and (10) to (12) (determination),
    - ii. section 68 (procedure), and
    - iii. section 69 (rules), and
  - d. the tribunal shall determine proceedings under this subsection by considering the opinion of the person who gave the notice under subsection (1) above in accordance with the principles that would be applied by a court on an application for judicial review of the giving of the notice.
3. Where the Commission receives information or documents from or relating to an intelligence service in response to a notice under section 69A(1), the Commission shall store and use the information or documents in accordance with any arrangements specified by the Secretary of State.
4. The recipient of a notice under section 69A(1) may apply to the High Court to have the notice cancelled on the grounds that the requirement imposed by the notice is undesirable for reasons of national security, other than for the reason that it would require a disclosure of a kind to which subsection (1) above applies.
5. An investigation under section 69(8) may not consider—
- a. whether an intelligence service has acted (or is acting) in a way which is incompatible with a person's human rights, or

- b. other matters concerning human rights in relation to an intelligence service.
6. In this section “intelligence service” means—
- a. the Security Service,
  - b. the Secret Intelligence Service, and
  - c. the Government Communications Headquarters.

### **69C. Investigations: places of detention**

1. For the purpose of an investigation under section 69(8) a person authorised in writing by the Commission may enter a specified place of detention in Northern Ireland on one or more occasions during a specified period.
2. In subsection (1) “specified” means specified in the terms of reference of the investigation.
3. In subsection (1) “place of detention” means—
  - a. a prison specified in the Schedule to the Prisons and Young Offenders Centres Rules (Northern Ireland) 1995,
  - b. a place used for the purpose of detaining arrested persons in a police station designated under Article 36 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)),
  - c. a place designated under paragraph 1 of Schedule 8 to the Terrorism Act 2000 (c. 11) (detention),
  - d. in a building where a court sits, a place used for the purpose of detaining arrested persons,
  - e. a juvenile justice centre provided under Article 51 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)),
  - f. the secure accommodation in Bangor provided and used in accordance with Article 44 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)),
  - g. a removal centre or short-term holding facility within the meaning of section 147 of the Immigration and Asylum Act 1999 (c. 33), and
  - h. any accommodation (including accommodation in a hospital) provided for the purpose of detention under the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)).
4. The Commission may specify a place of detention in the terms of reference of an investigation only if it has—
  - a. considered whether the matter in respect of which the place is specified has already been sufficiently investigated by another person, and

- b. concluded that it has not.
- 5. The power under subsection (1) may not be exercised—
  - a. during the period of 15 days beginning with that on which copies of the terms of reference of the investigation are provided in accordance with section 69D(1)(b), or
  - b. while an application under subsection (6), made during that period, has not yet been determined.
- 6. A county court may, on the application of a person who appears to the court to be responsible for a place of detention specified in terms of reference—
  - a. order that the power under subsection (1) may not be used to enter the place of detention;
  - b. impose restrictions on the exercise of the power in relation to the place of detention;
  - c. require the Commission to amend the terms of reference.
- 7. An order may be made under subsection (6) only if the court thinks that—
  - a. access to the place of detention is unnecessary having regard to the purpose of the investigation,
  - b. it would be unreasonable to allow the Commission access to the place of detention, or
  - c. the Commission has failed to comply with subsection (4) or section 69D.
- 8. In considering whether to make an order under subsection (6), and in considering the terms of an order under subsection (6)(b), the court shall have regard, in particular, to the likely impact of the use of the power under subsection (1) on the operation of the place of detention.
- 9. If a person obstructs the Commission in the exercise of the power under subsection (1) the Commission may apply to a county court for an order requiring the person not to obstruct the Commission.
- 10. A person commits an offence if without reasonable excuse he fails to comply with an order under subsection (9).
- 11. A person who is guilty of an offence under subsection (10) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- 12. The Secretary of State may by order amend subsection (3).

## 69D. Investigations: terms of reference

- 1. A power under section 69A(1) or 69C(1) may be used in relation to an investigation only if the Commission has—
  - a. prepared terms of reference for the investigation in advance, and
  - b. sent a copy of the terms of reference to—

- i. any person identified in them,
  - ii. a person responsible for any place of detention specified in them, and
  - iii. any other person whom the Commission thinks may be affected by the investigation.
2. Terms of reference must specify a period within which the investigation must be concluded.
3. Subsection (2) does not prevent the Commission from commencing (in accordance with this Part) a new investigation of matters arising out of, or incompletely considered in, an earlier investigation.

## 70. Assistance by Commission

1. This section applies to—
  - a. proceedings involving law or practice relating to the protection of human rights which a person in Northern Ireland has commenced, or wishes to commence; or
  - b. proceedings in the course of which such a person relies, or wishes to rely, on such law or practice.
2. Where the person applies to the Northern Ireland Human Rights Commission for assistance in relation to proceedings to which this section applies, the Commission may grant the application on any of the following grounds—
  - a. that the case raises a question of principle;
  - b. that it would be unreasonable to expect the person to deal with the case without assistance because of its complexity, or because of the person's position in relation to another person involved, or for some other reason;
  - c. that there are other special circumstances which make it appropriate for the Commission to provide assistance.
3. Where the Commission grants an application under subsection (2) it may—
  - a. provide, or arrange for the provision of, legal advice;
  - b. arrange for the provision of legal representation;
  - c. provide any other assistance which it thinks appropriate.
4. Arrangements made by the Commission for the provision of assistance to a person may include provision for recovery of expenses from the person in certain circumstances.

## 71. Restrictions on application of rights

1. Nothing in section 6(2)(c) or 24(1)(a) shall enable a person—
  - a. to bring any proceedings in a court or tribunal on the ground that any legislation or act is incompatible with the Convention rights; or
  - b. to rely on any of the Convention rights in any such proceedings, unless he would be a victim for the purposes of article 34 of the Convention if proceedings in respect of the legislation or act were brought in the European Court of Human Rights.
2. Subsection (1) does not apply to the Attorney General, the Attorney General for Northern Ireland, the Advocate General for Scotland or the Lord Advocate.
- 2A. Subsection (1) does not apply to the Commission.
- 2B. In relation to the Commission's instituting, or intervening in, human rights proceedings—
  - a. the Commission need not be a victim or potential victim of the unlawful act to which the proceedings relate,
  - b. section 7(3) and (4) of the Human Rights Act 1998 (c. 42) (breach of Convention rights: sufficient interest, &c.) shall not apply,
  - c. the Commission may act only if there is or would be one or more victims of the unlawful act, and
  - d. no award of damages may be made to the Commission (whether or not the exception in section 8(3) of that Act applies).
- 2C. For the purposes of subsection (2B)—
  - a. "human rights proceedings" means proceedings which rely (wholly or partly) on—
    - i. section 7(1)(b) of the Human Rights Act 1998, or
    - ii. section 69(5)(b) of this Act, and
  - b. an expression used in subsection (2B) and in section 7 of the Human Rights Act 1998 has the same meaning in subsection (2B) as in section 7.
3. Section 6(2)(c)—
  - a. does not apply to a provision of an Act of the Assembly if the passing of the Act is, by virtue of subsection (2) of section 6 of the Human Rights Act 1998, not unlawful under subsection (1) of that section; and
  - b. does not enable a court or tribunal to award in respect of the passing of an Act of the Assembly any damages which it could not award on finding the passing of the Act unlawful under that subsection.



4. Section 24(1)(a)—
  - a. does not apply to an act which, by virtue of subsection (2) of section 6 of the Human Rights Act 1998, is not unlawful under subsection (1) of that section; and
  - b. does not enable a court or tribunal to award in respect of an act any damages which it could not award on finding the act unlawful under that subsection.
5. In this section “the Convention” has the same meaning as in the Human Rights Act 1998.

## **72. Standing Advisory Commission on Human Rights: dissolution**

[Repealed]

### **Subheading 2: Equality of opportunity**

## **73. The Equality Commission for Northern Ireland**

1. There shall be a body corporate to be known as the Equality Commission for Northern Ireland.
2. The Commission shall consist of not less than 14 nor more than 20 Commissioners appointed by the Secretary of State.
3. The Secretary of State shall appoint—
  - a. one Commissioner as Chief Commissioner; and
  - b. at least one Commissioner as Deputy Chief Commissioner.
4. In making appointments under this section, the Secretary of State shall as far as practicable secure that the Commissioners, as a group, are representative of the community in Northern Ireland.
5. Schedule 8 (which makes supplementary provision about the Commission) shall have effect.

## **74. The Commission’s principal functions**

1. The functions exercisable by the bodies listed in subsection (2) shall instead be exercisable by the Equality Commission; and the bodies listed are hereby dissolved.
2. Those bodies are—
  - a. the Fair Employment Commission for Northern Ireland;
  - b. the Equal Opportunities Commission for Northern Ireland;
  - c. the Commission for Racial Equality for Northern Ireland;
  - d. the Northern Ireland Disability Council.

3. In exercising its functions the Equality Commission shall—
  - a. aim to secure an appropriate division of resources between the functions previously exercisable by each of the bodies listed in subsection (2); and
  - b. have regard to advice offered by a consultative council.
4. In subsection (3) “consultative council” means a group of persons selected by the Commission to advise in relation to the functions previously exercisable by one of the bodies listed in subsection (2) or in relation to the Commission’s functions under Schedule 9.
5. The Secretary of State may by order make such supplemental, incidental or consequential provision as appears to him to be appropriate as a result of subsections (1) and (2).
6. In particular, an order may include provision—
  - a. amending an enactment;
  - b. for the transfer of rights and liabilities;
  - c. for payments into the Consolidated Fund or to a specified person.

## 75. Statutory duty on public authorities

1. A public authority shall in carrying out its functions relating to Northern Ireland have due regard to the need to promote equality of opportunity—
  - a. between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
  - b. between men and women generally;
  - c. between persons with a disability and persons without;and
  - d. between persons with dependants and persons without.
2. Without prejudice to its obligations under subsection (1), a public authority shall in carrying out its functions relating to Northern Ireland have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.
3. In this section “public authority” means—
  - a. any department, corporation or body listed in Schedule 2 to the Parliamentary Commissioner Act 1967 (departments, corporations and bodies subject to investigation) and designated for the purposes of this section by order made by the Secretary of State;
  - b. any body (other than the Equality Commission) listed in Schedule 2 to the Commissioner for Complaints (Northern Ireland) Order 1996 (bodies subject to investigation);

- c. any department or other authority listed in Schedule 2 to the Ombudsman (Northern Ireland) Order 1996 (departments and other authorities subject to investigation);
- cc. the Northern Ireland Policing Board, the Chief Constable of the Police Service of Northern Ireland and the Police Ombudsman for Northern Ireland;
- cd. the Director of Public Prosecutions for Northern Ireland;
- ce. the Chief Inspector of Criminal Justice in Northern Ireland;
- cf. the Northern Ireland Law Commission;
- d. any other person designated for the purposes of this section by order made by the Secretary of State.

**3A.** An order under subsection (3)(a) or (d) may provide that the designated department, corporation, body or other person—

- a. is not subject to, or is only subject to, specified obligations under subsection (1) or (2), or
- b. is not subject to, or is only subject to, specified obligations under subsection (1) or (2)—
  - i. when exercising a specified function, or
  - ii. when exercising a specified function in specified circumstances or for specified purposes.

**3B.** In subsection (3A) “specified” means specified in the order.

**4.** Schedule 9 (which makes provision for the enforcement of the duties under this section) shall have effect.

**4A.** The references in subsections (1) and (2) and Schedule 9 to the functions of the Director of Public Prosecutions for Northern Ireland do not include any of his functions relating to the prosecution of offences or any of the functions conferred on him by, or in relation to, Part 5 or 8 of the Proceeds of Crime Act 2002 (c. 29) (civil recovery of the proceeds etc. of unlawful conduct, civil recovery investigations and disclosure orders in relation to confiscation investigations).

**5.** In this section—

- “disability” has the same meaning as in the Disability Discrimination Act 1995; and
- “racial group” has the same meaning as in the Race Relations (Northern Ireland) Order 1997.

## 76. Discrimination by public authorities

1. It shall be unlawful for a public authority carrying out functions relating to Northern Ireland to discriminate, or to aid or incite another person to discriminate, against a person or class of person on the ground of religious belief or political opinion.
2. An act which contravenes this section is actionable in Northern Ireland at the instance of any person adversely affected by it; and the court may—
  - a. grant damages;
  - b. subject to subsection (3), grant an injunction restraining the defendant from committing, causing or permitting further contraventions of this section.
3. Without prejudice to any other power to grant an injunction, a court may grant an injunction under subsection (2) only if satisfied that the defendant—
  - a. contravened this section on the occasion complained of and on more than one previous occasion; and
  - b. is likely to contravene this section again unless restrained by an injunction.
4. This section does not apply in relation to any act or omission which is unlawful by virtue of the Fair Employment and Treatment (Northern Ireland) Order 1998, or would be unlawful but for some exception made by virtue of Part VIII of that Order.
5. Subsection (1) applies to the making, confirmation or approval of subordinate legislation only if—
  - a. the legislation contains a provision which discriminates against a person or class of person on the ground of religious belief or political opinion; and
  - b. the provision extends only to the whole or any part of Northern Ireland.
6. Where it is alleged that subsection (1) applies to the making, confirmation or approval of subordinate legislation, subsection (2) shall not apply but the contravention may be relied upon in legal proceedings relating to the validity of the subordinate legislation.
7. The following are public authorities for the purposes of this section—
  - a. a Minister of the Crown;
  - b. any department, corporation or body listed in Schedule 2 to the Parliamentary Commissioner Act 1967 (departments, corporations and bodies subject to investigation);
  - c. any body listed in Schedule 2 to the Commissioner for Complaints (Northern Ireland) Order 1996 (bodies subject to investigation);
  - d. any authority (other than a Northern Ireland department) listed in Schedule 2 to the Ombudsman (Northern Ireland) Order 1996 (departments and other authorities subject to investigation);

- e. the Police Service of Northern Ireland, the Police Service of Northern Ireland Reserve and the Police Ombudsman for Northern Ireland;
  - ea. the Director of Public Prosecutions for Northern Ireland;
  - f. the Probation Board for Northern Ireland; and
  - fa. the Chief Inspector of Criminal Justice in Northern Ireland;
  - fb. the Northern Ireland Law Commission;
  - g. a universal service provider (within the meaning of Part 3 of the Postal Services Act 2011) so far as carrying out functions in connection with the provision of a universal postal service (within the meaning of that Part).
8. This section does not apply to a decision of the Director of Public Prosecutions for Northern Ireland not to institute, or to discontinue, criminal proceedings or, where such a decision has been made, to any act done for the purpose of enabling the decision whether to institute or continue the proceedings to be made or for securing that the proceedings are discontinued.
  9. No injunction may be granted in respect of a contravention of this section by the Director of Public Prosecutions for Northern Ireland unless the court is satisfied that it would not prejudice any decision to institute criminal proceedings or any criminal proceedings.
  10. Where a party to proceedings for a contravention of this section applies for a stay of those proceedings on the ground of prejudice to a decision to institute criminal proceedings, or of prejudice to particular criminal proceedings, the court must grant the stay unless it is satisfied that continuance of the proceedings for the contravention would not result in the prejudice alleged.
  11. The reference in subsection (1) to the functions of the Director of Public Prosecutions for Northern Ireland does not include any of the functions conferred on him by, or in relation to, Part 5 or 8 of the Proceeds of Crime Act 2002 (c. 29) (civil recovery of the proceeds etc. of unlawful conduct, civil recovery investigations and disclosure orders in relation to confiscation investigations).

## 77. Unlawful oaths etc

1. Subject to subsections (2) and (3), an authority or body to which this section applies may not require a person to take an oath or make a declaration as a condition of—
  - a. being appointed to the authority or body;
  - b. acting as a member of the authority or body; or
  - c. serving with or being employed by the authority or body.
2. Subsection (1) shall not prevent a person being required to take an oath, or make a declaration, which is expressly required or authorised by the law in force immediately before this section comes into force.

3. Subsection (1) shall not prevent a person being required to make a declaration—
  - a. of acceptance of office;
  - b. that he is qualified to act, serve or be employed in a capacity; or
  - c. that he is not disqualified from acting, serving or being employed in a capacity.
4. This section applies to—
  - a. the Assembly;
  - b. the Northern Ireland Assembly Commission;
  - c. any body listed in Schedule 2 to the Commissioner for Complaints (Northern Ireland) Order 1996 (bodies subject to investigation);
  - d. any authority (other than a Northern Ireland department) listed in Schedule 2 to the Ombudsman (Northern Ireland) Order 1996 (departments and other authorities subject to investigation); and
  - e. the Probation Board for Northern Ireland.
5. Subsections (1) to (3) apply with the necessary modifications to a Minister and a Northern Ireland department.
6. An act which contravenes this section is actionable in Northern Ireland at the instance of any person adversely affected by it; and the court may—
  - a. grant damages;
  - b. subject to subsection (7), grant an injunction restraining the defendant from committing, causing or permitting further contraventions of this section.
7. Without prejudice to any other power to grant an injunction, a court may grant an injunction under subsection (6) only if satisfied that the defendant—
  - a. contravened this section on the occasion complained of and on more than one previous occasion; and
  - b. is likely to contravene this section again unless restrained by an injunction.
8. In this section a reference to a declaration includes a reference to any kind of undertaking or affirmation, by whatever name.

## 78. Removal of restrictions on investigation into maladministration

1. The provisions mentioned in subsection (2) (which preclude an investigation when the person aggrieved has or had a remedy by way of proceedings in a court of law) shall not apply to an investigation of a complaint alleging maladministration involving—
  - a. discrimination, or aiding or inciting any person to discriminate, on the ground of religious belief or political opinion; or
  - b. a requirement in contravention of section 77 to take an oath or make a declaration (within the meaning of that section).
2. The provisions are—
  - a. section 5(2)(b) of the Parliamentary Commissioner Act 1967;
  - b. Article 9(3)(b) of the Commissioner for Complaints (Northern Ireland) Order 1996; and
  - c. Article 10(3)(b) of the Ombudsman (Northern Ireland) Order 1996.

## Part VIII: Miscellaneous

### Subheading 1: Judicial scrutiny

## 79. Devolution issues

Schedule 10 (which makes provision in relation to devolution issues) shall have effect.

## 80. Legislative power to remedy ultra vires acts

1. The Secretary of State may by order make such provision as he considers necessary or expedient in consequence of—
  - a. any provision of an Act of the Assembly which is not, or may not be, within the legislative competence of the Assembly; or
  - b. any purported exercise by a Minister or Northern Ireland department of his or its functions which is not, or may not be, a valid exercise of those functions.
2. An order under this section may—
  - a. make provision having retrospective effect;
  - b. make consequential or supplementary provision, including provision amending or repealing any Northern Ireland legislation, or any instrument made under such legislation;

- c. make transitional or saving provision.

## 81. Powers of courts or tribunals to vary retrospective decisions

1. This section applies where any court or tribunal decides that—
  - a. any provision of an Act of the Assembly is not within the legislative competence of the Assembly; or
  - b. a Minister or Northern Ireland department does not have the power to make, confirm or approve a provision of subordinate legislation that he or it has purported to make, confirm or approve.
2. The court or tribunal may make an order—
  - a. removing or limiting any retrospective effect of the decision; or
  - b. suspending the effect of the decision for any period and on any conditions to allow the defect to be corrected.
3. In deciding whether to make an order under this section, the court or tribunal shall (among other things) have regard to the extent to which persons who are not parties to the proceedings would otherwise be adversely affected.
4. Where a court or tribunal is considering whether to make an order under this section, it shall order notice of that fact to be given to—
  - a. the Attorney General for Northern Ireland; and
  - b. where the decision mentioned in subsection (1) relates to a devolution issue (within the meaning of Schedule 10), the appropriate authority, unless the person to whom the notice would be given is a party to the proceedings.
5. A person to whom notice is given under subsection (4) or, where such notice is given to the First Minister and the deputy First Minister, those Ministers acting jointly may take part as a party in the proceedings so far as they relate to the making of the order.
6. Paragraphs 37 and 38 of Schedule 10 apply with necessary modifications for the purposes of subsections (4) and (5) as they apply for the purposes of that Schedule.
7. In this section “the appropriate authority” means—
  - a. in relation to proceedings in Northern Ireland, the First Minister and the deputy First Minister;
  - b. in relation to proceedings in England and Wales, the Attorney General;
  - c. in relation to proceedings in Scotland, the Lord Advocate and the Advocate General for Scotland.

## 82. The Judicial Committee

[Repealed]



## 83. Interpretation of Acts of the Assembly etc

1. This section applies where—
  - a. any provision of an Act of the Assembly, or of a Bill for such an Act, could be read either—
    - i. in such a way as to be within the legislative competence of the Assembly; or
    - ii. in such a way as to be outside that competence; or
  - b. any provision of subordinate legislation made, confirmed or approved, or purporting to be made, confirmed or approved, by a Northern Ireland authority could be read either—
    - i. in such a way as not to be invalid by reason of section 24 or, as the case may be, section 76; or
    - ii. in such a way as to be invalid by reason of that section.
2. The provision shall be read in the way which makes it within that competence or, as the case may be, does not make it invalid by reason of that section, and shall have effect accordingly.
3. In this section “Northern Ireland authority” means a Minister, a Northern Ireland department or a public authority (within the meaning of section 76) carrying out functions relating to Northern Ireland.

### Subheading 2: Power to make provision by Order in Council

## 84. Provision with respect to certain matters relating to Northern Ireland

1. Her Majesty may by Order in Council make provision with respect to elections (but not the franchise) and boundaries in respect of district councils in Northern Ireland.
  - 1A. The power in subsection (1) includes power to make provision with respect to polls at elections for district councillors when they are combined with polls at other elections.
  - 1B. An Order in Council under subsection (1) may make different provision for different areas about the conduct of elections, including different provision about the registration of persons entitled to vote at an election.
2. Her Majesty may by Order in Council make such amendments of the law of any part of the United Kingdom as appear to Her Majesty to be necessary or expedient in consequence of any provision made by or under—
  - a. Northern Ireland legislation; or
  - b. any Act of Parliament passed before this Act in so far as the provision is part of the law of Northern Ireland.

- Head of state powers
- Advisory bodies to the head of state

3. An Order in Council under subsection (1) or (2) may contain such consequential and supplemental provisions as appear to Her Majesty to be necessary or expedient.
4. No recommendation shall be made to Her Majesty to make an Order in Council under this section unless a draft of the Order has been laid before and approved by resolution of each House of Parliament.

## 85. Provision dealing with certain reserved matters

1. Her Majesty may by Order in Council make provision dealing with any matter falling within a description specified in any of paragraphs 9 to 17 of Schedule 3 (a “relevant matter”), including—
  - a. provision having retrospective effect;
  - b. provision for the delegation of functions;
  - c. provision amending or repealing any provision made by or under any Act of Parliament or Northern Ireland legislation.
2. An Order in Council under this section may—
  - a. make provision ancillary to provisions (whether in the Order or previously enacted) which deal with any relevant matter;
  - b. make such consequential, incidental, supplemental, or transitional provision as appears to Her Majesty to be necessary or expedient.
3. No recommendation shall be made to Her Majesty to make an Order in Council under this section unless a draft of the Order has been laid before and approved by resolution of each House of Parliament.
4. No draft may be laid under subsection (3) unless—
  - a. the Secretary of State has laid before Parliament a document which contains a draft of the proposed Order;
  - b. the Secretary of State has referred the document to the Assembly for its consideration; and
  - c. the period of 60 days beginning with the day on which the document was laid before Parliament has ended.
5. The Assembly may report to the Secretary of State the views expressed in the Assembly on the proposed Order and shall do so if the Secretary of State so requests.
6. The draft laid under subsection (3) must be accompanied—
  - a. if representations have been made during the period mentioned in subsection (4), by a statement containing a summary of the representations;
  - b. if a report has been made to the Secretary of State under subsection (5) during that period, by a copy of the report; and

- c. if, as a result of any representations or report so made, the proposed Order has been changed, by a statement containing details of the changes.
7. Subsection (3) does not apply to an Order in Council which declares that it has been made to appear to Her Majesty that by reason of urgency the Order requires to be made without a draft having been approved as mentioned in that subsection.
8. Where an Order in Council contains a declaration such as is mentioned in subsection (7)—
  - a. the Order shall be laid before Parliament after being made; and
  - b. if at the end of the period of 40 days after the date on which the Order is made it has not been approved by resolution of each House, it shall then cease to have effect (but without prejudice to anything previously done under it or to the making of a new Order).
9. In reckoning the periods mentioned in subsections (4) and (8), no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
10. References to Acts of the Assembly in any enactment or instrument shall, so far as the context permits, be deemed to include references to Orders in Council under this section.
11. Orders in Council under this section may be omitted from any annual edition of statutory instruments made by virtue of section 8 of the Statutory Instruments Act 1946.
12. In this section “representations” means representations about a proposed Order in Council under this section made to the Secretary of State and includes—
  - a. any relevant resolution of either House of Parliament or of the Assembly; and
  - b. any relevant report or resolution of any committee of either House of Parliament or of the Assembly.

## **86. Provision for purposes consequential on Act etc**

1. Her Majesty may by Order in Council make such provision, including provision amending the law of any part of the United Kingdom, as appears to Her Majesty to be necessary or expedient in consequence of, or for giving full effect to, this Act or any Order under section 4 or 6.
2. Orders under subsection (1) may make provision for transferring to a United Kingdom authority, with effect from any date specified in the Order—
  - a. any functions which immediately before that date are exercisable by a Northern Ireland authority and appear to Her Majesty to be concerned with a matter which is an excepted or reserved matter other than by virtue of an Order under section 4;
  - b. any functions which immediately before that date are exercisable by a Northern Ireland authority and appear to Her Majesty not to be exercisable in or as regards Northern Ireland by virtue of an Order under section 6.

3. Orders under subsection (1) may make provision for transferring to a Northern Ireland authority, with effect from any date specified in the Order—
  - a. any functions which immediately before that date are exercisable by a United Kingdom authority and appear to Her Majesty to be concerned with a matter which is a transferred matter other than by virtue of an Order under section 4;
  - b. any functions which immediately before that date are exercisable by a United Kingdom authority and appear to Her Majesty to be exercisable in or as regards Northern Ireland by virtue of an Order under section 6.
- 3A. An Order under subsection (1) in relation to an Order under section 4 may make provision doing any of the following—
  - a. transferring to a United Kingdom authority, with effect from any date specified in the Order under subsection (1), any function which immediately before that date is exercisable by a Northern Ireland authority;
  - b. transferring to a Northern Ireland authority, with effect from any date specified in the Order under subsection (1), any function which immediately before that date is exercisable by a United Kingdom authority;
  - c. conferring a function on a United Kingdom authority or a Northern Ireland authority;
  - d. removing a function from a United Kingdom authority or a Northern Ireland authority.
4. An Order under subsection (1) may make provision, to such extent as may appear to Her Majesty to be necessary or expedient in consequence of, or for giving full effect to, this Act or any Order under section 4 or 6—
  - a. for transferring or apportioning any property, rights or liabilities;
  - b. for substituting any authority for any other authority in any charter, contract or other document or in any legal proceedings;
  - c. for any other transitional or consequential matter.
5. Where such provision as is mentioned in subsection (3)(b) has been made by Order in Council under subsection (1), Her Majesty may, if it appears to Her necessary or expedient to do so, by Order in Council—
  - a. provide that the functions transferred to the Northern Ireland authority shall be exercisable by a United Kingdom authority, either alone or concurrently with the Northern Ireland authority; and
  - b. make such provision as is mentioned in subsection (4)(a) to (c).
6. No recommendation shall be made to Her Majesty to make an Order under this section unless a draft of it has been laid before and approved by resolution of each House of Parliament.

7. In this section “Northern Ireland authority” means—
  - a. a Minister or a Northern Ireland department;
  - b. the Comptroller and Auditor General for Northern Ireland; or
  - c. any other public body or holder of public office in Northern Ireland.
8. In this section “United Kingdom authority” means—
  - a. the Privy Council;
  - b. any Minister of the Crown;
  - c. the Defence Council;
  - d. the Commissioners of Inland Revenue;
  - e. the Commissioners of Customs and Excise;
  - f. the Comptroller and Auditor General; or
  - g. any other public body or holder of public office in the United Kingdom.

## **86A. Provision for transfer of functions relating to extradition etc**

1. Her Majesty may by Order in Council make provision amending—
  - a. the Crime (International Co-operation) Act 2003; or
  - b. the Extradition Act 2003,  
for the purpose of transferring to a Minister or a Northern Ireland department, with effect from any date specified in the Order, any relevant function under the Act.
2. In subsection (1) “relevant function” means a function which, immediately before the date specified in the Order,—
  - a. is exercisable by a Minister of the Crown; and
  - b. is exercisable in relation to Northern Ireland.
3. An Order under subsection (1) may make provision, to such extent as may appear to Her Majesty to be necessary or expedient in consequence of, or for giving full effect to, the Order—
  - a. for transferring or apportioning any property, rights or liabilities;
  - b. for substituting any body or person for any other body or person in any charter, contract or other document or in any legal proceedings;

- c. for any other transitional or consequential matter.
4. No recommendation shall be made to Her Majesty to make an Order under this section unless a draft of it has been laid before and approved by resolution of each House of Parliament.

## 86B. Provision for entrenching enactments

1. Her Majesty may by Order in Council make provision amending section 7 so as to provide for—
  - a. enactments to become entrenched; or
  - b. enactments that are entrenched by virtue of an Order under paragraph (a) to cease to be entrenched.
2. For the purposes of this section an enactment is entrenched if section 7 prevents it from being modified by an Act of the Assembly or subordinate legislation made, confirmed or approved by a Minister or Northern Ireland department.
3. No recommendation shall be made to Her Majesty to make an Order under this section unless a draft of it has been laid before and approved by resolution of each House of Parliament.

## Subheading 3: Social security, child support and pensions

### 87. Consultation and co-ordination

1. The Secretary of State and the Northern Ireland Minister having responsibility for social security (“the Northern Ireland Minister”) shall from time to time consult one another with a view to securing that, to the extent agreed between them, the legislation to which this section applies provides single systems of social security, child support and pensions for the United Kingdom.
2. Without prejudice to section 28, the Secretary of State with the consent of the Treasury, and the Northern Ireland Minister with the consent of the Department of Finance and Personnel, may make—
  - a. arrangements for co-ordinating the operation of the legislation to which this section applies with a view to securing that, to the extent allowed for in the arrangements, it provides single systems of social security, child support and pensions for the United Kingdom; and
  - b. reciprocal arrangements for co-ordinating the operation of so much of the legislation as operates differently in relation to Great Britain and in relation to Northern Ireland.
3. Such arrangements as are mentioned in subsection (2)(a) or (b) may include provision for making any necessary financial adjustments, other than adjustments between the National Insurance Fund and the Northern Ireland National Insurance Fund.

4. The Secretary of State may make regulations for giving effect to arrangements under subsection (2); and any such regulations may for the purposes of the arrangements provide—
  - a. for adapting legislation (including subordinate legislation) for the time being in force in Great Britain;
  - b. without prejudice to paragraph (a) above, for securing that acts, omissions and events having any effect for the purposes of the enactments in force in Northern Ireland have a corresponding effect in relation to Great Britain (but not so as to confer any double benefit); and
  - c. for determining, in cases where rights accrue both in relation to Great Britain and in relation to Northern Ireland, which of those rights shall be available to the person concerned.
5. The Northern Ireland department having responsibility for social security may make regulations for giving effect to arrangements under subsection (2); and any such regulations may for the purposes of the arrangements provide—
  - a. for adapting legislation (including subordinate legislation) for the time being in force in Northern Ireland;
  - b. without prejudice to paragraph (a) above, for securing that acts, omissions and events having any effect for the purposes of the enactments in force in Great Britain have a corresponding effect in relation to Northern Ireland (but not so as to confer any double benefit); and
  - c. for determining, in cases where rights accrue both in relation to Northern Ireland and in relation to Great Britain, which of those rights shall be available to the person concerned.
6. This section applies to—
  - a. the Social Security Contributions and Benefits Act 1992 and the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
  - b. the Social Security Administration Act 1992 and the Social Security Administration (Northern Ireland) Act 1992;
  - c. the Child Support Act 1991 and the Child Support (Northern Ireland) Order 1991;
  - d. the Social Security Pensions Act 1975 and the Social Security Pensions (Northern Ireland) Order 1975;
  - e. the Social Security Act 1989 and the Social Security (Northern Ireland) Order 1989;
  - f. the Disability (Grants) Act 1993;
  - g. the Pension Schemes Act 1993 and the Pensions Schemes (Northern Ireland) Act 1993;

- h. the Social Security (Incapacity for Work) Act 1994 and the Social Security (Incapacity for Work) (Northern Ireland) Order 1994;
  - i. the Jobseekers Act 1995 and the Jobseekers (Northern Ireland) Order 1995;
  - j. the Pensions Act 1995 and the Pensions (Northern Ireland) Order 1995;
  - k. the Child Support Act 1995 and the Child Support (Northern Ireland) Order 1995;
  - l. the Social Security (Recovery of Benefits) Act 1997 and the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997;
  - m. the Social Security Act 1998 and the Social Security (Northern Ireland) Order 1998.
  - n. the Welfare Reform and Pensions Act 1999 and the Welfare Reform and Pensions (Northern Ireland) Order 1999
  - o. the Child Support, Pensions and Social Security Act 2000 and the Child Support, Pensions and Social Security Act (Northern Ireland) 2000
  - p. the Social Security Fraud Act 2001 and the Social Security Fraud Act (Northern Ireland) 2001
  - q. the State Pension Credit Act 2002 and the State Pension Credit Act (Northern Ireland) 2002
  - r. the Age-Related Payments Act 2004 and the Age-Related Payments (Northern Ireland) Order 2004;
  - s. the Pensions Act 2004 and the Pensions (Northern Ireland) Order 2005
  - t. the Welfare Reform Act 2007 and the Welfare Reform Act (Northern Ireland) 2007;
  - u. the Pensions Act 2007 and the Pensions Act (Northern Ireland) 2008
  - v. the Child Maintenance and Other Payments Act 2008, the Mesothelioma, etc., Act (Northern Ireland) 2008, and the Child Maintenance Act (Northern Ireland) 2008;
  - w. the Pensions Act 2008 and the Pensions (No. 2) Act (Northern Ireland) 2008.
- 6A.** But this section does not apply to the legislation referred to in subsection (6) to the extent that it relates to child benefit or guardian's allowance.
- 7.** Her Majesty may by Order in Council make any modifications of subsection (6) which She considers necessary or expedient.



8. The following provisions (which are superseded by this section and section 88) shall cease to have effect—
  - a. sections 177 and 178 of the Social Security Administration Act 1992 (co-ordination and reciprocity with Northern Ireland);
  - b. sections 153 and 154 of the Social Security Administration (Northern Ireland) Act 1992 (co-ordination and reciprocity with Great Britain);
  - c. section 56(2) to (4) of the Child Support Act 1991 (co-ordination with Northern Ireland);
  - d. Article 49(2) and (3) of the Child Support (Northern Ireland) Order 1991 (co-ordination with Great Britain);
  - e. section 29(2) to (4) of the Child Support Act 1995 (co-ordination with Northern Ireland);
  - f. Article 20 of the Child Support (Northern Ireland) Order 1995 (co-ordination with Great Britain).
9. Section 189 of the Social Security Administration Act 1992 (regulations and orders: general) shall apply in relation to the power conferred by subsection (4) as it applied in relation to the power conferred by section 177(4) of that Act.
10. The power conferred by subsection (5) shall be construed as if it had been conferred by an Act of the Assembly; and section 165 of the Social Security Administration (Northern Ireland) Act 1992 (regulations and orders: general) shall apply in relation to that power as it applied in relation to the power conferred by section 153(3) of that Act.
11. A statutory instrument containing an Order in Council under subsection (7) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## 88. The Joint Authority

1. The Joint Authority continued in being by section 177(2) of the Social Security Administration Act 1992—
  - a. shall consist of the Secretary of State, the Northern Ireland Minister having responsibility for social security and the Chancellor of the Exchequer; and
  - b. shall continue in being by the name of the Social Security, Child Support and Pensions Joint Authority for the purposes of the legislation to which section 87 applies.
2. The responsibility of the Joint Authority shall include that of giving effect to arrangements under section 87(2), with power to discharge such functions as may be provided under the arrangements.
3. The Joint Authority shall also have power—
  - a. to require the making by the Commissioners of Inland Revenue of any necessary adjustments between the National Insurance Fund and the Northern Ireland National Insurance Fund, and

- b. to make any other necessary financial adjustments.
- 4. The Joint Authority shall continue—
  - a. to be a body corporate; and
  - b. to have an official seal which shall be officially and judicially noticed; and the seal of the Authority may be authenticated by any member of, or the secretary to, the Authority, or by any person authorised by the Authority to act on behalf of the secretary.
- 5. Any member of the Joint Authority shall be entitled, subject to and in accordance with any rules laid down by the Authority, to appoint a deputy to act for him at meetings of the Authority.
- 6. The Documentary Evidence Act 1868 shall apply to the Joint Authority as if the Authority were included in the first column of the Schedule to that Act and—
  - a. as if any member or the secretary, or any person authorised to act on behalf of the secretary, of the Authority were mentioned in the second column of that Schedule; and
  - b. as if the regulations referred to in that Act included any document issued by the Authority.

## 89. Industrial Injuries Advisory Council

1. For subsection (1) of section 149 of the Social Security Administration (Northern Ireland) Act 1992 (Social Security Advisory Committee) substitute—
 

“(1) The Department may from time to time—

  - (a) refer to the Social Security Advisory Committee for consideration and advice such questions relating to the operation of any of the relevant enactments as the Department thinks fit (including questions as to the advisability of amending any of them);
  - (b) refer to the Industrial Injuries Advisory Council for consideration and advice such questions as the Department thinks fit relating to industrial injuries benefit or its administration.”
2. After subsection (2) of that section insert—
 

“(2A) Subject—

  - (a) to subsection (3) below; and
  - (b) to section 150 below,

where the Department proposes to make regulations relating only to industrial injuries benefit or its administration, it shall refer the proposals, in the form of draft regulations or otherwise, to the Industrial Injuries Advisory Council for consideration and advice.”
3. At the end of subsection (3) of that section insert “ ; and subsection (2A) above does not apply to the regulations specified in Schedule 5A to this Act ”.
4. After that subsection insert—
 

“(3A) The Industrial Injuries Advisory Council may also give advice to the Department on any other matter relating to industrial injuries benefit or its administration.”
5. In subsections (1), (2) and (5) of section 150 of that Act (cases in which consultation not required), after “the Committee”, in each place, insert “ or the Council ”.

6. In subsection (3) of that section—
  - a. after “the Committee”, in the first place, insert “ or the Council ”; and
  - b. after “the Committee has made its report” insert “ or, as the case may be, the Council has given its advice ”.
7. In subsection (6) of that section, after the definition of “the Committee” insert—  
“the Council” means the Industrial Injuries Advisory Council;”.
8. After Schedule 5 to that Act insert—  
“SCHEDULE 5A  
Regulations not requiring prior submission to Industrial Injuries Advisory Council  
1 - Regulations under section 120(1)(b) of the Contributions and Benefits Act.  
2 - Regulations which state that they contain only provisions in consequence of an order under section 129 or 132 above.  
3 - Regulations made within a period of 6 months from the passing of any Act passed after this Act and directed to be construed as one with this Act, where—  
(a) the regulations state that they contain only regulations to make provision consequential on the passing of the Act; and  
(b) the Act does not exclude this paragraph in respect of the regulations;  
and in this paragraph “Act” includes an Act of the Northern Ireland Assembly.  
4 - Regulations which state that they contain only regulations making with respect to industrial injuries benefit or its administration the same or substantially the same provision as has been, or is to be, made with respect to other benefit as defined in section 121(1) of the Contributions and Benefits Act or its administration.  
5 - Regulations which state that the only provision with respect to industrial injuries benefit or its administration that is made by the regulations is the same or substantially the same as provision made by the instrument with respect to other benefit as defined in section 121(1) of the Contributions and Benefits Act or its administration.  
6 - Regulations made for the purpose only of consolidating other regulations revoked by them.  
7 - Regulations making only provision corresponding to provision contained in regulations made by the Secretary of State or the Lord Chancellor in relation to Great Britain.”
9. In section 192(5) of the Social Security Administration Act 1992, after the entry relating to section 170 (with Schedule 5) insert— “ section 171 (with Schedule 6); ”.

## **Subheading 4: Discrimination: certificates by Secretary of State**

### **90. Effect of certificates**

1. This section applies where in any proceedings—
  - a. a person claims that an act discriminated against him in contravention of section 24 or 76; and

- b. the person against whom the claim is made proposes to rely on a certificate purporting to be signed by or on behalf of the Secretary of State and certifying—
  - i. that an act specified in the certificate was done for the purpose of safeguarding national security or protecting public safety or public order; and
  - ii. that the doing of the act was justified by that purpose.
- 2. The claimant may, in accordance with rules made under section 91, appeal against the certificate to the Tribunal, that is to say, the tribunal established under section 91.
- 3. If on an appeal under subsection (2) the Tribunal determines—
  - a. that the act specified in the certificate was done for the certified purpose; and
  - b. that the doing of the act was justified by that purpose, the Tribunal shall uphold the certificate; in any other case, the Tribunal shall quash the certificate.
- 4. If—
  - a. the claimant does not appeal against the certificate; or
  - b. the certificate is upheld on appeal, the certificate shall be conclusive evidence of the matters certified by it.
- 5. In this section “act” does not include the making, confirmation or approval of a provision of subordinate legislation.

## 91. The Tribunal

- 1. There shall be a tribunal in relation to which Schedule 11 shall have effect.
- 2. The Lord Chancellor may, after consultation with the Lord Chief Justice of Northern Ireland, make rules—
  - a. for regulating the exercise of rights of appeal to the Tribunal;
  - b. for prescribing the practice and procedure to be followed on or in connection with appeals to the Tribunal, including the mode and burden of proof and admissibility of evidence on such appeals; and
  - c. for other matters preliminary or incidental to or arising out of such appeals.
- 2A. The Lord Chief Justice may nominate any of the following to exercise his functions under subsection (2)—
  - a. the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
  - b. a Lord Justice of Appeal (as defined in section 88 of that Act).

3. Rules under this section may provide that—
  - a. a party to any proceedings before the Tribunal on an appeal; and
  - b. where the Secretary of State is not party to any such proceedings, the Secretary of State,  
has the right to be legally represented in the proceedings, subject to any power conferred on the Tribunal by such rules.
4. Rules under this section may, in particular—
  - a. make provision enabling proceedings before the Tribunal to take place without a party being given full particulars of the reasons for the issue of the certificate which is the subject of the appeal;
  - b. make provision enabling the Tribunal to hold proceedings in the absence of any person, including a party and any legal representative appointed by a party;
  - c. make provision about the functions in proceedings before the Tribunal of persons appointed under subsection (7); and
  - d. make provision enabling the Tribunal to give a party a summary of any evidence taken in his absence.
5. Rules under this section may also include provision—
  - a. enabling any functions of the Tribunal which relate to matters preliminary or incidental to an appeal to be performed by a single member of the Tribunal; or
  - b. conferring on the Tribunal such ancillary powers as the Lord Chancellor thinks necessary for the purposes of the exercise of its functions.
6. In making rules under this section, the Lord Chancellor shall have regard, in particular, to—
  - a. the need to secure that certificates which are the subject of appeals are properly reviewed; and
  - b. the need to secure that information is not disclosed contrary to the public interest.
7. The Attorney General for Northern Ireland may appoint a person to represent the interests of a party to proceedings before the Tribunal in any proceedings from which he and any legal representative of his are excluded.
8. A person appointed under subsection (7)—
  - a. shall be a member of the Bar of Northern Ireland;
  - b. shall not be responsible to the party whose interests he represents.
9. In this section and section 92 “party”, in relation to proceedings on appeal, means the appellant or the person proposing to rely on the certificate which is the subject of the appeal.

## 92. Appeals from the Tribunal

1. Where the Tribunal has determined an appeal under section 90—
  - a. any party to the appeal; or
  - b. where the Secretary of State was not a party to the appeal, the Secretary of State,  
may bring a further appeal to the Court of Appeal in Northern Ireland on any question of law material to the Tribunal's determination.
2. An appeal under this section may be brought only with the leave of the Tribunal or, if such leave is refused, with the leave of the Court of Appeal in Northern Ireland.
3. The Lord Chancellor may, after consultation with the Lord Chief Justice of Northern Ireland, make rules regulating, and prescribing the procedure to be followed on, applications to the Tribunal for leave to appeal under this section.
- 3A. The Lord Chief Justice may nominate any of the following to exercise his functions under subsection (3)—
  - a. the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
  - b. a Lord Justice of Appeal (as defined in section 88 of that Act).
4. Rules under this section may include provision enabling an application for leave to appeal to be heard by a single member of the Tribunal.

## Subheading 5: Miscellaneous

### 93. Parliament Buildings etc

1. Subject to subsection (2), property in relation to which section 31(4) of the Northern Ireland Constitution Act 1973 had effect (property held in trust for Parliament of Northern Ireland etc.) shall on and after the commencement of this section be applied for the purposes of the Assembly or such other purposes as the Department of the Environment ("the Department") may determine.
2. The Secretary of State may require the Department to make available to him in any premises comprised in the property mentioned in subsection (1) (other than the Parliament Buildings at Stormont) such accommodation and facilities as he may specify.
3. The Secretary of State shall in consideration of the use of any such accommodation and facilities make to the Department such payments out of money provided by Parliament as he and the Department may agree.
4. In so far as any of the property mentioned in subsection (1) was not immediately before the commencement of this section vested in the Department it shall vest in the Department at that commencement; and subsections (1) and (2) shall have effect notwithstanding anything in any deed or other instrument relating to the property to which those subsections apply.

### 94. Land purchase annuities etc

1. Subject to subsection (2), land purchase annuities shall be collected by the Department of Agriculture and paid into the Consolidated Fund of Northern

Ireland.

2. A land purchase annuity may be extinguished by, or redeemed with the agreement of, the Department of Agriculture.
3. The Irish Land Purchase Fund shall be wound up and the money standing to its credit shall be paid into the Consolidated Fund of the United Kingdom.
4. In this section “land purchase annuities” means annuities for the repayment of advances made under any enactment relating to land purchase in Northern Ireland.

## Part IX: Supplemental

### 95. Savings for existing laws

1. Except so far as otherwise provided by or under this Act, nothing in this Act shall affect the operation in or in relation to Northern Ireland of any law in force on the appointed day or passed or made before that day, including in particular Orders in Council made under—
  - a. section 69 of the Government of Ireland Act 1920;
  - b. section 1(3) of the Northern Ireland (Temporary Provisions) Act 1972;
  - c. section 38 or 39 of the Northern Ireland Constitution Act 1973; or
  - d. Schedule 1 to the Northern Ireland Act 1974.
2. The laws continued by section 61 of the Government of Ireland Act 1920 shall continue to have effect to the extent provided for by that section (but with any modification necessary for adapting them to this Act).
3. No law made by the Assembly shall have effect so as to prejudice or diminish the rights or privileges of any pensioned officer of a local authority under the provisions of the Local Government (Ireland) Acts 1898 to 1919.
4. No provision of this Act shall—
  - a. affect the operation before the coming into force of that provision of any Northern Ireland legislation; or
  - b. render unlawful anything required or authorised to be done by any Act of Parliament, whenever passed.
5. Schedule 12 (which provides for the construction of certain references in existing laws) shall have effect, but subject to any provision made by or under this Act or by any Act of the Assembly.

### 95A. [Repealed]

### 96. Orders and regulations

1. An order under section 17(4), 25, 26, 27, 31(3) or (6), 38(6), 72(2) or 74(5) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

2. An order under section 4(6), 31(2), 34(4), 35(1), 55, 69C(12), 75(3)(a) or (d) or 80 or Schedule 1—
  - a. shall be made by statutory instrument; and
  - b. shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- 2A. Paragraph (b) of subsection (2) does not apply to an order under section 31(2) if the order declares that the Secretary of State considers it to be expedient for the order to be made without the approval mentioned in that paragraph.
- 2B. An order containing a declaration under subsection (2A)—
  - a. shall be laid before Parliament after being made; and
  - b. shall cease to have effect if it is not approved by a resolution of each House of Parliament before the end of the period of 28 days beginning with the date on which it is made.
- 2C. Subsection (2B)(b) does not prejudice the making of a new order.
- 2D. In calculating the period of 28 days mentioned in subsection (2B)(b), no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
3. Regulations under section 87(4) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.
4. An order under section 61(7)—
  - a. shall be made by statutory instrument; and
  - b. shall not be made unless a draft has been laid before and approved by resolution of the House of Commons.
5. Regulations under section 87(5) shall be subject to negative resolution (within the meaning given by section 41(6) of the Interpretation Act Northern Ireland) 1954).
6. Rules under section 91 or 92—
  - a. shall be made by statutory instrument; and
  - b. shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

## 97. Financial provision

Any expenditure of the Secretary of State in consequence of this Act shall be paid out of money provided by Parliament.

## 98. Interpretation

1. In this Act—
  - “the appointed day” has the meaning given by section 3(1);



- “the Assembly” has the meaning given by section 4(5);
- “the Belfast Agreement” means the agreement reached at multi-party talks on Northern Ireland set out in Command Paper 3883;
- “EU law” means—
  - a. all rights, powers, liabilities, obligations and restrictions created or arising by or under the EU Treaties; and
  - b. all remedies and procedures provided for by or under those Treaties;
- “the Convention rights” has the same meaning as in the Human Rights Act 1998;
- “cross-community support” has the meaning given by section 4(5);
- “designated Nationalist” and “designated Unionist” have the meanings given by section 4(5);
- “document” includes anything in which information is recorded in any form;
- “enactment” includes any provision of this Act and any provision of, or of any instrument made under, Northern Ireland legislation;
- “excepted matter” has the meaning given by section 4(1);
- “financial year”, unless the context otherwise requires, means a year ending with 31st March;
- “functions” includes powers and duties, and “confer”, in relation to functions, includes impose;
- “international obligations” means any international obligations of the United Kingdom other than obligations to observe and implement EU law or the Convention rights;
- “Minister”, unless the context otherwise requires, has the meaning given by section 7(3);
- “Minister of the Crown” includes the Treasury;
- “modify”, in relation to an enactment, includes amend or repeal;
- “Northern Ireland” includes so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Northern Ireland;
- “Northern Ireland legislation” means—

- a. Acts of the Parliament of Ireland;
  - b. Acts of the Parliament of Northern Ireland;
  - c. Orders in Council under section 1(3) of the Northern Ireland (Temporary Provisions) Act 1972;
  - d. Measures of the Northern Ireland Assembly established under section 1 of the Northern Ireland Assembly Act 1973;
  - e. Orders in Council under Schedule 1 to the Northern Ireland Act 1974;
  - f. Acts of the Assembly; and
  - g. Orders in Council under section 85;
- “the Northern Ireland zone” means the sea within British fishery limits which is adjacent to Northern Ireland;
  - “the pledge of office” has the meaning given by section 16C(14);
  - “political opinion” and “religious belief” shall be construed in accordance with Article 2(3) and (4) of the Fair Employment and Treatment (Northern Ireland) Order 1998;
  - “proceedings”, in relation to the Assembly, includes proceedings of any committee;
  - “property” includes rights and interests of any description;
  - “reserved matter” has the meaning given by section 4(1);
  - “the St Andrews Agreement” means the agreement reached on 13 October 2006 at multi-party talks on Northern Ireland held at St Andrews;
  - “subordinate legislation” has the same meaning as in the Interpretation Act 1978 and also includes an instrument made under Northern Ireland legislation;
  - “transferred matter” has the meaning given by section 4(1).
2. For the purposes of this Act, a provision of any enactment, Bill or subordinate legislation deals with the matter, or each of the matters, which it affects otherwise than incidentally.
  3. For the purposes of this Act, a provision of any Act or Bill which modifies a provision of—
    - a. the Agricultural Wages (Regulation) (Northern Ireland) Order 1977;

- b. the Employment Rights (Northern Ireland) Order 1996; or
  - c. the Industrial Tribunals (Northern Ireland) Order 1996,  
which is amended or applied by or under the National Minimum Wage Act 1998 shall not be treated as dealing with a matter falling within the subject-matter of that Act if the modification affects the national minimum wage and other employment matters in the same way.
4. For the purposes of this Act, a provision of an Act of the Assembly or of subordinate legislation discriminates against any person or class of persons if it treats that person or that class less favourably in any circumstances than other persons are treated in those circumstances by the law for the time being in force in Northern Ireland.
  5. For those purposes a person discriminates against another person or a class of persons if he treats that other person or that class less favourably in any circumstances than he treats or would treat other persons in those circumstances.
  6. No provision of an Act of the Assembly or of subordinate legislation, and no making, confirmation or approval of a provision of subordinate legislation, shall be treated for the purposes of this Act as discriminating if the provision has the effect of safeguarding national security or protecting public safety or public order.
  7. No other act done by any person shall be treated for the purposes of this Act as discriminating if—
    - a. the act is done for the purpose of safeguarding national security or protecting public safety or public order; and
    - b. the doing of the act is justified by that purpose.
  8. Her Majesty may by Order in Council determine, or make provision for determining, for such purposes of this Act as may be specified, any boundary between—
    - a. the waters or parts of the sea which are to be treated as adjacent to Northern Ireland; and
    - b. those which are not,  
and may make different determinations or provisions for different purposes.
  9. No recommendation shall be made to Her Majesty to make an Order in Council under subsection (8) unless a draft of the Order has been laid before and approved by resolution of each House of Parliament.

## 99. Minor and consequential amendments

The enactments mentioned in Schedule 13 shall have effect subject to the amendments there specified, being minor amendments and amendments consequential on the provisions of this Act.

## 100. Transitional provisions, savings and repeals

1. The transitional provisions and savings contained in Schedule 14 shall have effect; but nothing in this subsection shall be taken as prejudicing the operation of sections 16 and 17 of the Interpretation Act 1978 (which relate to the effect of repeals).
2. The enactments specified in Schedule 15, which include some that are spent, are hereby repealed to the extent specified in the third column of that Schedule.

## 101. Short title and commencement

1. This Act may be cited as the Northern Ireland Act 1998.
2. The following provisions shall come into force on the day on which this Act is passed—
  - a. sections 3, 55, 86, 93, 96 and 98;
  - b. paragraph 20 of Schedule 13 and section 99 so far as relating to that paragraph;
  - c. in Schedule 15, the repeal of section 31(4) to (6) of the Northern Ireland Constitution Act 1973 and section 100(2) so far as relating to that repeal; and
  - d. this section.
3. The remaining provisions of this Act (except Parts II and III) shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be appointed for different purposes.

## Schedules

### Schedule 1: Polls for the purposes of section 1

1. The Secretary of State may by order direct the holding of a poll for the purposes of section 1 on a date specified in the order.
2. Subject to paragraph 3, the Secretary of State shall exercise the power under paragraph 1 if at any time it appears likely to him that a majority of those voting would express a wish that Northern Ireland should cease to be part of the United Kingdom and form part of a united Ireland.
3. The Secretary of State shall not make an order under paragraph 1 earlier than seven years after the holding of a previous poll under this Schedule.
4.
  1. An order under this Schedule directing the holding of a poll shall specify—
    - a. the persons entitled to vote; and
    - b. the question or questions to be asked.
  2. An order—
    - a. may include any other provision about the poll which the Secretary of State thinks expedient (including the creation of criminal offences); and

• Seccession of territory

- b. may apply (with or without modification) any provision of, or made under, any enactment.

## Schedule 2: Excepted Matters

1. The Crown, including the succession to the Crown and a regency, but not—
  - a. functions of the First Minister and deputy First Minister, the Northern Ireland Ministers or the Northern Ireland departments, or functions in relation to Northern Ireland of any Minister of the Crown;
  - b. property belonging to Her Majesty in right of the Crown or belonging to a government department or held in trust for Her Majesty for the purposes of a government department (other than property used for the purposes of the armed forces of the Crown or the Ministry of Defence Police);
  - c. the foreshore or the sea bed or subsoil or their natural resources so far as vested in Her Majesty in right of the Crown.
2. The Parliament of the United Kingdom; parliamentary elections, including the franchise; disqualifications for membership of that Parliament.
3. International relations, including relations with territories outside the United Kingdom, the European Union (and its institutions) and other international organisations and extradition, and international development assistance and co-operation, but not—
  - a. [Repealed]
  - aa. co-operation between the Police Service of Northern Ireland and the Garda Síochána with respect to any of the following matters—
    - i. transfers, secondments, exchanges or training of officers;
    - ii. communications (including liaison and information technology);
    - iii. joint investigations;
    - iv. disaster planning;
  - b. the exercise of legislative powers so far as required for giving effect to any agreement or arrangement entered into—
    - i. by a Minister or junior Minister participating, by reason of any provision of section 52A or 52B, in a meeting of the North-South Ministerial Council or the British-Irish Council; or
    - ii. by, or in relation to the activities of, any body established for implementing, on the basis mentioned in paragraph 11 of Strand Two of the Belfast Agreement, policies agreed in the North-South Ministerial Council;

- First chamber reserved policy areas
- Second chamber reserved policy areas

- International law
- International organizations
- International human rights treaties

c. observing and implementing international obligations, obligations under the Human Rights Convention and obligations under EU law.

In this paragraph “the Human Rights Convention” means the following as they have effect for the time being in relation to the United Kingdom—

a. the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950; and

b. any Protocols to that Convention which have been ratified by the United Kingdom.

4. The defence of the realm; trading with the enemy; the armed forces of the Crown but not any matter within paragraph 10 of Schedule 3; war pensions; the Ministry of Defence Police.

5. Control of nuclear, biological and chemical weapons and other weapons of mass destruction.

6. Dignities and titles of honour.

7. Treason but not powers of arrest or criminal procedure.

8. Nationality; immigration, including asylum and the status and capacity of persons in the United Kingdom who are not British citizens; free movement of persons within the European Economic Area; issue of travel documents.

9. The following matters—

a. taxes or duties under any law applying to the United Kingdom as a whole;

b. stamp duty levied in Northern Ireland before the appointed day; and

c. taxes or duties substantially of the same character as those mentioned in sub-paragraph (a) or (b).

9A. Child Trust Funds.

9B. [Omitted]

9C. The operation of the Small Charitable Donations Act 2012.

10. The following matters—

a. national insurance contributions;

b. the control and management of the Northern Ireland National Insurance Fund and payments into and out of that Fund;

c. reductions in and deductions from national insurance contributions;

d. national insurance rebates;

e. payments out of public money to money purchase pension schemes;

f. contributions equivalent premiums;

g. rights to return to the state pension scheme.

- Tax bills

Sub-paragraph (a) includes the determination, payment, collection and return of national insurance contributions and matters incidental to those matters.

Sub-paragraph (b) does not include payments out of the Northern Ireland National Insurance Fund which relate to—

- i. the benefits mentioned in section 143(1) of the Social Security Administration (Northern Ireland) Act 1992, or benefits substantially of the same character as those benefits; or
- ii. administrative expenses incurred in connection with matters not falling within sub-paragraphs (a) to (g).

Sub-paragraphs (b) and (e) do not include payments out of or into the Northern Ireland National Insurance Fund under—

- i. section 172(1)(b), (2)(a) or (7)(c) of the Pension Schemes (Northern Ireland) Act 1993; or
- ii. Article 202, 227, 234 or 252 of the Employment Rights (Northern Ireland) Order 1996.

In this paragraph “contributions equivalent premium” has the meaning given by section 51(2) of the Pension Schemes (Northern Ireland) Act 1993.

**10A.** Tax credits under Part 1 of the Tax Credits Act 2002.

**10B.** Health in pregnancy grant, Child benefit and guardian's allowance.

**11.** The appointment and removal of judges of the Court of Judicature of Northern Ireland, holders of offices listed in column 1 of Schedule 3 to the Judicature (Northern Ireland) Act 1978, county court judges, recorders, resident magistrates, lay magistrates, justices of the peace, members of juvenile court panels, coroners, the Chief and other Social Security Commissioners for Northern Ireland, the Chief and other Child Support Commissioners for Northern Ireland and the President and other members of the Lands Tribunal for Northern Ireland.

**11A.** The Supreme Court, but not rights of appeal to the Supreme Court or legal aid for appeals to the Supreme Court.

**12.**

1. Elections, including the franchise, in respect of the Northern Ireland Assembly, the European Parliament and district councils.

2. This paragraph does not apply to—

- a. the division of local government districts into areas (“district electoral areas”) for the purposes of elections to the councils of those districts,
- b. the determination of the names of district electoral areas, or
- c. the determination of the number of councillors to be elected for a district electoral area or a local government district.

**13.** The subject-matter of the Political Parties, Elections and Referendums Act 2000 with the exception of Part IX (political donations etc. by companies).

This paragraph does not include the funding of political parties for the purpose of assisting members of the Northern Ireland Assembly connected with such parties to perform their Assembly duties.

14. Coinage, legal tender and bank notes.
15. The National Savings Bank.
16. The subject-matter of the Protection of Trading Interests Act 1980.
17. National security (including the Security Service, the Secret Intelligence Service and the Government Communications Headquarters); special powers and other provisions for dealing with terrorism or subversion; the subject-matter of—
  - a. the Official Secrets Acts 1911 and 1920;
  - b. Chapter I of Part I of the Regulation of Investigatory Powers Act 2000, except so far as relating to the prevention or detection of serious crime (within the meaning of that Act); and
  - c. the Official Secrets Act 1989, except so far as relating to any information, document or other article protected against disclosure by section 4(2) (crime) and not by any other provision of sections 1 to 4.
18. Nuclear energy and nuclear installations, including nuclear safety, security and safeguards, and liability for nuclear occurrences, but not the subject-matter of—
  - a. section 3(5) to (7) of the Environmental Protection Act 1990 (emission limits); or
  - b. the Radioactive Substances Act 1993.
19. Regulation of sea fishing outside the Northern Ireland zone (except in relation to Northern Ireland fishing boats).  
 In this paragraph “Northern Ireland fishing boat” means a fishing vessel which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Northern Ireland as the port to which the vessel is to be treated as belonging.
20. Regulation of activities in outer space.
- 20A. Regulation of activities in Antarctica (which for these purposes has the meaning given by section 1 of the Antarctic Act 1994).
21. Any matter with which a provision of the Northern Ireland Constitution Act 1973, other than section 36(1)(c), solely or mainly deals.
22. Any matter with which a provision of this Act falling within the following sub-paragraphs solely or mainly deals—
  - a. Parts I and II;
  - b. Part III except sections 19, 20, 22, 23(2) to (4) F16, 28, 28A, 28B, 28D and 28E;
  - c. Part IV except sections 40, 43, 44(8) and 50 and Schedule 5;
  - d. in Part V, sections [F1752A to 52C]F17 and 54;
  - e. Part VI except sections 57(1) and 67;
  - f. in Part VII, sections 69B, 71(1) and (2) and (3) to (5), 74(5) and (6), 76 and 78;



g. in Part VIII, sections 79 to 83 and Schedule 10.

This paragraph does not apply to—

- i. any matter in respect of which it is stated by this Act that provision may be made by Act of the Assembly;
- ii. any matter to which a description specified in this Schedule or Schedule 3 is stated not to apply; or
- iii. any matter falling within a description specified in Schedule 3.

### Schedule 3: Reserved Matters

- 1. The conferral of functions in relation to Northern Ireland on any Minister of the Crown.
- 2. Property belonging to Her Majesty in right of the Crown or belonging to a department of the Government of the United Kingdom or held in trust for Her Majesty for the purposes of such a department (other than property used for the purposes of the armed forces of the Crown or the Ministry of Defence Police).
- 3. Navigation, including merchant shipping, but not harbours or inland waters.
- 4. Civil aviation but not aerodromes.
- 5. The foreshore and the sea bed and subsoil and their natural resources (except so far as affecting harbours); submarine pipe-lines; submarine cables, including any land line used solely for the purpose of connecting one submarine cable with another.
- 6. Domicile.
- 7. The subject-matter of the Postal Services Act 2000.  
This paragraph does not include financial assistance for the provision of services (other than postal services and services relating to postal or money orders) to be provided from public post offices.  
In this paragraph “postal services” and “public post offices” have the same meanings as in the Postal Services Act 2000.
- 7A. The alteration of the number of members of the Assembly returned for each constituency.  
This paragraph does not include—
  - a. the alteration of that number to a number lower than five or higher than six, or
  - b. the provision of different numbers for different constituencies.
- 8. Disqualification for membership of the Assembly; privileges, powers and immunities of the Assembly, its members and committees greater than those conferred by section 50.
- 9.
  - 1. The following matters—
    - a. the subject-matter of the following provisions of the Regulation of Investigatory Powers Act 2000(2)—

• First chamber reserved policy areas  
• Second chamber reserved policy areas

- i. Chapter 1 of Part 1, so far as relating to the prevention or detection of serious crime (within the meaning of that Act), and
    - ii. so far as relating to the prevention or detection of crime (within the meaning of that Act) or the prevention of disorder—
      - aa. Chapter 2 of Part 1, and
      - bb. Parts 2 and 3;
  - b. in relation to the prevention or detection of crime, the subject-matter of Part 3 of the Police Act 1997(3);
  - c. the operation of—
    - i. sections 21 to 40 of, and Schedules 3 and 4 to, the Justice and Security (Northern Ireland) Act 2007(4), and
    - ii. section 102 of, and Schedule 12 to, the Terrorism Act 2000(5);
  - d. in relation to terrorism, the exercise of the Royal prerogative of mercy;
  - e. the operation of sections 1 to 8 of, and Schedule 1 to, the Justice and Security (Northern Ireland) Act 2007 and the operation of Part 1 of the Criminal Procedure and Investigations Act 1996(6) where a certificate under section 1 of the 2007 Act has been issued;
  - f. in relation to the regulation of drugs or other substances through the criminal law (including offences, exceptions to offences, penalties, powers of arrest and detention, prosecutions and the treatment of offenders) or otherwise in relation to the prevention or detection of crime—
    - i. the subject-matter of the Misuse of Drugs Act 1971(7);
    - ii. the subject-matter of sections 12 and 13 of the Criminal Justice (International Co-operation) Act 1990(8);
  - g. the National Crime Agency;
  - h. in relation to prisons, the accommodation of persons in separated conditions on the grounds of security, safety or good order.
2. In sub-paragraph (1)(h) “prisons” includes any institution for the detention of persons because of their involvement, or suspected involvement, in crime.
  3. This paragraph does not include any excepted matters or any matter within paragraph 10 of this Schedule.

9A. [Omitted]

10.

1. The subject-matter of the Public Processions (Northern Ireland) Act 1998(1).
2. In relation to the maintenance of public order, the armed forces of the Crown (including the conferring of powers, authorities, privileges or immunities on members of the armed forces for the purposes of the maintenance of public order).
3. This paragraph does not include any matter within paragraph 17 of Schedule 2.

11. The operation of the temporary provisions, as defined in section 47 of the Police (Northern Ireland) Act 2000(1).

11A. [Omitted]

12.

1. Items for the time being specified in Article 45(1) or (2) of the Firearms (Northern Ireland) Order 2004(1); and the subject-matter of Article 45(10) of that Order.
2. The security of explosives, including—
  - a. the prevention of loss or theft of explosives,
  - b. the prevention of the use of explosives for wrongful purposes, and
  - c. the detection, identification and traceability of explosives.

This sub-paragraph does not include the security of fireworks, or the licensing of shotfirers, or the subject-matter of section 2 of the Explosives Act (Northern Ireland) 1970(2).

13. Civil defence.

14. The subject-matter of Part 2 of the Civil Contingencies Act 2004.

14A. [Omitted]

15. [Omitted]

15A. [Omitted]

16. The Civil Service Commissioners for Northern Ireland.

17. [Omitted]

18. The subject-matter of sections 149 to 151 of and Schedules 5 and 5A to the Social Security Administration (Northern Ireland) Act 1992 (Social Security Advisory Committee and Industrial Injuries Advisory Council).

19. The subject-matter of the Vaccine Damage Payment Scheme.

20. Import and export controls and trade with any place outside the United Kingdom but not—

- a. the furtherance of the trade of Northern Ireland or the protection of traders in Northern Ireland against fraud;

- b. services in connection with, or the regulation of, the quality, insurance, transport, marketing or identification of agricultural or food products, including livestock;
  - c. the prevention of disease or the control of weeds and pests;
  - d. aerodromes and harbours;
  - e. any matter within paragraph 4 of Schedule 2.
21. The subject-matter of the National Minimum Wage Act 1998.
22. The subject-matter of the following provisions of the Pension Schemes Act 1993—
- a. section 6(1), (2)(a)(i), (iii) and (iv) and (b), (3), (4) and (8) (registration of occupational and personal pension schemes);
  - b. section 145 (Pensions Ombudsman).
23. The following matters—
- a. financial services, including investment business, banking and deposit-taking, collective investment schemes and insurance;
  - b. financial markets, including listing and public offers of securities and investments, transfer of securities and insider dealing.
- This paragraph does not include the subject-matter of—
- a. the Industrial and Provident Societies Act Northern Ireland) 1969;
  - b. the Credit Unions (Northern Ireland) Order 1985;
  - c. the Companies (Northern Ireland) Order 1986;
  - d. the Insolvency (Northern Ireland) Order 1989;
  - e. the Companies (Northern Ireland) Order 1990;
  - f. the Companies (No.2) (Northern Ireland) Order 1990;
  - g. the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations (Northern Ireland) 1997.
24. The subject-matter of—
- a. the Building Societies Act 1986;
  - b. the Friendly Societies Act 1992.
25. The subject-matter of the Money Laundering Regulations 2007, but in relation to any type of business.

- 25A. The subject-matter of the Transfer of Funds (Information on the Payer) Regulations 2007, but in relation to any type of business.
- 26. Regulation of anti-competitive practices and agreements; abuse of dominant position; monopolies and mergers.
- 27. Intellectual property but not the subject-matter of Parts I and II of the Plant Varieties Act 1997 (plant varieties and the Plant Varieties and Seeds Tribunal).
- 28. Units of measurement and United Kingdom primary standards.
- 29. Telecommunications; wireless telegraphy; the provision of programme services (within the meaning of the Broadcasting Act 1990); internet services; electronic encryption; the subject matter of Part II of the Wireless Telegraphy Act 1949 (electromagnetic disturbance).
- 30. The National Lottery (except in so far as any matter within Schedule 2 is concerned).
- 31. Xenotransplantation.
- 32. Surrogacy arrangements, within the meaning of the Surrogacy Arrangements Act 1985, including the subject-matter of that Act.
- 33. The subject-matter of the Human Fertilisation and Embryology Act 1990.
- 34. Human genetics.
- 35. Research Councils within the meaning of the Science and Technology Act 1965.
- 35A. The Arts and Humanities Research Council (as defined by section 1 of the Higher Education Act 2004).
- 36. Areas in which industry may qualify for assistance under Part III of the Industrial Development Act 1982.
- 37. Consumer safety in relation to goods.
- 38. Technical standards and requirements in relation to products in pursuance of an obligation under EU law but not standards and requirements in relation to food, agricultural or horticultural produce, fish or fish products, seeds, animal feeding stuffs, fertilisers or pesticides.
- 39. The subject-matter of section 3(5) to (7) of the Environmental Protection Act 1990 (emission limits); the environmental protection technology scheme for research and development in the United Kingdom.
- 40. The subject-matter of—
  - a. the Data Protection Act 1984;
  - b. the Data Protection Act 1998; and
  - c. Council Directive 95/46/EC (protection of individuals with regard to the processing of personal data and free movement of such data).
- 41. Oaths and declarations (including all undertakings and affirmations, by whatever name) other than those within section 77(3).
- 41A.
  - 1. The division of local government districts into areas (“district electoral areas”) for the purposes of elections to the councils of those districts.
  - 2. The determination of the names of district electoral areas.
  - 3. The determination of the number of councillors to be elected for a district electoral area or a local government district.

• Provisions for intellectual property

42. Any matter with which a provision of this Act falling within the following sub-paragraphs solely or mainly deals—
- a. in Part III, sections 19, 20, 28, 28A and 28B;
  - aa. in Part VII, sections 68 to 69A, 69C to 70, 71(2A) to (2C) and Schedule 7;
  - b. in Part VII, sections 73, 74(3) and (4), 75 and 77(1), (2) and (4) to (8) and Schedules 8 and 9;
  - c. in Part VIII, sections 90 to 93 and Schedule 11.
- This paragraph does not apply to—
- i. any matter in respect of which it is stated by this Act that provision may be made by Act of the Assembly; or
  - ii. any matter to which a description specified in this Schedule or Schedule 2 is stated not to apply.

## Schedules 4-9

[Schedules 4-9 Omitted due to length - full text of schedules can be found online at <http://www.legislation.gov.uk/ukpga/1998/47/schedules>]

## Schedule 10: Devolution Issues

### Part 1: Preliminary

1. In this Schedule “devolution issue” means—
- a. a question whether any provision of an Act of the Assembly is within the legislative competence of the Assembly;
  - b. a question whether a purported or proposed exercise of a function by a Minister or Northern Ireland department is, or would be, invalid by reason of section 24;
  - c. a question whether a Minister or Northern Ireland department has failed to comply with any of the Convention rights, any obligation under EU law or any order under section 27 so far as relating to such an obligation; or
  - d. any question arising under this Act about excepted or reserved matters.
2. A devolution issue shall not be taken to arise in any proceedings merely because of any contention of a party to the proceedings which appears to the court or tribunal before which the proceedings take place to be frivolous or vexatious.

## **Part 2: Proceedings in Northern Ireland**

### **Subheading 1: Application of Part II**

3. This Part of this Schedule applies in relation to devolution issues in proceedings in Northern Ireland.

### **Subheading 2: Institution of proceedings**

4.
  1. Proceedings for the determination of a devolution issue may be instituted or defended by the Attorney General or the Attorney General for Northern Ireland.
  2. The First Minister and the deputy First Minister acting jointly may defend any such proceedings.
  3. This paragraph is without prejudice to any power to institute or defend proceedings exercisable apart from this paragraph by any person.

### **Subheading 3: Notice of devolution issue**

5. A court or tribunal shall order notice of any devolution issue which arises in any proceedings before it to be given to the Attorney General, the Attorney General for Northern Ireland, the First Minister and the deputy First Minister (unless the person to whom the notice would be given is a party to the proceedings).
6. A person to whom notice is given in pursuance of paragraph 5 or, where such notice is given to the First Minister and the deputy First Minister, those Ministers acting jointly may take part as a party in the proceedings, so far as they relate to a devolution issue.

### **Subheading 4: Reference of devolution issue to Court of Appeal**

7. A court, other than the Supreme Court or the Court of Appeal in Northern Ireland, may refer any devolution issue which arises in any proceedings before it to the Court of Appeal in Northern Ireland.
8. A tribunal from which there is no appeal shall refer any devolution issue which arises in any proceedings before it to the Court of Appeal in Northern Ireland; and any other tribunal may make such a reference.

### **Subheading 5: References from Court of Appeal to Supreme Court**

9. The Court of Appeal in Northern Ireland may refer any devolution issue which arises in proceedings before it (otherwise than on a reference under paragraph 7 or 8) to the Supreme Court.

## **Subheading 6: Appeals from Court of Appeal to Supreme Court**

10. An appeal against a determination of a devolution issue by the Court of Appeal in Northern Ireland on a reference under paragraph 7 or 8 shall lie to the Supreme Court, but only with permission of the Court of Appeal in Northern Ireland or, failing such permission, with permission of the Supreme Court.

## **Part 3: Proceedings in England and Wales**

### **Subheading 1: Application of Part III**

11. This Part of this Schedule applies in relation to devolution issues in proceedings in England and Wales.

### **Subheading 2: Institution of proceedings**

12.
  1. Proceedings for the determination of a devolution issue may be instituted or defended by the Attorney General.
  2. The Attorney General for Northern Ireland or the First Minister and the deputy First Minister acting jointly may defend any such proceedings.
  3. This paragraph is without prejudice to any power to institute or defend proceedings exercisable apart from this paragraph by any person.

### **Subheading 3: Notice of devolution issue**

13. A court or tribunal shall order notice of any devolution issue which arises in any proceedings before it to be given to the Attorney General, the Attorney General for Northern Ireland, the First Minister and the deputy First Minister (unless the person to whom the notice would be given is a party to the proceedings).
14. A person to whom notice is given in pursuance of paragraph 13 or, where such notice is given to the First Minister and the deputy First Minister, those Ministers acting jointly may take part as a party in the proceedings, so far as they relate to a devolution issue.

### **Subheading 4: Reference of devolution issue to High Court or Court of Appeal**

15. A magistrates' court may refer any devolution issue which arises in proceedings (other than criminal proceedings) before it to the High Court.
16.
  1. A court may refer any devolution issue which arises in proceedings (other than criminal proceedings) before it to the Court of Appeal.
  2. Sub-paragraph (1) does not apply to—
    - a. a magistrates' court, the Court of Appeal or the Supreme Court; or



- b. the High Court if the devolution issue arises in proceedings on a reference under paragraph 15.
- 17. A tribunal from which there is no appeal shall refer any devolution issue which arises in proceedings before it to the Court of Appeal; and any other tribunal may make such a reference.
- 18. A court, other than the Supreme Court or the Court of Appeal, may refer any devolution issue which arises in criminal proceedings before it to—
  - a. the High Court (if the proceedings are summary proceedings); or
  - b. the Court of Appeal (if the proceedings are proceedings on indictment).

### **Subheading 5: References from Court of Appeal to Supreme Court**

- 19. The Court of Appeal may refer any devolution issue which arises in proceedings before it (otherwise than on a reference under paragraph 16, 17 or 18) to the Supreme Court.

### **Subheading 6: Appeals from superior courts to Supreme Court**

- 20. An appeal against a determination of a devolution issue by the High Court or the Court of Appeal on a reference under paragraph 15, 16, 17 or 18 shall lie to the Supreme Court, but only with permission of the High Court or the Court of Appeal or, failing such permission, with permission of the Supreme Court.

## **Part 4: Proceedings in Scotland**

### **Subheading 1: Application of Part IV**

- 21. This Part of this Schedule applies in relation to devolution issues in proceedings in Scotland.

### **Subheading 2: Institution of proceedings**

- 22. 1. Proceedings for the determination of a devolution issue may be instituted or defended by the Advocate General for Scotland.
- 2. The Attorney General for Northern Ireland or the First Minister and the deputy First Minister acting jointly may defend any such proceedings.
- 3. This paragraph is without prejudice to any power to institute or defend proceedings exercisable apart from this paragraph by any person.

### **Subheading 3: Intimation of devolution issue**

- 23. Intimation of any devolution issue which arises in any proceedings before a court or tribunal shall be given to the Advocate General for Scotland, the Attorney General for Northern Ireland, the First Minister and the deputy First Minister (unless the person to whom the intimation would be given is a party to the proceedings).

24. A person to whom intimation is given in pursuance of paragraph 23 or, where such intimation is given to the First Minister and the deputy First Minister, those Ministers acting jointly may take part as a party in the proceedings, so far as they relate to a devolution issue.

#### **Subheading 4: Reference of devolution issue to higher court**

25. A court, other than the Supreme Court or any court consisting of three or more judges of the Court of Session, may refer any devolution issue which arises in proceedings (other than criminal proceedings) before it to the Inner House of the Court of Session.
26. A tribunal from which there is no appeal shall refer any devolution issue which arises in proceedings before it to the Inner House of the Court of Session; and any other tribunal may make such a reference.
27. A court, other than any court consisting of two or more judges of the High Court of Justiciary, may refer any devolution issue which arises in criminal proceedings before it to the High Court of Justiciary.

#### **Subheading 5: References from superior courts to Supreme Court**

28. Any court consisting of three or more judges of the Court of Session may refer any devolution issue which arises in proceedings before it (otherwise than on a reference under paragraph 25 or 26) to the Supreme Court.
29. Any court consisting of two or more judges of the High Court of Justiciary may refer any devolution issue which arises in proceedings before it (otherwise than on a reference under paragraph 27) to the Supreme Court.

#### **Subheading 6: Appeals from superior courts to Supreme Court**

30. An appeal against a determination of a devolution issue by the Inner House of the Court of Session on a reference under paragraph 25 or 26 shall lie to the Supreme Court.
31. An appeal against a determination of a devolution issue by—
- a. a court of two or more judges of the High Court of Justiciary (whether in the ordinary course of proceedings or on a reference under paragraph 27); or
  - b. a court of three or more judges of the Court of Session from which there is no appeal to the Supreme Court apart from this paragraph,
- shall lie to the Supreme Court, but only with permission of the court concerned or, failing such permission, with permission of the Supreme Court.

### **Part 5: General**

#### **Subheading 1**

[Repealed]

32. [Repealed]

## Subheading 2: Direct references to Supreme Court

33. The Attorney General, the Attorney General for Northern Ireland, the First Minister and the deputy First Minister acting jointly or the Advocate General for Scotland may require any court or tribunal to refer to the Supreme Court any devolution issue which has arisen in proceedings before it to which he is or they are a party.
34. The Attorney General, the Attorney General for Northern Ireland, the First Minister and the deputy First Minister acting jointly or the Advocate General for Scotland may refer to the Supreme Court any devolution issue which is not the subject of proceedings.
35.
  1. This paragraph applies where a reference is made under paragraph 34 in relation to a devolution issue which relates to the proposed exercise of a function by a Northern Ireland Minister or department.
  2. The person making the reference shall notify the Northern Ireland Minister or department of that fact.
  3. No Northern Ireland Minister or department shall exercise the function in the manner proposed during the period beginning with the receipt of the notification under sub-paragraph (2) and ending with the reference being decided or otherwise disposed of.
  4. Proceedings relating to any possible failure by a Northern Ireland Minister or department to comply with sub-paragraph (3) may be instituted by the Attorney General for Northern Ireland.
  5. Sub-paragraph (4) is without prejudice to any power to institute proceedings exercisable apart from that sub-paragraph by any person.

## Subheading 3: Delegation by First Ministers

36. The First Minister and the deputy First Minister acting jointly may determine that a Minister or Northern Ireland department specified in the determination may exercise on their behalf, in relation to any proceedings under this Schedule so specified, any power conferred on them by this Schedule.

## Subheading 4: Expenses

37.
  1. A court or tribunal before which any proceedings take place may take account of any additional expense of the kind mentioned in sub-paragraph (3) in deciding any question as to costs or expenses.
  2. In deciding any such question, the court or tribunal may award the whole or part of the additional expense as costs or expenses to the party who incurred it (whatever the decision on the devolution issue).
  3. The additional expense is any additional expense which the court or tribunal considers that any party to the proceedings has incurred as a result of the participation of any person in pursuance of paragraph 6, 14 or 24.

## Subheading 5: Procedure of courts and tribunals

38. Any power to make provision for regulating the procedure before any court or tribunal shall include power to make provision for the purposes of this Schedule including, in particular, provision—
- a. for prescribing the stage in the proceedings at which a devolution issue is to be raised or referred;
  - b. for the staying or sisting of proceedings for the purpose of any proceedings under this Schedule; and
  - c. for determining the manner in which and the time within which any notice or intimation is to be given.

## Subheading 6: Bail and legal aid in criminal proceedings

- 39.
1. Sub-paragraph (3) applies where a devolution issue arises in proceedings against a person (“the defendant”) for an offence and the issue is referred to the Court of Appeal in Northern Ireland under paragraph 7.
  2. Sub-paragraphs (3) and (4) apply where such an issue arises in such proceedings and—
    - a. the issue is referred by the Court of Appeal to the Supreme Court under paragraph 9 or 33; or
    - b. the issue is determined by the Court of Appeal under paragraph 7 and—
      - i. an appeal to the Supreme Court against the determination is brought under paragraph 10; or
      - ii. an application for leave to bring such an appeal is made to the Court of Appeal under that paragraph.
  3. The Court of Appeal may, if it thinks fit, on the application of the defendant, admit him to bail pending the determination of the reference, appeal or application.
  4. The Court of Appeal may at any time when it appears to the Court of Appeal—
    - a. that it is desirable in the interests of justice that the defendant should have legal aid; and
    - b. that he has not sufficient means to obtain that aid,assign to him a solicitor and counsel, or counsel only, in the reference, appeal or application.

5. If, on a question of granting a person free legal aid under sub-paragraph (4), there is a doubt—
  - a. whether it is desirable in the interests of justice that he should have legal aid; or
  - b. whether he has sufficient means to obtain that aid,

the doubt shall be resolved in favour of granting him free legal aid.
6. The fees of any counsel, and the expenses and fees of any solicitor, assigned to a person under sub-paragraph (4) shall be defrayed, up to an amount allowed by the Master (Taxing Office), by the Lord Chancellor.
40. Where a devolution issue arises as mentioned in sub-paragraph (1) of paragraph 39 and—
  - a. the issue is referred to the Supreme Court under paragraph 9 or 33; or
  - b. the issue is determined by the Court of Appeal in Northern Ireland under paragraph 7 and—
    - i. an appeal to the Supreme Court against the determination is brought under paragraph 10; or
    - ii. an application for special leave to bring such an appeal is made to the Supreme Court under that paragraph,

sub-paragraphs (3) to (6) of paragraph 39 shall apply as if the references to the Court of Appeal were references to the Supreme Court.

## Subheading 7: Interpretation

41. Any duty or power conferred by this Schedule to refer a devolution issue to a court shall be construed as a duty or power to refer the issue to the court for decision.

**Schedules 11-15: [Schedules 11-15 Omitted due to length - full text of schedules can be found online at <http://www.legislation.gov.uk/ukpga/1998/47/schedules>]**

## Scotland Act 1998

### Preamble

An Act to provide for the establishment of a Scottish Parliament and Administration and other changes in the government of Scotland; to provide for changes in the constitution and functions of certain public authorities; to provide for the variation of the basic rate of income tax in relation to income of Scottish taxpayers in

accordance with a resolution of the Scottish Parliament; to amend the law about parliamentary constituencies in Scotland; and for connected purposes.

[19th November 1998]

• Source of constitutional authority

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## **Part I: The Scottish Parliament**

### **Subheading 1: The Scottish Parliament**

#### **1. The Scottish Parliament**

1. There shall be a Scottish Parliament.
2. One member of the Parliament shall be returned for each constituency (under the simple majority system) at an election held in the constituency.
3. Members of the Parliament for each region shall be returned at a general election under the additional member system of proportional representation provided for in this Part and vacancies among such members shall be filled in accordance with this Part.
4. The validity of any proceedings of the Parliament is not affected by any vacancy in its membership.
5. Schedule 1 (which makes provision for the constituencies and regions for the purposes of this Act and the number of regional members) shall have effect.

### **Subheading 2: General elections**

#### **2. Ordinary general elections**

1. The day on which the poll at the first ordinary general election for membership of the Parliament shall be held, and the day, time and place for the meeting of the Parliament following that poll, shall be appointed by order made by the Secretary of State.
2. The poll at subsequent ordinary general elections shall be held on the first Thursday in May in the fourth calendar year following that in which the previous ordinary general election was held, unless the day of the poll is determined by a proclamation under subsection (5).
3. If the poll is to be held on the first Thursday in May, the Parliament—
  - a. is dissolved by virtue of this section at the beginning of the minimum period which ends with that day, and
  - b. shall meet within the period of seven days beginning immediately after the day of the poll.
4. In subsection (3), “the minimum period” means the period determined in accordance with an order under section 12(1).

• Head of state powers

5. If the Presiding Officer proposes a day for the holding of the poll which is not more than one month earlier, nor more than one month later, than the first Thursday in May, Her Majesty may by proclamation under the Scottish Seal—
  - a. dissolve the Parliament,
  - b. require the poll at the election to be held on the day proposed, and
  - c. require the Parliament to meet within the period of seven days beginning immediately after the day of the poll.
6. In this Act “the Scottish Seal” means Her Majesty’s Seal appointed by the Treaty of Union to be kept and used in Scotland in place of the Great Seal of Scotland.

### 3. Extraordinary general elections

1. The Presiding Officer shall propose a day for the holding of a poll if—
  - a. the Parliament resolves that it should be dissolved and, if the resolution is passed on a division, the number of members voting in favour of it is not less than two-thirds of the total number of seats for members of the Parliament, or
  - b. any period during which the Parliament is required under section 46 to nominate one of its members for appointment as First Minister ends without such a nomination being made.
2. If the Presiding Officer makes such a proposal, Her Majesty may by proclamation under the Scottish Seal—
  - a. dissolve the Parliament and require an extraordinary general election to be held,
  - b. require the poll at the election to be held on the day proposed, and
  - c. require the Parliament to meet within the period of seven days beginning immediately after the day of the poll.
3. If a poll is held under this section within the period of six months ending with the day on which the poll at the next ordinary general election would be held (disregarding section 2(5)), that ordinary general election shall not be held.
4. Subsection (3) does not affect the year in which the subsequent ordinary general election is to be held.

• Head of state powers

### 4. Calculating time for meeting of the Parliament

In calculating any period of days for the purposes of section 2(3)(b) or (5)(c) or section 3(2)(c), Saturday, Sunday, Christmas Eve, Christmas Day, Good Friday, a bank holiday in Scotland or a day appointed for public thanksgiving or mourning shall be disregarded.

### 5. Candidates

1. At a general election, the candidates may stand for return as constituency members or regional members.

2. A person may not be a candidate to be a constituency member for more than one constituency.
3. The candidates to be regional members shall be those included in a list submitted under subsection (4) or individual candidates.
4. Any registered political party may submit to the regional returning officer a list of candidates to be regional members for a particular region (referred to in this Act, in relation to the region, as the party's "regional list").
5. A registered political party's regional list has effect in relation to the general election and any vacancy occurring among the regional members after that election and before the next general election.
6. Not more than twelve persons may be included in the list (but the list may include only one person).
7. A registered political party's regional list must not include a person—
  - a. who is included in any other list submitted under subsection (4) for the region or any list submitted under that subsection for another region,
  - b. who is an individual candidate to be a regional member for the region or another region,
  - c. who is a candidate to be a constituency member for a constituency not included in the region, or
  - d. who is a candidate to be a constituency member for a constituency included in the region but is not a candidate of that party.
8. A person may not be an individual candidate to be a regional member for a particular region if he is—
  - a. included in a list submitted under subsection (4) for the region or another region,
  - b. an individual candidate to be a regional member for another region,
  - c. a candidate to be a constituency member for a constituency not included in the region, or
  - d. a candidate of any registered political party to be a constituency member for a constituency included in the region.
9. In this Act, "registered political party" means a party registered under Part II of the Political Parties, Elections and Referendums Act 2000.

## 6. Poll for regional members

1. This section and sections 7 and 8 are about the return of regional members at a general election.
2. In each of the constituencies for the Parliament, a poll shall be held at which each person entitled to vote as elector may give a vote (referred to in this Act as a "regional vote") for—
  - a. a registered political party which has submitted a regional list, or



- b. an individual candidate to be a regional member for the region.
3. The right conferred on a person by subsection (2) is in addition to any right the person may have to vote in any poll for the return of a constituency member.

## 7. Calculation of regional figures

1. The persons who are to be returned as constituency members for constituencies included in the region must be determined before the persons who are to be returned as the regional members for the region.
2. For each registered political party which has submitted a regional list, the regional figure for the purposes of section 8 is—
  - a. the total number of regional votes given for the party in all the constituencies included in the region, divided by
  - b. the aggregate of one plus the number of candidates of the party returned as constituency members for any of those constituencies.
3. Each time a seat is allocated to the party under section 8, that figure shall be recalculated by increasing (or further increasing) the aggregate in subsection (2)(b) by one.
4. For each individual candidate to be a regional member for the region, the regional figure for the purposes of section 8 is the total number of regional votes given for him in all the constituencies included in the region.

## 8. Allocation of seats to regional members

1. The first regional member seat shall be allocated to the registered political party or individual candidate with the highest regional figure.
2. The second and subsequent regional member seats shall be allocated to the registered political party or individual candidate with the highest regional figure, after any recalculation required by section 7(3) has been carried out.
3. An individual candidate already returned as a constituency or regional member shall be disregarded.
4. Seats for the region which are allocated to a registered political party shall be filled by the persons in the party's regional list in the order in which they appear in the list.
5. For the purposes of this section and section 10, a person in a registered political party's regional list who is returned as a member of the Parliament shall be treated as ceasing to be in the list (even if his return is void).
6. Once a party's regional list has been exhausted (by the return of persons included in it as constituency members or by the previous application of subsection (1) or (2)) the party shall be disregarded.
7. If (on the application of subsection (1) or any application of subsection (2)) the highest regional figure is the regional figure of two or more parties or individual candidates,
  - a. the subsection in question shall apply to each of them; or
  - b. if paragraph (a) would result in more than the correct number of seats for the region being allocated, the subsection in question shall apply as if the regional figure for each of those parties or candidates had been adjusted in accordance with subsection (8).

8. The regional figure for a party or candidate is adjusted in accordance with this subsection by—
  - a. adding one vote to the total number of regional votes given for the party or candidate in all the constituencies included in the region; and
  - b. (in the case of a party) recalculating the regional figure accordingly.
9. If, on the application of the subsection in question in accordance with subsection (7)(b), seats would be allocated to two or more parties or individual candidates and that would result in more than the correct number of seats for the region being allocated, the regional returning officer shall decide between them by lot.

### Subheading 3: Vacancies

#### 9. Constituency vacancies

1. Where the seat of a constituency member is vacant, an election shall be held to fill the vacancy (subject to subsection (4)).
2. The date of the poll shall be fixed by the Presiding Officer.
3. The date shall fall within the period of three months—
  - a. beginning with the occurrence of the vacancy, or
  - b. if the vacancy does not come to the notice of the Presiding Officer within the period of one month beginning with its occurrence, beginning when it does come to his notice.
4. The election shall not be held if the latest date for holding the poll would fall within the period of three months ending with the day on which the poll at the next ordinary general election would be held (disregarding section 2(5)).
5. For the purposes of this section, the date on which a vacancy is to be treated as occurring shall be determined under standing orders.
6. A person may not be a candidate at such an election if he is a member of the Parliament or a candidate in another election to fill a vacancy.

#### 10. Regional vacancies

1. This section applies where the seat of a regional member is vacant.
2. If the regional member was returned as an individual candidate, or the vacancy is not filled in accordance with the following provisions, the seat shall remain vacant until the next general election.
3. If the regional member was returned (under section 8 or this section) from a registered political party's regional list, the regional returning officer shall notify the Presiding Officer of the name of the person who is to fill the vacancy.
4. The regional returning officer shall ascertain from that party's regional list the name and address of the person whose name appears highest on that list ("the first choice") and shall take such steps as appear to him to be reasonable to contact the first choice to ask whether he will—
  - a. state in writing that he is willing and able to serve as a regional member for that region; and

- b. deliver a certificate signed by or on behalf of the nominating officer of the registered party which submitted that regional list stating that the first choice may be returned as a regional member from that list.

**4A. Where—**

- a. within such period as the regional returning officer considers reasonable—
  - i. he decides that the steps he has taken to contact the first choice have been unsuccessful; or
  - ii. he has not received from that person the statement and certificate referred to in subsection (4); or
- b. the first choice has—
  - i. stated in writing that he is not willing to serve as a regional member for that region; or

- ii. failed to deliver the certificate referred to in subsection (4)(b),

the regional returning officer shall repeat the procedure required by subsection (4) in respect of the person (if any) whose name appears next in that list (“the second choice”) or, where paragraph (a) or (b) of this subsection applies in respect of that person, in respect of the person (if any) whose name appears next highest after the second choice in that list; and the regional returning officer shall continue to repeat the procedure until the regional returning officer has notified the Presiding Officer of the name of the person who is to fill the vacancy or the names in the list are exhausted.

5. Where a person whose name appears on that list provides the statement and certificate referred to in subsection (4), the regional returning officer shall notify to the Presiding Officer the name of that person.

**5A. Where—**

- a. under subsection (4A), the regional returning officer has asked the second choice or a subsequent choice the questions referred to in subsection (4); and
- b. the person who was asked those questions on an earlier occasion then provides the statement and certificate referred to in that subsection,

that statement and certificate shall have no effect unless and until the circumstances described in paragraph (a) or (b) of subsection (4A) apply in respect of the second choice or, as the case may be, of the subsequent choice.

6. Where a person’s name has been notified under subsection (3), this Act shall apply as if he had been declared to be returned as a regional member for the region on the day on which notification of his name was received by the Presiding Officer.
7. For the purposes of this section, the date on which a vacancy is to be treated as occurring shall be determined under standing orders.

## Subheading 4: Franchise and conduct of elections

### 11. Electors

1. The persons entitled to vote as electors at an election for membership of the Parliament held in any constituency are those who on the day of the poll—
  - a. would be entitled to vote as electors at a local government election in an electoral area falling wholly or partly within the constituency, and
  - b. are registered in the register of local government electors at an address within the constituency.
2. A person is not entitled to vote as elector in any constituency—
  - a. more than once at a poll for the return of a constituency member, or
  - b. more than once at a poll for the return of regional members, or to vote as elector in more than one constituency at a general election.

### 12. Power of the Scottish Ministers to make provision about elections

1. The Scottish Ministers may by order make provision as to—
  - a. the conduct of elections for membership of the Parliament, and
  - b. the questioning of such an election and the consequences of irregularities,
  - c. [Omitted]
2. The provision that may be made under subsection (1)(a) does not include provision that may be made by the Secretary of State under section 12A but, subject to that, includes, in particular, provision—
  - a. about supplying or otherwise dealing with a register of electors,
  - b. [Omitted]
  - c. about the limitation of the election expenses of candidates, and
  - d. for the combination of polls at elections for membership of the Parliament with polls at other elections, if the conduct of the other election falls within the legislative competence of the Parliament.
  - e. [Omitted]
  - f. [Omitted]
3. [Omitted]

4. An order under subsection (1) may—
  - a. apply, with or without modifications or exceptions, any provision made by or under the Representation of the People Acts or the European Parliamentary Elections Act 2002 or by any other enactment relating to parliamentary elections, European Parliamentary elections or local government elections,
  - b. [Omitted]
  - c. [Omitted]
5. The return of a member of the Parliament at an election may be questioned only under Part III of the Representation of the People Act 1983 as applied by an order under subsection (1).
6. For the purposes of this Act, the regional returning officer for any region is the person designated as such in accordance with an order made by the Scottish Ministers under this subsection.
7. Before making an order under this section the Scottish Ministers must consult the Secretary of State.

## **12A. Power of the Secretary of State to make provision about elections**

1. The Secretary of State may by regulations make provision—
  - a. about the registration of electors,
  - b. for modifying the application of section 7(1) where the poll at an election for the return of a constituency member is abandoned (or notice of it is countermanded),
  - c. for modifying section 8(7) to ensure the allocation of the correct number of seats for the region, and
  - d. as to the return of members of the Parliament otherwise than at an election.
2. The provision that may be made under subsection (1)(a) includes—
  - a. provision for disregarding alterations in a register of electors, and
  - b. other provision about, or for purposes connected with, the content of a register or the effect of registration,  
but subject to that it does not include provision about supplying or otherwise dealing with a register.
3. The provision that may be made under subsection (1)(d) includes, in particular, provision modifying section 10(4) and (5).

4. Regulations under subsection (1) may—
  - a. apply, with or without modifications or exceptions, any provision made by or under the Representation of the People Acts or the European Parliamentary Elections Act 2002 or by any other enactment relating to parliamentary elections, European Parliamentary elections or local government elections, and
  - b. so far as may be necessary in consequence of any provision made by this Act or regulations under subsection (1), modify any provision made by any enactment relating to the registration of parliamentary electors or local government electors.
5. Before making regulations under this section the Secretary of State must consult the Scottish Ministers.

## **Subheading 5: Duration of membership**

### **13. Term of office of members**

The term of office of a member of the Parliament begins on the day on which the member is declared to be returned and ends with the dissolution of the Parliament.

### **14. Resignation of members**

A member of the Parliament may at any time resign his seat by giving notice in writing to the Presiding Officer.

## **Subheading 6: Disqualification**

### **15. Disqualification from membership of the Parliament**

1. A person is disqualified from being a member of the Parliament (subject to section 16) if—
  - a. he is disqualified from being a member of the House of Commons under paragraphs (a) to (e) of section 1(1) of the House of Commons Disqualification Act 1975 (judges, civil servants, members of the armed forces, members of police forces and members of foreign legislatures),
  - b. he is disqualified otherwise than under that Act (either generally or in relation to a particular parliamentary constituency) from being a member of the House of Commons or from sitting and voting in it,
  - c. [Repealed]
  - d. he is an office-holder of a description specified in an Order in Council made by Her Majesty under this subsection.
2. An office-holder of a description specified in an Order in Council made by Her Majesty under this subsection is disqualified from being a member of the Parliament for any constituency or region of a description specified in the Order in relation to the office-holder.

3. In this section “office-holder” includes employee or other post-holder.

## 16. Exceptions and relief from disqualification

1. A person is not disqualified from being a member of the Parliament merely because—
  - a. he is a peer (whether of the United Kingdom, Great Britain, England or Scotland), or
  - b. he is a Lord Spiritual.
2. A citizen of the European Union who is resident in the United Kingdom is not disqualified from being a member of the Parliament merely because of section 3 of the Act of Settlement (disqualification of persons born outside the United Kingdom other than certain Commonwealth citizens and citizens of the Republic of Ireland).
3. Subsection (4) applies where a person was, or is alleged to have been, disqualified from being a member of the Parliament (either generally or in relation to a particular constituency or region) on any ground other than one falling within section 15(1)(b).
4. The Parliament may resolve to disregard any disqualification incurred by that person on the ground in question if it considers that—
  - a. the ground has been removed, and
  - b. it is proper to disregard any disqualification so incurred.
5. A resolution under this section shall not—
  - a. affect any proceedings under Part III of the Representation of the People Act 1983 as applied by an order under section 12, or
  - b. enable the Parliament to disregard any disqualification which has been established in such proceedings or in proceedings under section 18.

## 17. Effect of disqualification

1. If a person who is disqualified from being a member of the Parliament or from being a member for a particular constituency or region is returned as a member of the Parliament or (as the case may be) as a member for the constituency or region, his return shall be void and his seat vacant.
2. If a member of the Parliament becomes disqualified from being a member of the Parliament or from being a member for the particular constituency or region for which he is sitting, he shall cease to be a member of the Parliament (so that his seat is vacant).
3. Subsections (1) and (2) have effect subject to any resolution of the Parliament under section 16.
4. Subsection (2) also has effect subject to section 427 of the Insolvency Act 1986 (sequestration etc); and where, in consequence of that section, the seat of a disqualified member of the Parliament is not vacant he shall not cease to be a member of the Parliament until his seat becomes vacant but—
  - a. he shall not participate in any proceedings of the Parliament, and

- b. any of his other rights and privileges as a member of the Parliament may be withdrawn by a resolution of the Parliament.
5. The validity of any proceedings of the Parliament is not affected by the disqualification of any person from being a member of the Parliament or from being a member for the constituency or region for which he purports to sit.

## 18. Judicial proceedings as to disqualification

1. Any person who claims that a person purporting to be a member of the Parliament is disqualified or has been disqualified at any time since being returned may apply to the Court of Session for a declarator to that effect.
2. An application in respect of any person may be made whether the grounds on which it is made are alleged to have subsisted when the person was returned or to have arisen subsequently.
3. No declarator shall be made—
  - a. on grounds which subsisted when the person was returned, if an election petition is pending or has been tried in which the disqualification on those grounds of the person concerned is or was in issue, or
  - b. on any ground, if a resolution under section 16 requires that any disqualification incurred on that ground by the person concerned is to be disregarded.
4. The person in respect of whom an application is made shall be the defender.
5. The applicant shall give such caution for the expenses of the proceedings as the Court of Session may direct; but any such caution shall not exceed £5,000 or such other sum as the Scottish Ministers may by order specify.
6. The decision of the court on an application under this section shall be final.
7. In this section “disqualified” means disqualified from being a member of the Parliament or from being a member for the constituency or region for which the person concerned purports to sit.

## Subheading 7: Presiding Officer and administration

### 19. Presiding Officer

1. The Parliament shall, following a general election, elect from among its members a Presiding Officer and two deputies.
  - 1A. The Parliament must do so—
    - a. before it conducts any other proceedings, except the taking by its members of the oath of allegiance (see section 84), and
    - b. in any event, within the period of 14 days beginning immediately after the day of the poll at the election.
  - 1B. The Parliament may, at any time, elect from among its members one or more additional deputies.



2. A person elected Presiding Officer or deputy shall hold office until the conclusion of the next election for Presiding Officer under subsection (1) unless he previously resigns, ceases to be a member of the Parliament otherwise than by virtue of a dissolution or is removed from office by resolution of the Parliament.
- 2A. But standing orders may make provision for additional deputies to hold office for a shorter time than provided by subsection (2).
3. If the Presiding Officer or a deputy elected under subsection (1) ceases to hold office before the Parliament is dissolved, the Parliament shall elect another from among its members to fill his place.
4. The Presiding Officer's functions may be exercised by a deputy if the office of Presiding Officer is vacant or the Presiding Officer is for any reason unable to act.
5. The Presiding Officer may (subject to standing orders) authorise any deputy to exercise functions on his behalf.
6. Standing orders may include provision as to the participation (including voting) of the Presiding Officer and deputies in the proceedings of the Parliament.
7. The validity of any act of the Presiding Officer or a deputy is not affected by any defect in his election.

## 20. Clerk of the Parliament

1. There shall be a Clerk of the Parliament.
2. The Clerk shall be appointed by the Scottish Parliamentary Corporate Body (established under section 21).
3. The Clerk's functions may be exercised by any Assistant Clerk if the office of Clerk is vacant or the Clerk is for any reason unable to act.
4. The Clerk may authorise any Assistant Clerk or other member of the staff of the Parliament to exercise functions on his behalf.

## 21. Scottish Parliamentary Corporate Body

1. There shall be a body corporate to be known as "The Scottish Parliamentary Corporate Body" (referred to in this Act as the Parliamentary corporation) to perform the functions conferred on the corporation by virtue of this Act or any other enactment.
2. The members of the corporation shall be—
  - a. the Presiding Officer, and
  - b. at least four members of the Parliament appointed in accordance with standing orders.
3. The corporation shall provide the Parliament, or ensure that the Parliament is provided, with the property, staff and services required for the Parliament's purposes.
4. The Parliament may give special or general directions to the corporation for the purpose of or in connection with the exercise of the corporation's functions.
5. Any property or liabilities acquired or incurred in relation to matters within the general responsibility of the corporation to which (apart from this subsection) the Parliament would be entitled or subject shall be treated for all purposes as property or (as the case may be) liabilities of the corporation.
6. Any expenses of the corporation shall be payable out of the Scottish Consolidated Fund.

7. Any sums received by the corporation shall be paid into that Fund, subject to any provision made by or under an Act of the Scottish Parliament for the disposal of or accounting for such sums.
8. Schedule 2 (which makes further provision about the corporation) shall have effect.

## Subheading 8: Proceedings etc

### 22. Standing orders

1. The proceedings of the Parliament shall be regulated by standing orders.
2. Schedule 3 (which makes provision as to how certain matters are to be dealt with by standing orders) shall have effect.

### 23. Power to call for witnesses and documents

1. The Parliament may require any person—
  - a. to attend its proceedings for the purpose of giving evidence, or
  - b. to produce documents in his custody or under his control, concerning any subject for which any member of the Scottish Executive has general responsibility.
2. Subject to subsection (3), the Parliament may impose such a requirement on a person outside Scotland only in connection with the discharge by him of—
  - a. functions of the Scottish Administration, or
  - b. functions of a Scottish public authority or cross-border public authority, or Border rivers functions (within the meaning of section 111(4)), which concern a subject for which any member of the Scottish Executive has general responsibility.
3. In relation to the exercise of functions of a Minister of the Crown, the Parliament may not impose such a requirement on—
  - a. him (whether or not he continues to be a Minister of the Crown), or
  - b. a person who is or has been in Crown employment, within the meaning of section 191(3) of the Employment Rights Act 1996, unless the exercise concerns a subject for which any member of the Scottish Executive has general responsibility.
4. But the Parliament may not impose such a requirement in pursuance of subsection (3) in connection with the exercise of functions which are exercisable—
  - a. by the Scottish Ministers as well as by a Minister of the Crown, or
  - b. by a Minister of the Crown only with the agreement of, or after consultation with, the Scottish Ministers.

5. Subsection (4)(b) does not prevent the Parliament imposing such a requirement in connection with the exercise of functions which do not relate to reserved matters.
6. Where all the functions of a body relate to reserved matters, the Parliament may not impose such a requirement on any person in connection with the discharge by him of those functions.
7. The Parliament may not impose such a requirement on—
  - a. a judge of any court, or
  - b. a member of any tribunal in connection with the discharge by him of his functions as such.
8. Such a requirement may be imposed by a committee or sub-committee of the Parliament only if the committee or sub-committee is expressly authorised to do so (whether by standing orders or otherwise).
9. A person is not obliged under this section to answer any question or produce any document which he would be entitled to refuse to answer or produce in proceedings in a court in Scotland.
10. A procurator fiscal is not obliged under this section to answer any question or produce any document concerning the operation of the system of criminal prosecution in any particular case if the Lord Advocate—
  - a. considers that answering the question or producing the document might prejudice criminal proceedings in that case or would otherwise be contrary to the public interest, and
  - b. has authorised the procurator fiscal to decline to answer the question or produce the document on that ground.

## 24. Witnesses and documents: notice

1. A requirement under section 23 shall be imposed by the Clerk giving the person in question notice in writing specifying—
  - a. the time and place at which the person is to attend and the particular subjects concerning which he is required to give evidence, or
  - b. the documents, or types of documents, which he is to produce, the date by which he is to produce them and the particular subjects concerning which they are required.
2. Such notice shall be given—
  - a. in the case of an individual, by sending it, by registered post or the recorded delivery service, addressed to him at his usual or last known address or, where he has given an address for service, at that address,
  - b. in any other case, by sending it, by registered post or the recorded delivery service, addressed to the person at the person's registered or principal office.

## 25. Witnesses and documents: offences

1. Any person to whom a notice under section 24(1) has been given who—
  - a. refuses or fails to attend proceedings as required by the notice,
  - b. refuses or fails, when attending proceedings as required by the notice, to answer any question concerning the subjects specified in the notice,
  - c. deliberately alters, suppresses, conceals or destroys any document which he is required to produce by the notice, or
  - d. refuses or fails to produce any such document,  
is guilty of an offence.
2. Subsection (1) is subject to sections 23(9) and (10) and 27(3).
3. It is a defence for a person charged with an offence under subsection (1)(a), (b) or (d) to prove that he had a reasonable excuse for the refusal or failure.
4. A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a period not exceeding three months.
5. Where an offence under this section which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
  - a. a director, manager, secretary or other similar officer of the body corporate, or
  - b. any person who was purporting to act in any such capacity,  
he, as well as the body corporate, is guilty of that offence and liable to be proceeded against accordingly.

## 26. Witnesses and documents: general

1. The Presiding Officer or such other person as may be authorised by standing orders may—
  - a. administer an oath to any person giving evidence in proceedings of the Parliament, and
  - b. require him to take the oath.
2. Any person who refuses to take an oath when required to do so under subsection (1)(b) is guilty of an offence.
3. Subsection (4) of section 25 applies to an offence under subsection (2) as it applies to an offence under that section.
4. Standing orders may provide for the payment of allowances and expenses to persons—
  - a. attending proceedings of the Parliament to give evidence, or

- b. producing documents which they have been required or requested to produce,
- whether or not in pursuance of a notice under section 24(1).
- 5. For the purposes of sections 23 to 25 and this section, a person shall be taken to comply with a requirement to produce a document if he produces a copy of, or an extract of the relevant part of, the document.

## 27. Participation of the Scottish Law Officers

1. If the Lord Advocate or the Solicitor General for Scotland is not a member of the Parliament—
  - a. he may participate in the proceedings of the Parliament to the extent permitted by standing orders, but may not vote, and
  - b. standing orders may in other respects provide that they are to apply to him as if he were such a member.
2. Subsection (1) is without prejudice to section 39.
3. The Lord Advocate or the Solicitor General for Scotland may, in any proceedings of the Parliament, decline to answer any question or produce any document relating to the operation of the system of criminal prosecution in any particular case if he considers that answering the question or producing the document—
  - a. might prejudice criminal proceedings in that case, or
  - b. would otherwise be contrary to the public interest.

## Subheading 9: Legislation

### 28. Acts of the Scottish Parliament

1. Subject to section 29, the Parliament may make laws, to be known as Acts of the Scottish Parliament.
2. Proposed Acts of the Scottish Parliament shall be known as Bills; and a Bill shall become an Act of the Scottish Parliament when it has been passed by the Parliament and has received Royal Assent.
3. A Bill receives Royal Assent at the beginning of the day on which Letters Patent under the Scottish Seal signed with Her Majesty's own hand signifying Her Assent are recorded in the Register of the Great Seal.
4. The date of Royal Assent shall be written on the Act of the Scottish Parliament by the Clerk, and shall form part of the Act.
5. The validity of an Act of the Scottish Parliament is not affected by any invalidity in the proceedings of the Parliament leading to its enactment.
6. Every Act of the Scottish Parliament shall be judicially noticed.
7. This section does not affect the power of the Parliament of the United Kingdom to make laws for Scotland.

### 29. Legislative competence

1. An Act of the Scottish Parliament is not law so far as any provision of the Act is outside the legislative competence of the Parliament.

2. A provision is outside that competence so far as any of the following paragraphs apply—
  - a. it would form part of the law of a country or territory other than Scotland, or confer or remove functions exercisable otherwise than in or as regards Scotland,
  - b. it relates to reserved matters,
  - c. it is in breach of the restrictions in Schedule 4,
  - d. it is incompatible with any of the Convention rights or with EU law,
  - e. it would remove the Lord Advocate from his position as head of the systems of criminal prosecution and investigation of deaths in Scotland.
3. For the purposes of this section, the question whether a provision of an Act of the Scottish Parliament relates to a reserved matter is to be determined, subject to subsection (4), by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances.
4. A provision which—
  - a. would otherwise not relate to reserved matters, but
  - b. makes modifications of Scots private law, or Scots criminal law, as it applies to reserved matters,

is to be treated as relating to reserved matters unless the purpose of the provision is to make the law in question apply consistently to reserved matters and otherwise.
5. Subsection (1) is subject to section 30(6).

### 30. Legislative competence: supplementary

1. Schedule 5 (which defines reserved matters) shall have effect.
2. Her Majesty may by Order in Council make any modifications of Schedule 4 or 5 which She considers necessary or expedient.
3. Her Majesty may by Order in Council specify functions which are to be treated, for such purposes of this Act as may be specified, as being, or as not being, functions which are exercisable in or as regards Scotland.
4. An Order in Council under this section may also make such modifications of—
  - a. any enactment or prerogative instrument (including any enactment comprised in or made under this Act), or
  - b. any other instrument or document,

as Her Majesty considers necessary or expedient in connection with other provision made by the Order.
5. Subsection (6) applies where any alteration is made—
  - a. to the matters which are reserved matters, or

• First chamber reserved policy areas  
• Second chamber reserved policy areas

• International organizations  
• International human rights treaties

• Head of state powers  
• Advisory bodies to the head of state

• First chamber reserved policy areas  
• Second chamber reserved policy areas  
• Constitution amendment procedure

- b. to Schedule 4,  
(whether by virtue of the making, revocation or expiry of an Order in Council under this section or otherwise).
- 6. Where the effect of the alteration is that a provision of an Act of the Scottish Parliament ceases to be within the legislative competence of the Parliament, the provision does not for that reason cease to have effect (unless an enactment provides otherwise).

### 31. Scrutiny of Bills before introduction

1. A person in charge of a Bill shall, on or before introduction of the Bill in the Parliament, state that in his view the provisions of the Bill would be within the legislative competence of the Parliament.
2. The Presiding Officer shall, on or before the introduction of a Bill in the Parliament, decide whether or not in his view the provisions of the Bill would be within the legislative competence of the Parliament and state his decision.
3. The form of any statement, and the manner in which it is to be made, shall be determined under standing orders, and standing orders may provide for any statement to be published.

### 32. Submission of Bills for Royal Assent

1. It is for the Presiding Officer to submit Bills for Royal Assent.
2. The Presiding Officer shall not submit a Bill for Royal Assent at any time when—
  - a. the Advocate General, the Lord Advocate or the Attorney General is entitled to make a reference in relation to the Bill under section 33,
  - b. any such reference has been made but has not been decided or otherwise disposed of by the Supreme Court, or
  - c. an order may be made in relation to the Bill under section 35.
3. The Presiding Officer shall not submit a Bill in its unamended form for Royal Assent if—
  - a. the Supreme Court has decided that the Bill or any provision of it would not be within the legislative competence of the Parliament, or
  - b. a reference made in relation to the Bill under section 33 has been withdrawn following a request for withdrawal of the reference under section 34(2)(b).
4. In this Act—  
“Advocate General” means the Advocate General for Scotland,

### 33. Scrutiny of Bills by the Supreme Court

1. The Advocate General, the Lord Advocate or the Attorney General may refer the question of whether a Bill or any provision of a Bill would be within the legislative competence of the Parliament to the Supreme Court for decision.

2. Subject to subsection (3), he may make a reference in relation to a Bill at any time during—
  - a. the period of four weeks beginning with the passing of the Bill, and
  - b. any period of four weeks beginning with any subsequent approval of the Bill in accordance with standing orders made by virtue of section 36(5).
3. He shall not make a reference in relation to a Bill if he has notified the Presiding Officer that he does not intend to make a reference in relation to the Bill, unless the Bill has been approved as mentioned in subsection (2)(b) since the notification.

## 34. ECJ references

1. This section applies where—
  - a. a reference has been made in relation to a Bill under section 33,
  - b. a reference for a preliminary ruling has been made by the Supreme Court in connection with that reference, and
  - c. neither of those references has been decided or otherwise disposed of.
2. If the Parliament resolves that it wishes to reconsider the Bill—
  - a. the Presiding Officer shall notify the Advocate General, the Lord Advocate and the Attorney General of that fact, and
  - b. the person who made the reference in relation to the Bill under section 33 shall request the withdrawal of the reference.
3. In this section “a reference for a preliminary ruling” means a reference of a question to the European Court under Article 267 of the Treaty on the Functioning of the European Union; or Article 150 of the Treaty establishing the European Atomic Energy Community.

## 35. Power to intervene in certain cases

1. If a Bill contains provisions—
  - a. which the Secretary of State has reasonable grounds to believe would be incompatible with any international obligations or the interests of defence or national security, or
  - b. which make modifications of the law as it applies to reserved matters and which the Secretary of State has reasonable grounds to believe would have an adverse effect on the operation of the law as it applies to reserved matters,he may make an order prohibiting the Presiding Officer from submitting the Bill for Royal Assent.
2. The order must identify the Bill and the provisions in question and state the reasons for making the order.

• Federal review of subnational legislation

• International law



3. The order may be made at any time during—
  - a. the period of four weeks beginning with the passing of the Bill,
  - b. any period of four weeks beginning with any subsequent approval of the Bill in accordance with standing orders made by virtue of section 36(5),
  - c. if a reference is made in relation to the Bill under section 33, the period of four weeks beginning with the reference being decided or otherwise disposed of by the Supreme Court.
4. The Secretary of State shall not make an order in relation to a Bill if he has notified the Presiding Officer that he does not intend to do so, unless the Bill has been approved as mentioned in subsection (3)(b) since the notification.
5. An order in force under this section at a time when such approval is given shall cease to have effect.

### 36. Stages of Bills

1. Standing orders shall include provision—
  - a. for general debate on a Bill with an opportunity for members to vote on its general principles,
  - b. for the consideration of, and an opportunity for members to vote on, the details of a Bill, and
  - c. for a final stage at which a Bill can be passed or rejected.
2. Subsection (1) does not prevent standing orders making provision to enable the Parliament to expedite proceedings in relation to a particular Bill.
3. Standing orders may make provision different from that required by subsection (1) for the procedure applicable to Bills of any of the following kinds—
  - a. Bills which restate the law,
  - b. Bills which repeal spent enactments,
  - c. private Bills.
4. Standing orders shall provide for an opportunity for the reconsideration of a Bill after its passing if (and only if)—
  - a. the Supreme Court decides that the Bill or any provision of it would not be within the legislative competence of the Parliament,
  - b. a reference made in relation to the Bill under section 33 is withdrawn following a request for withdrawal of the reference under section 34(2)(b), or
  - c. an order is made in relation to the Bill under section 35.

5. Standing orders shall, in particular, ensure that any Bill amended on reconsideration is subject to a final stage at which it can be approved or rejected.
6. References in subsection (4), sections 28(2) and 38(1)(a) and paragraph 7 of Schedule 3 to the passing of a Bill shall, in the case of a Bill which has been amended on reconsideration, be read as references to the approval of the Bill.

## **Subheading 10: Other provisions**

### **37. Acts of Union**

The Union with Scotland Act 1706 and the Union with England Act 1707 have effect subject to this Act.

### **38. Letters Patent and proclamations**

1. The Keeper of the Registers of Scotland shall record in the Register of the Great Seal—
  - a. all Letters Patent signed with Her Majesty's own hand signifying Her Assent to a Bill passed by the Parliament, and
  - b. all royal proclamations under sections 2(5) and 3(2), which have passed under the Scottish Seal.
2. On recording such Letters Patent he shall intimate the date of recording to the Clerk.
3. Her Majesty may by Order in Council make provision as to—
  - a. the form and manner of preparation, and
  - b. the publication, of such Letters Patent and proclamations.
4. If the First Minister so directs, impressions with the same device as the Scottish Seal shall be taken in such manner, of such size and on such material as is specified in the direction.
5. Each such impression—
  - a. shall be known as a Wafer Scottish Seal, and
  - b. shall be kept in accordance with directions of the First Minister.
6. If a Wafer Scottish Seal has been applied to Letters Patent or a proclamation mentioned in subsection (1), the document has the same validity as if it had passed under the Scottish Seal.

### **39. Members' interests**

1. Provision shall be made for a register of interests of members of the Parliament and for the register to be published and made available for public inspection.

2. Provision shall be made—
  - a. requiring members of the Parliament to register in that register financial interests (including benefits in kind), as defined for the purposes of this paragraph,
  - b. requiring that any member of the Parliament who has a financial interest (including benefits in kind), as defined for the purposes of this paragraph, in any matter declares that interest before taking part in any proceedings of the Parliament relating to that matter.
3. Provision made in pursuance of subsection (2) shall include any provision which the Parliament considers appropriate for preventing or restricting the participation in proceedings of the Parliament of a member with an interest defined for the purposes of subsection (2)(a) or (b) in a matter to which the proceedings relate.
4. Provision shall be made prohibiting a member of the Parliament from—
  - a. advocating or initiating any cause or matter on behalf of any person, by any means specified in the provision, in consideration of any payment or benefit in kind of a description so specified, or
  - b. urging, in consideration of any such payment or benefit in kind, any other member of the Parliament to advocate or initiate any cause or matter on behalf of any person by any such means.
5. Provision made in pursuance of subsections (2) to (4) shall include any provision which the Parliament considers appropriate for excluding from proceedings of the Parliament any member who fails to comply with, or contravenes, any provision made in pursuance of those subsections.
6. Any member of the Parliament who—
  - a. takes part in any proceedings of the Parliament without having complied with, or in contravention of, any provision made in pursuance of subsection (2) or (3), or
  - b. contravenes any provision made in pursuance of subsection (4),  
is guilty of an offence.
7. A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
8. In this section—
  - a. “provision” means provision made by or under an Act of the Scottish Parliament,
  - b. references to members of the Parliament include references to the Lord Advocate and the Solicitor General for Scotland, whether or not they are such members.

## Subheading 11: Legal issues

### 40. Proceedings by or against the Parliament etc

1. Proceedings by or against the Parliament shall be instituted by or (as the case may be) against the Parliamentary corporation on behalf of the Parliament.
2. Proceedings by or against—
  - a. the Presiding Officer or a deputy, or
  - b. any member of the staff of the Parliament,  
shall be instituted by or (as the case may be) against the corporation on his behalf.
3. In any proceedings against the Parliament, the court shall not make an order for suspension, interdict, reduction or specific performance (or other like order) but may instead make a declarator.
4. In any proceedings against—
  - a. any member of the Parliament,
  - b. the Presiding Officer or a deputy,
  - c. any member of the staff of the Parliament, or
  - d. the Parliamentary corporation, the court shall not make an order for suspension, interdict, reduction or specific performance (or other like order) if the effect of doing so would be to give any relief against the Parliament which could not have been given in proceedings against the Parliament.
5. References in this section to an order include an interim order.

### 41. Defamatory statements

1. For the purposes of the law of defamation—
  - a. any statement made in proceedings of the Parliament, and
  - b. the publication under the authority of the Parliament of any statement,  
shall be absolutely privileged.
2. In subsection (1), “statement” has the same meaning as in the Defamation Act 1996.

### 42. Contempt of court

1. The strict liability rule shall not apply in relation to any publication—
  - a. made in proceedings of the Parliament in relation to a Bill or subordinate legislation, or

- b. to the extent that it consists of a fair and accurate report of such proceedings made in good faith.
2. In subsection (1), “the strict liability rule” and “publication” have the same meanings as in the Contempt of Court Act 1981.

## 43. Corrupt practices

[Repealed]

## Part II: The Scottish Administration

### Subheading 1: Ministers and their staff

## 44. The Scottish Executive

1. There shall be a Scottish Executive, whose members shall be—
  - a. the First Minister,
  - b. such Ministers as the First Minister may appoint under section 47, and
  - c. the Lord Advocate and the Solicitor General for Scotland.
2. The members of the Scottish Executive are referred to collectively as the Scottish Ministers.
3. A person who holds a Ministerial office may not be appointed a member of the Scottish Executive; and if a member of the Scottish Executive is appointed to a Ministerial office he shall cease to hold office as a member of the Scottish Executive.
4. In subsection (3), references to a member of the Scottish Executive include a junior Scottish Minister and “Ministerial office” has the same meaning as in section 2 of the House of Commons Disqualification Act 1975.

## 45. The First Minister

1. The First Minister shall be appointed by Her Majesty from among the members of the Parliament and shall hold office at Her Majesty’s pleasure.
2. The First Minister may at any time tender his resignation to Her Majesty and shall do so if the Parliament resolves that the Scottish Executive no longer enjoys the confidence of the Parliament.
3. The First Minister shall cease to hold office if a person is appointed in his place.
4. If the office of First Minister is vacant or he is for any reason unable to act, the functions exercisable by him shall be exercisable by a person designated by the Presiding Officer.
5. A person shall be so designated only if—
  - a. he is a member of the Parliament, or
  - b. if the Parliament has been dissolved, he is a person who ceased to be a member by virtue of the dissolution.

• Head of state powers

6. Functions exercisable by a person by virtue of subsection (5)(a) shall continue to be exercisable by him even if the Parliament is dissolved.
7. The First Minister shall be the Keeper of the Scottish Seal.

## 46. Choice of the First Minister

1. If one of the following events occurs, the Parliament shall within the period allowed nominate one of its members for appointment as First Minister.
2. The events are—
  - a. the holding of a poll at a general election,
  - b. the First Minister tendering his resignation to Her Majesty,
  - c. the office of First Minister becoming vacant (otherwise than in consequence of his so tendering his resignation),
  - d. the First Minister ceasing to be a member of the Parliament otherwise than by virtue of a dissolution.
3. The period allowed is the period of 28 days which begins with the day on which the event in question occurs; but—
  - a. if another of those events occurs within the period allowed, that period shall be extended (subject to paragraph (b)) so that it ends with the period of 28 days beginning with the day on which that other event occurred, and
  - b. the period shall end if the Parliament passes a resolution under section 3(1)(a) or when Her Majesty appoints a person as First Minister.
4. The Presiding Officer shall recommend to Her Majesty the appointment of any member of the Parliament who is nominated by the Parliament under this section.

## 47. Ministers

1. The First Minister may, with the approval of Her Majesty, appoint Ministers from among the members of the Parliament.
2. The First Minister shall not seek Her Majesty's approval for any appointment under this section without the agreement of the Parliament.
3. A Minister appointed under this section—
  - a. shall hold office at Her Majesty's pleasure,
  - b. may be removed from office by the First Minister,
  - c. may at any time resign and shall do so if the Parliament resolves that the Scottish Executive no longer enjoys the confidence of the Parliament,
  - d. if he resigns, shall cease to hold office immediately, and
  - e. shall cease to hold office if he ceases to be a member of the Parliament otherwise than by virtue of a dissolution.

## 48. The Scottish Law Officers

1. It is for the First Minister to recommend to Her Majesty the appointment or removal of a person as Lord Advocate or Solicitor General for Scotland; but he shall not do so without the agreement of the Parliament.
2. The Lord Advocate and the Solicitor General for Scotland may at any time resign and shall do so if the Parliament resolves that the Scottish Executive no longer enjoys the confidence of the Parliament.
3. Where the Lord Advocate resigns in consequence of such a resolution, he shall be deemed to continue in office until the warrant of appointment of the person succeeding to the office of Lord Advocate is granted, but only for the purpose of exercising his retained functions.
4. Subsection (3) is without prejudice to section 287 of the Criminal Procedure (Scotland) Act 1995 (demission of office by Lord Advocate).
5. Any decision of the Lord Advocate in his capacity as head of the systems of criminal prosecution and investigation of deaths in Scotland shall continue to be taken by him independently of any other person.
6. In Schedule 2 to the House of Commons Disqualification Act 1975 (Ministerial offices) and Part III of Schedule 1 to the Ministerial and other Salaries Act 1975 (salaries of the Law Officers), the entries for the Lord Advocate and the Solicitor General for Scotland are omitted.

## 49. Junior Scottish Ministers

1. The First Minister may, with the approval of Her Majesty, appoint persons from among the members of the Parliament to assist the Scottish Ministers in the exercise of their functions.
2. They shall be known as junior Scottish Ministers.
3. The First Minister shall not seek Her Majesty's approval for any appointment under this section without the agreement of the Parliament.
4. A junior Scottish Minister—
  - a. shall hold office at Her Majesty's pleasure,
  - b. may be removed from office by the First Minister,
  - c. may at any time resign and shall do so if the Parliament resolves that the Scottish Executive no longer enjoys the confidence of the Parliament,
  - d. if he resigns, shall cease to hold office immediately, and
  - e. shall cease to hold office if he ceases to be a member of the Parliament otherwise than by virtue of a dissolution.

## 50. Validity of acts of Scottish Ministers etc

The validity of any act of a member of the Scottish Executive or junior Scottish Minister is not affected by any defect in his nomination by the Parliament or (as the case may be) in the Parliament's agreement to his appointment.

## 51. The Civil Service

1. The Scottish Ministers may appoint persons to be members of the staff of the Scottish Administration.
2. Service as—
  - a. the holder of any office in the Scottish Administration which is not a ministerial office, or
  - b. a member of the staff of the Scottish Administration, shall be service in the civil service of the State.
3. See Part 1 of the Constitutional Reform and Governance Act 2010 (in particular, sections 3 and 4) for provision affecting—
  - a. subsection (1), and
  - b. any other enactment about the appointment of persons mentioned in subsection (2).
4. See also section 1 of the Civil Service (Management Functions) Act 1992 under which functions conferred on the Minister for the Civil Service by section 3 of the Constitutional Reform and Governance Act 2010 may be delegated to the Scottish Ministers etc.
5. Any salary or allowances payable to or in respect of the persons mentioned in subsection (2) (including contributions to any pension scheme) shall be payable out of the Scottish Consolidated Fund.
6. Section 1(2) and (3) of the Superannuation Act 1972 (delegation of functions relating to civil service superannuation schemes etc.) shall have effect as if references to a Minister of the Crown (other than the Minister for the Civil Service) included the Scottish Ministers.
7. The Scottish Ministers shall make payments to the Minister for the Civil Service, at such times as he may determine, of such amounts as he may determine in respect of—
  - a. the provision of pensions, allowances or gratuities by virtue of section 1 of the Superannuation Act 1972 to or in respect of persons who are or have been in such service as is mentioned in subsection (2), and
  - b. any expenses to be incurred in administering those pensions, allowances or gratuities.
8. Amounts required for payments under subsection (7) shall be charged on the Scottish Consolidated Fund.
9. [Omitted]

## Subheading 2: Ministerial functions

### 52. Exercise of functions

1. Statutory functions may be conferred on the Scottish Ministers by that name.
2. Statutory functions of the Scottish Ministers, the First Minister or the Lord Advocate shall be exercisable on behalf of Her Majesty.



3. Statutory functions of the Scottish Ministers shall be exercisable by any member of the Scottish Executive.
4. Any act or omission of, or in relation to, any member of the Scottish Executive shall be treated as an act or omission of, or in relation to, each of them; and any property acquired, or liability incurred, by any member of the Scottish Executive shall be treated accordingly.
5. Subsection (4) does not apply in relation to the exercise of—
  - a. functions conferred on the First Minister alone, or
  - b. retained functions of the Lord Advocate.
6. In this Act, “retained functions” in relation to the Lord Advocate means—
  - a. any functions exercisable by him immediately before he ceases to be a Minister of the Crown, and
  - b. other statutory functions conferred on him alone after he ceases to be a Minister of the Crown.
7. In this section, “statutory functions” means functions conferred by virtue of any enactment.

### **53. General transfer of functions**

1. The functions mentioned in subsection (2) shall, so far as they are exercisable within devolved competence, be exercisable by the Scottish Ministers instead of by a Minister of the Crown.
2. Those functions are—
  - a. those of Her Majesty’s prerogative and other executive functions which are exercisable on behalf of Her Majesty by a Minister of the Crown,
  - b. other functions conferred on a Minister of the Crown by a prerogative instrument, and
  - c. functions conferred on a Minister of the Crown by any pre-commencement enactment,but do not include any retained functions of the Lord Advocate.
3. In this Act, “pre-commencement enactment” means—
  - a. an Act passed before or in the same session as this Act and any other enactment made before the passing of this Act,
  - b. an enactment made, before the commencement of this section, under such an Act or such other enactment,
  - c. subordinate legislation under section 106, to the extent that the legislation states that it is to be treated as a pre-commencement enactment.
4. This section and section 54 are modified by Part III of Schedule 4.

## 54. Devolved competence

1. References in this Act to the exercise of a function being within or outside devolved competence are to be read in accordance with this section.
2. It is outside devolved competence—
  - a. to make any provision by subordinate legislation which would be outside the legislative competence of the Parliament if it were included in an Act of the Scottish Parliament, or
  - b. to confirm or approve any subordinate legislation containing such provision.
3. In the case of any function other than a function of making, confirming or approving subordinate legislation, it is outside devolved competence to exercise the function (or exercise it in any way) so far as a provision of an Act of the Scottish Parliament conferring the function (or, as the case may be, conferring it so as to be exercisable in that way) would be outside the legislative competence of the Parliament.

## 55. Functions exercisable with agreement

1. A statutory provision, or any provision not contained in an enactment, which provides for a Minister of the Crown to exercise a function with the agreement of, or after consultation with, any other Minister of the Crown shall cease to have effect in relation to the exercise of the function by a member of the Scottish Executive by virtue of section 53.
2. In subsection (1) “statutory provision” means any provision in a pre-commencement enactment other than paragraph 5 or 15 of Schedule 32 to the Local Government, Planning and Land Act 1980 (designation of enterprise zones).

## 56. Shared powers

1. Despite the transfer by virtue of section 53 of any function under—
  - a. section 17(1) of the Ministry of Transport Act 1919 (power to make advances for certain purposes),
  - b. any Order in Council under section 1 of the United Nations Act 1946 (measures to give effect to Security Council decisions),
  - c. section 9 of the Industrial Organisation and Development Act 1947 (levies for scientific research, promotion of exports, etc.),
  - d. section 5 of the Science and Technology Act 1965 (funding of scientific research),
  - e. section 1 of the Mineral Exploration and Investment Grants Act 1972 (contributions in respect of mineral exploration),
  - f. sections 10 to 12 of the Industry Act 1972 (credits and grants for construction of ships and offshore installations),

- g. sections 2, 11(3) and 12(4) of the Employment and Training Act 1973 (power to make arrangements for employment and training etc. and to make certain payments),
  - h. sections 7 to 9 and 11 to 13 of the Industrial Development Act 1982 (financial and other assistance for industry), and
  - i. sections 39 and 40 of the Road Traffic Act 1988 (road safety information and training),
- the function shall be exercisable by a Minister of the Crown as well as by the Scottish Ministers.
2. Despite the transfer of any other function by virtue of section 53, the function shall, if subordinate legislation so provides, be exercisable (or be exercisable so far as the legislation provides) by a Minister of the Crown as well as by the Scottish Ministers.
  3. Subordinate legislation under subsection (2) may not be made so as to come into force at any time after the function in question has become exercisable by the Scottish Ministers.
  4. Any power referred to in section 53(2)(a) to establish, maintain or abolish a body, office or office-holder having functions which include both—
    - a. functions which are exercisable in or as regards Scotland and do not relate to reserved matters, and
    - b. other functions, shall, despite that section, be exercisable jointly by the Minister of the Crown and the Scottish Ministers.
  5. In subsection (4), “office-holder” includes employee or other post-holder.

## 57. EU law and Convention rights

1. Despite the transfer to the Scottish Ministers by virtue of section 53 of functions in relation to observing and implementing obligations under EU law, any function of a Minister of the Crown in relation to any matter shall continue to be exercisable by him as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.
2. A member of the Scottish Executive has no power to make any subordinate legislation, or to do any other act, so far as the legislation or act is incompatible with any of the Convention rights or with EU law.
3. Subsection (2) does not apply to an act of the Lord Advocate—
  - a. in prosecuting any offence, or
  - b. in his capacity as head of the systems of criminal prosecution and investigation of deaths in Scotland,

## 58. Power to prevent or require action

1. If the Secretary of State has reasonable grounds to believe that any action proposed to be taken by a member of the Scottish Executive would be incompatible with any international obligations, he may by order direct that the proposed action shall not be taken.

2. If the Secretary of State has reasonable grounds to believe that any action capable of being taken by a member of the Scottish Executive is required for the purpose of giving effect to any such obligations, he may by order direct that the action shall be taken.
3. In subsections (1) and (2), "action" includes making, confirming or approving subordinate legislation and, in subsection (2), includes introducing a Bill in the Parliament.
4. If any subordinate legislation made or which could be revoked by a member of the Scottish Executive contains provisions—
  - a. which the Secretary of State has reasonable grounds to believe to be incompatible with any international obligations or the interests of defence or national security, or
  - b. which make modifications of the law as it applies to reserved matters and which the Secretary of State has reasonable grounds to believe to have an adverse effect on the operation of the law as it applies to reserved matters, the Secretary of State may by order revoke the legislation.
5. An order under this section must state the reasons for making the order.

### Subheading 3: Property and liabilities

#### 59. Property and liabilities of the Scottish Ministers

1. Property may be held by the Scottish Ministers by that name.
2. Property acquired by or transferred to the Scottish Ministers shall belong to, and liabilities incurred by the Scottish Ministers shall be liabilities of, the Scottish Ministers for the time being.
3. In relation to property to be acquired by or transferred to, or belonging to, the Scottish Ministers or liabilities incurred by the Scottish Ministers, references to the Scottish Ministers—
  - a. in any title recorded in the Register of Sasines or registered in the Land Register of Scotland, or
  - b. in any other document, shall be read in accordance with subsection (2).
4. A document shall be validly executed by the Scottish Ministers if it is executed by any member of the Scottish Executive.

#### 60. Transfers to the Scottish Ministers

1. Subordinate legislation may provide—
  - a. for the transfer to the Scottish Ministers of any property belonging to a Minister of the Crown or government department, or
  - b. for the Scottish Ministers to have such rights or interests in relation to any property belonging to a Minister of the Crown or government department as the person making the legislation considers appropriate (whether in connection with a transfer or otherwise).

• International law

• Powers of cabinet  
 • Head of state powers  
 • Advisory bodies to the head of state

2. Subordinate legislation may provide for the transfer to the Scottish Ministers of any liabilities to which a Minister of the Crown or government department is subject.
3. Subordinate legislation under this section may only be made in connection with any transfer or sharing of functions of a Minister of the Crown by virtue of section 53, 63 or 89 or in any other circumstances in which the person making the legislation considers it appropriate to do so for the purposes of this Act.

## 61. Property and liabilities of the Lord Advocate and the First Minister

1. Property may be held by the Lord Advocate by that name.
2. Property acquired by or transferred to the Lord Advocate shall belong to, and liabilities incurred by the Lord Advocate shall be liabilities of, the Lord Advocate for the time being.
3. In relation to property to be acquired by or transferred to, or belonging to, the Lord Advocate or liabilities incurred by the Lord Advocate, references to the Lord Advocate—
  - a. in any title recorded in the Register of Sasines or registered in the Land Register of Scotland, or
  - b. in any other document,shall be read in accordance with subsection (2).
4. Any rights and liabilities acquired or incurred by the First Minister shall be rights or (as the case may be) liabilities of the First Minister for the time being.

## 62. Transfers to the Lord Advocate

1. Subordinate legislation may provide—
  - a. for the transfer to the Lord Advocate of any property belonging to a Minister of the Crown or government department, or
  - b. for the Lord Advocate to have such rights or interests in relation to any property belonging to a Minister of the Crown or government department as the person making the legislation considers appropriate (whether in connection with a transfer or otherwise).
2. Subordinate legislation may provide for the transfer to the Lord Advocate of any liabilities to which a Minister of the Crown or government department is subject.
3. Subordinate legislation under this section may only be made in connection with the Lord Advocate becoming a member of the Scottish Executive or having any retained functions or in any other circumstances in which the person making the legislation considers it appropriate to do so for the purposes of this Act.

- Powers of cabinet
- Head of state powers
- Advisory bodies to the head of state

## Subheading 4: Transfer of additional functions

### 63. Power to transfer functions

- 1. Her Majesty may by Order in Council provide for any functions, so far as they are exercisable by a Minister of the Crown in or as regards Scotland, to be exercisable—
  - a. by the Scottish Ministers instead of by the Minister of the Crown,
  - b. by the Scottish Ministers concurrently with the Minister of the Crown, or
  - c. by the Minister of the Crown only with the agreement of, or after consultation with, the Scottish Ministers.
- 2. Where an Order is made under subsection (1)(a) or (b) in relation to a function of a Minister of the Crown which is exercisable only with the agreement of, or after consultation with, another Minister of the Crown, the function shall, unless the Order provides otherwise, be exercisable by the Scottish Ministers free from any such requirement.
- 3. An Order under this section may, in particular, provide for any function exercisable by the Scottish Ministers by virtue of an Order under subsection (1)(a) or (b) to be exercisable subject to a requirement for the function to be exercised with the agreement of, or after consultation with, a Minister of the Crown or other person.

## Part III: Financial Provisions

### 64. Scottish Consolidated Fund

- 1. There shall be a Scottish Consolidated Fund.
- 2. The Secretary of State shall from time to time make payments into the Fund out of money provided by Parliament of such amounts as he may determine.
- 3. Sums received by an office-holder in the Scottish Administration shall be paid into the Fund.
- 4. Subsection (3) is subject to any provision made by or under an Act of the Scottish Parliament for the disposal of or accounting for such sums.
- 5. The Treasury may, after consulting with the Scottish Ministers, by order designate receipts of any description specified in the order which are payable into the Fund (or would be but for any provision made by or under an Act of the Scottish Parliament).
- 6. The Scottish Ministers shall make payments to the Secretary of State, at such times and by such methods as the Treasury may from time to time determine, of sums equal to the total amount outstanding in respect of designated receipts.
- 7. Amounts required for the payment of sums under subsection (6) shall be charged on the Fund.
- 8. The Fund shall be held with the Paymaster General.

## 65. Payments out of the Fund

1. A sum may only be paid out of the Scottish Consolidated Fund if—
  - a. it has been charged on the Fund by any enactment,
  - b. it is payable out of the Fund without further approval by virtue of this Act, or
  - c. it is paid out for or in connection with any of the purposes mentioned in subsection (2) in accordance with rules made by or under an Act of the Scottish Parliament.
2. Those purposes are—
  - a. meeting expenditure of the Scottish Administration,
  - b. meeting expenditure payable out of the Fund under any enactment.
3. A sum paid out of the Fund shall not be applied for any purpose other than that for which it was charged or (as the case may be) paid out.

## 66. Borrowing by the Scottish Ministers etc

1. The Scottish Ministers may borrow from the Secretary of State any sums required by them for the purpose of—
  - a. meeting a temporary excess of sums paid out of the Scottish Consolidated Fund over sums paid into that Fund, or
  - b. providing a working balance in the Fund.
2. Amounts required for the repayment of, or the payment of interest on, sums borrowed under this section shall be charged on the Fund.
3. Sums borrowed under this section from the Secretary of State shall be repaid to the Secretary of State at such times and by such methods, and interest on them shall be paid to him at such rates and at such times, as the Treasury may from time to time determine.
4. A member of the Scottish Executive may borrow money only under this section or under any power conferred by any other Act of Parliament.
5. The Secretary of State may by order made with the consent of the Treasury amend subsection (1A) so as to vary the means by which the Scottish Ministers may borrow money.

## 67. Lending by the Secretary of State

1. The Treasury may issue to the Secretary of State out of the National Loans Fund such sums as are required by him for making loans under section 66.
2. The aggregate at any time outstanding in respect of the principal of sums borrowed under section 66(1) shall not exceed £500 million.
3. The Secretary of State may by order made with the consent of the Treasury substitute for the amount (or substituted amount) specified in subsection (2) such amount as may be specified in the order.
- 3A. An amount substituted under subsection (3) may be more or less than the amount for which it is substituted but may not be less than £500 million.

4. Sums received by the Secretary of State under section 66(3) shall be paid into the National Loans Fund.

## **67A. Lending for capital expenditure**

1. The aggregate at any time outstanding in respect of the principal of sums borrowed under section 66(1A) shall not exceed £2.2 billion.
2. The Secretary of State may by order made with the consent of the Treasury substitute for the amount (or substituted amount) specified in subsection (1) such amount as may be specified in the order.
3. An amount substituted under subsection (2) may be more or less than the amount for which it is substituted but may not be less than £2.2 billion.
4. A person lending money to a member of the Scottish Government is not bound to enquire whether the member of the Scottish Government has power to borrow the money and is not to be prejudiced by the absence of any such power.
5. The Scottish Ministers may not mortgage or charge any of their property as security for money which they have borrowed under section 66(1A).  
This is subject to section 66(2).
6. Security given in breach of subsection (5) is unenforceable.

## **68. Borrowing by statutory bodies**

1. If a member of the Scottish Executive lends money to a body established under any enactment, the rate of interest on the loan shall not be less than the lowest rate determined by the Treasury under section 5 of the National Loans Act 1968 in respect of similar loans made out of the National Loans Fund on the day the loan is made.
2. A body established under any enactment shall not, in pursuance of a power conferred by virtue of an Act of the Scottish Parliament, borrow money in a currency other than sterling except with the consent of the Scottish Ministers given with the approval of the Treasury.

## **69. The Auditor General for Scotland**

1. There shall be an Auditor General for Scotland who shall be an individual appointed by Her Majesty on the nomination of the Parliament.
2. A recommendation shall not be made to Her Majesty for the removal from office of the Auditor General for Scotland unless the Parliament so resolves and, if the resolution is passed on a division, the number of members voting in favour is not less than two-thirds of the total number of seats for members of the Parliament.
3. The validity of any act of the Auditor General for Scotland is not affected by any defect in his nomination by the Parliament.
4. The Auditor General for Scotland shall not, in the exercise of any of his functions, be subject to the direction or control of any member of the Scottish Executive or of the Parliament.
5. Subsection (4) does not apply in relation to any function conferred on him of preparing accounts.



## 70. Financial control, accounts and audit

1. Scottish legislation shall provide—
  - a. for proper accounts to be prepared by the Scottish Ministers, by the Lord Advocate and by other persons to whom sums are paid out of the Scottish Consolidated Fund, of their expenditure and receipts,
  - b. for the Scottish Ministers to prepare an account of payments into and out of the Fund,
  - c. for the Auditor General for Scotland to exercise, or ensure the exercise by other persons of, the functions mentioned in subsection (2),
  - d. for access by persons exercising those functions to such documents as they may reasonably require,
  - e. for members of the staff of the Scottish Administration designated for the purpose to be answerable to the Parliament in respect of the expenditure and receipts of each part of the Scottish Administration, and
  - f. for the publication of parliamentary accounts and of reports on such accounts and for the laying of such accounts and reports before the Parliament.
2. The functions referred to in subsection (1)(c) are—
  - a. issuing credits for the payment of sums out of the Fund,
  - b. examining parliamentary accounts (which includes determining whether sums paid out of the Fund have been paid out and applied in accordance with section 65), and certifying and reporting on them,
  - c. carrying out examinations into the economy, efficiency and effectiveness with which the Scottish Ministers and the Lord Advocate have used their resources in discharging their functions, and
  - d. carrying out examinations into the economy, efficiency and effectiveness with which other persons determined under Scottish legislation to whom sums are paid out of the Fund have used those sums in discharging their functions.
3. Standing orders shall provide for the consideration by the Parliament of accounts and reports laid before it in pursuance of subsection (1)(f).
4. Scottish legislation may make further provision for the purpose of ensuring that persons who receive sums derived from the Fund are accountable including, in particular, provision for any person to whom subsection (1)(a) does not apply to be accountable for his expenditure and receipts in respect of functions for which he receives sums derived from the Fund.
5. Persons (other than the Auditor General for Scotland) charged with the exercise of any function mentioned in subsection (2) or other like function conferred by Scottish legislation shall not, in the exercise of that or any ancillary function, be subject to the direction or control of any member of the Scottish Executive or of the Parliament.

6. Scottish legislation may not require any cross-border public authority to prepare accounts if any other legislation requires—
  - a. the authority to prepare accounts of its expenditure and receipts, and
  - b. the accounts to be examined, certified and reported on by the Auditor General for Scotland, the Comptroller and Auditor General or a person appointed by either of them.
7. Subsection (2)(b) does not apply to accounts prepared by the Auditor General for Scotland.
8. This section does not require Scottish legislation to impose any requirement which is imposed by any other legislation.
9. In this section—
  - “parliamentary accounts” means—
    - a. any accounts prepared in pursuance of subsection (1)(a) or (b), and
    - b. any accounts referred to in subsection (6) which are required to be examined, certified and reported on by the Auditor General for Scotland or any person appointed by him,
  - “Scottish legislation” means provision made by or under an Act of the Scottish Parliament and “other legislation” means provision made by any other enactment.

## 71. Existing debt

1. Subsections (2) to (4) apply where—
  - a. power to lend money under a provision of a pre-commencement enactment was exercised by the Secretary of State,
  - b. the sums required by him for the exercise of the power were issued by the Treasury out of the National Loans Fund, and
  - c. the power is exercisable by the Scottish Ministers by virtue of section 53, or would have been so exercisable but for the repeal of the pre-commencement enactment.
2. Any amount payable by way of repayment of or interest on the loan shall be paid to the Scottish Ministers and into the Scottish Consolidated Fund (instead of to the Secretary of State and into the National Loans Fund).
3. Amounts equal to those which are to be received by the Scottish Ministers in repayment of principal shall be treated as being amounts of advances made on the commencement of this section to the Scottish Ministers by the Secretary of State.
4. Such advances shall be repaid to the Secretary of State at such times and by such methods, and interest on them shall be paid to him at such rates and at such times, as the Treasury may from time to time determine.

5. Subsection (6) applies to any amount outstanding immediately before the commencement of this subsection in respect of the principal of the sum treated by virtue of section 2(3) of the Government Trading Funds Act 1973 as issued to the Registers of Scotland Executive Agency Trading Fund on the day on which the order establishing that fund came into force (“the issue date”).
6. The Secretary of State may, with the agreement of the Treasury, by order provide—
  - a. for the amount to be treated as an advance made by him to the Scottish Ministers on the issue date, and
  - b. for the advance to be repaid to him at such times and by such methods, and for interest on the advance to be paid to him at such rates and at such times, as were determined by the Treasury under section 2B(3) of that Act in respect of the sum referred to in subsection (5).
7. Sums required to be paid under subsection (4) or (6) shall be charged on the Scottish Consolidated Fund.
8. Sums received under subsection (4) or (6) shall be paid into the National Loans Fund.

## 72. Accounts of loans to the Scottish Ministers

The Secretary of State shall, for each financial year—

- a. prepare, in such form and manner as the Treasury may direct, an account of sums paid and received by him under sections 66, 67 and 71, and
- b. send the account to the Comptroller and Auditor General not later than the end of November in the following financial year,

and the Comptroller and Auditor General shall examine, certify and report on the account and shall lay copies of it and of his report before each House of Parliament.

## Part IV: The tax-varying power

[Omitted]

### Part 4A: Taxation

#### Subheading 1: Introductory

#### 80A. Overview of Part 4A

1. In this Part—
  - a. Chapter 2 confers on the Scottish Parliament power to set a rate of income tax to be paid by Scottish taxpayers, and
  - b. Chapters 3 and 4 specify the taxes about which the Scottish Parliament may make provision in the exercise of the power conferred by section 28(1).

2. The power to make provision about a devolved tax is subject to the restrictions imposed by—
  - a. subsection (3), and
  - b. the other provisions of this Part.
3. A devolved tax may not be imposed where to do so would be incompatible with any international obligations.
4. In this Act “devolved tax” means a tax specified in this Part as a devolved tax.

## 80B. Power to add new devolved taxes

1. Her Majesty may by Order in Council amend this Part so as to—
  - a. specify, as an additional devolved tax, a tax of any description, or
  - b. make any other modifications of the provisions relating to devolved taxes which She considers necessary or expedient.
2. An Order in Council under this section may also make such modifications of—
  - a. any enactment or prerogative instrument (including any enactment comprised in or made under this Act), or
  - b. any other instrument or document,
 as Her Majesty considers necessary or expedient in connection with other provision made by the Order.

## Subheading 2: Income Tax

### 80C. Power to set Scottish rate for Scottish taxpayers

1. The Scottish Parliament may by resolution (a “Scottish rate resolution”) set the Scottish rate for the purpose of calculating the rates of income tax to be paid by Scottish taxpayers.
2. Section 6(2B) of the Income Tax Act 2007 provides for the calculation of those rates.
3. A Scottish rate resolution applies—
  - a. for only one tax year, and
  - b. for the whole of that year.
4. A Scottish rate resolution may specify only one rate.
5. The Scottish rate must be a whole number or half a whole number.
6. A Scottish rate resolution—
  - a. must specify the tax year for which it applies,
  - b. must be made before the start of that tax year, and

- c. must not be made more than 12 months before the start of that year.
- 7. If a Scottish rate resolution is cancelled before the start of the tax year for which it is to apply—
  - a. the Income Tax Acts have effect for that year as if the resolution had never been passed, and
  - b. the resolution may be replaced by another Scottish rate resolution.
- 8. Standing orders must provide that only a member of the Scottish Government may move a motion for a Scottish rate resolution.

## 80D. Scottish taxpayers

1. In any tax year, a Scottish taxpayer is an individual (T)—
  - a. who is resident in the UK for income tax purposes, and
  - b. who, for that year, meets condition A, B or C.
2. T meets condition A if T has a close connection with Scotland (see section 80E).
3. T meets condition B if—
  - a. T does not have a close connection with any part of the UK other than Scotland (see section 80E), and
  - b. T spends more days of that year in Scotland than in any other part of the UK (see section 80F).
4. T meets condition C if, for the whole or any part of the year, T is—
  - a. a member of Parliament for a constituency in Scotland,
  - b. a member of the European Parliament for Scotland, or
  - c. a member of the Scottish Parliament.
5. In this Chapter “the UK” means the United Kingdom.

## 80E. Close connection with Scotland or another part of the UK

1. To find whether, for any year, T has a close connection with any part of the UK see—
  - a. subsection (2) (where T has only one place of residence in the UK), or
  - b. subsection (3) (where T has 2 or more places of residence in the UK).
2. T has a close connection with a part of the UK if in that year—
  - a. T has only one place of residence in the UK,

- b. that place of residence is in that part of the UK, and
  - c. for at least part of the year, T lives at that place.
3. T has a close connection with a part of the UK if in that year—
- a. T has 2 or more places of residence in the UK,
  - b. for at least part of the year, T's main place of residence in the UK is in that part of the UK,
  - c. the times in the year when T's main place of residence is in that part of the UK comprise (in aggregate) at least as much of the year as the times when T's main place of residence is in any one other part of the UK, and
  - d. for at least part of the year, T lives at a place of residence in that part of the UK.
4. In this section “place” includes a place on board a vessel or other means of transport.

## **80F. Days spent in Scotland or another part of the UK**

1. T spends more days of a year in Scotland than in any other part of the UK if (and only if)—
- a. the number of days in the year on which T is in Scotland at the end of the day equals or exceeds
  - b. the number of days in the year on which T is in any other part of the UK at the end of the day.
2. But T is not to be treated as being in the UK at the end of a day if—
- a. on that day T arrives in the UK as a passenger,
  - b. T departs from the UK on the next day, and
  - c. during the time between arrival and departure T does not engage in activities which are to a substantial extent unrelated to T's passage through the UK.

## **80G. Supplemental powers to modify enactments**

1. The Treasury may by order provide that subsections (2A) to (2C) of section 6 of the Income Tax Act 2007 are to be disapplied, or that their effect is to be modified, in relation to any enactment.
2. The Treasury may by order make such modifications of any enactment as they consider necessary or expedient in consequence of or in connection with—
- a. the power of the Parliament to set a rate under section 80C;

- b. the making of a Scottish rate resolution;
  - c. an order under subsection (1).
3. An order under subsection (2) may, in particular, provide that a Scottish rate resolution does not require any change in the amounts repayable or deductible under PAYE regulations between—
- a. the beginning of the tax year for which the resolution has effect, and
  - b. such date (falling after the date of the resolution) as may be specified in the order.
4. An order under this section may, to the extent that the Treasury consider it to be appropriate, take effect retrospectively from the beginning of the tax year in which the order is made.

## 80H. Reimbursement of expenses

The Scottish Ministers may reimburse any Minister of the Crown or government department for administrative expenses incurred by virtue of this Chapter at any time after the passing of the Scotland Act 2012 by the Minister or department.

## Subheading 3: Tax on transactions involving interests in land

### 80I. Tax on transactions involving interests in land

1. A tax charged on any of the following transactions is a devolved tax—
- a. the acquisition of an estate, interest, right or power in or over land in Scotland;
  - b. the acquisition of the benefit of an obligation, restriction or condition affecting the value of any such estate, interest, right or power.
2. The tax may be chargeable—
- a. whether or not there is any instrument effecting the transaction,
  - b. if there is such an instrument, regardless of where it is executed, and
  - c. regardless of where any party to the transaction is or is resident.

### 80J. Certain transactions not taxable

1. Tax may not be imposed under section 80I on so much of a transaction as relates to land below mean low water mark.

2. The following persons are not to be liable to pay a tax imposed under section 80I—

Government:

- A Minister of the Crown
- The Scottish Ministers
- A Northern Ireland department
- The Welsh Ministers, the First Minister for Wales and the Counsel General to the Welsh Assembly Government

Parliament etc:

- The Corporate Officer of the House of Lords
- The Corporate Officer of the House of Commons
- The Scottish Parliamentary Corporate Body
- The Northern Ireland Assembly Commission
- The National Assembly for Wales Commission
- The National Assembly for Wales.

## **Subheading 4: Tax on disposals to landfill**

### **80K. Tax on disposals to landfill**

1. A tax charged on disposals to landfill made in Scotland is a devolved tax.
2. A disposal is a disposal to landfill if—
  - a. it is a disposal of material as waste, and
  - b. it is made by way of landfill.

## **Part V: Miscellaneous and general**

### **Subheading 1: Remuneration of members of the Parliament and Government**

#### **81. Remuneration of members of the Parliament and Government**

1. The Parliament shall make provision for the payment of salaries to members of the Parliament and members of the Scottish Executive.
2. The Parliament may make provision for the payment of allowances to members of the Parliament or members of the Scottish Executive.
3. The Parliament may make provision for the payment of pensions, gratuities or allowances to, or in respect of, any person who—
  - a. has ceased to be a member of the Parliament or the Scottish Executive, or
  - b. has ceased to hold such office, employment or other post in connection with the Parliament or the Scottish Executive as the Parliament may determine but continues to be a member of the Parliament or the Scottish Executive.



4. Such provision may, in particular, include provision for—
  - a. contributions or payments towards provision for such pensions, gratuities or allowances,
  - b. the establishment and administration (whether by the Parliamentary corporation or otherwise) of one or more pension schemes.
5. In this section “provision” includes provision—
  - a. by an Act of the Scottish Parliament, or
  - b. by a resolution of the Parliament conferring functions on the Parliamentary corporation;and references to a member of the Scottish Executive include a junior Scottish Minister.

## 82. Limits on salaries of members of the Parliament

1. The Parliament shall ensure that the amount of salary payable to a member of the Parliament in accordance with section 81 is reduced if any salary is payable to him—
  - za. under section 4 of the Parliamentary Standards Act 2009 (salaries of members of the House of Commons),
    - a. pursuant to a resolution (or combination of resolutions) of the House of Lords relating to the remuneration of members of that House, or
    - b. under section 1 of the European Parliament (Pay and Pensions) Act 1979 (remuneration of United Kingdom MEPs).
2. The Parliament shall ensure that the amount of salary is reduced—
  - a. to a particular proportion of what it would otherwise be or to a particular amount, or
  - b. by the amount of any salary payable to the member as mentioned in subsection ((1)(za), (a) or (b), by a particular proportion of that amount or by some other particular amount.

## 83. Remuneration: supplementary

1. The Parliament shall ensure that information concerning sums paid as salaries, allowances, pensions or gratuities of the kind mentioned in section 81 is published for each financial year.
2. No payment of salary or allowances of the kind mentioned in section 81(1) or (2) shall be made to a person who is required by section 84 to take an oath unless he has done so.
3. Subsection (2) does not affect any entitlement to payments in respect of the period before the person concerned took the oath once he has done so.

4. For the purposes of sections 81 and 82, a person who is a member of the Parliament immediately before the Parliament is dissolved shall be treated—
  - a. if he continues to hold office by virtue of section 19(2) or paragraph 1 of Schedule 2, as if he were such a member until the end of the day on which he ceases to hold such office, and
  - b. if he does not fall within paragraph (a) but is nominated as a candidate at the subsequent general election, as if he were such a member until the end of the day on which the election is held.
5. Different provision may be made under section 81 or 82 for different cases.

## **Subheading 2: Other provision about members of the Parliament etc**

### **84. Oaths**

1. A person who is returned as a member of the Parliament shall take the oath of allegiance (whether or not he has taken the oath after being returned on a previous occasion or otherwise than as a member of the Parliament).
2. He shall do so at a meeting of the Parliament and shall not take part in any other proceedings of the Parliament until he has done so.
3. If he has not done so within the period of two months beginning with the day on which he was returned, or such longer period as the Parliament may have allowed before the end of that period, he shall cease to be a member of the Parliament (so that his seat is vacant).
4. Each member of the Scottish Executive shall on appointment—
  - a. take the official oath in the form provided by the Promissory Oaths Act 1868, and
  - b. take the oath of allegiance.
5. Each junior Scottish Minister shall on appointment take the oath of allegiance.
6. Subsections (4) and (5) do not require a member of the Parliament to take the oath of allegiance again if he has already done so in compliance with his duty as a member.
7. In this section, references to taking the oath of allegiance are to taking it in the form provided by the Promissory Oaths Act 1868.

### **85. Exemption from jury service**

1. [Repealed]
2. In Part III of Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (persons excusable as of right from jury service), after the entries in Group A there is inserted—
 

“Group AB  
 Scottish Parliament and Scottish Executive  
 (a) members of the Scottish Parliament;  
 (b) members of the Scottish Executive; and  
 (c) junior Scottish Ministers.”

## Subheading 3: Arrangements at Westminster

### 86. Scottish representation at Westminster

[Repealed]

### 87. The Advocate General for Scotland

1. In Schedule 2 to the House of Commons Disqualification Act 1975 (Ministerial offices) and Part III of Schedule 1 to the Ministerial and other Salaries Act 1975 (salaries of the Law Officers), after the entry for the Solicitor General there is inserted—  
“Advocate General for Scotland”.
2. The validity of anything done in relation to the Advocate General is not affected by a vacancy in that office.
3. If that office is vacant or the Advocate General is for any reason unable to act, his functions shall be exercisable by such other Minister of the Crown as the Prime Minister may determine in writing.

## Subheading 4: Cross-border public authorities

### 88. Cross-border public authorities: initial status

1. Sections 53 and 118 to 121 shall not apply in relation to any function which is specifically exercisable in relation to a cross-border public authority; and section 118 shall not apply in relation to any function of such an authority.
2. A Minister of the Crown shall consult the Scottish Ministers before he exercises, in relation to a cross-border public authority, any specific function—
  - a. which relates to any appointment or removal of the cross-border public authority concerned or of any members or office-holders of the cross-border public authority concerned, or
  - b. whose exercise might affect Scotland otherwise than wholly in relation to reserved matters.
3. Any cross-border public authority or other person which is required by a pre-commencement enactment or a prerogative instrument to lay any report relating to a cross-border public authority before Parliament or either House of Parliament shall also lay the report before the Scottish Parliament.
4. Subsections (1) to (3) are subject to any Order in Council made under section 89.
5. In this Act “cross-border public authority” means any body, government department, office or office-holder specified in an Order in Council made by Her Majesty under this section.
6. Such an Order may only specify a body, government department, office or office-holder which (at the time when the Order is made) has, in addition to other functions, functions which are exercisable in or as regards Scotland and do not relate to reserved matters.
7. In this section—
  - “office-holder” includes employee or other post-holder,

- “report” includes accounts and any statement.

## 89. Power to adapt etc. cross-border public authorities

1. Her Majesty may by Order in Council make such provision in relation to a cross-border public authority as She considers necessary or expedient in consequence of this Act.
2. Such provision may, in particular, include provision—
  - a. modifying any function of a cross-border public authority or of a Minister of the Crown in relation to such an authority,
  - b. conferring any function on a cross-border public authority or on a Minister of the Crown or the Scottish Ministers in relation to such an authority,
  - c. modifying the constitution of a cross-border public authority,
  - d. modifying the application of section 56(4) or 88(1), (2) or (3),
  - e. for any function to be exercisable by the Scottish Ministers instead of by a Minister of the Crown, or by the one concurrently with the other, or by both jointly or by either with the agreement of or after consultation with the other,
  - f. apportioning any assets or liabilities,
  - g. imposing, or enabling the imposition of, any limits or other restrictions in addition to or in substitution for existing limits or restrictions,
  - h. providing for sums to be charged on or payable out of, or paid into, the Scottish Consolidated Fund (instead of or in addition to payments into or out of the Consolidated Fund or the National Loans Fund or out of money provided by Parliament),
  - i. requiring payments, with or without interest, to a Minister of the Crown or into the Consolidated Fund or National Loans Fund.
3. No recommendation shall be made to Her Majesty in Council to make an Order under this section unless the cross-border public authority concerned has been consulted.

## 90. Power to transfer property of cross-border public authorities

1. This section applies if an Act of the Scottish Parliament provides for any functions of a cross-border public authority to be no longer exercisable in or as regards Scotland.
2. Her Majesty may by Order in Council provide—
  - a. for the transfer of any property to which this section applies, or

• Head of state powers  
• Advisory bodies to the head of state

• Head of state powers  
• Advisory bodies to the head of state

- b. for any person to have such rights or interests in relation to any property to which this section applies as Her Majesty considers appropriate (whether in connection with a transfer or otherwise).
- 3. This section applies to property belonging to the cross-border public authority concerned which appears to Her Majesty—
  - a. to be held or used wholly or partly for or in connection with the exercise of any of the functions concerned, or
  - b. not to be within paragraph (a) but, when last held or used for or in connection with the exercise of any function, to have been so held or used for or in connection with the exercise of any of the functions concerned.
- 4. Her Majesty may by Order in Council provide for the transfer of any liabilities—
  - a. to which the cross-border public authority concerned is subject, and
  - b. which appear to Her Majesty to have been incurred wholly or partly for or in connection with the exercise of any of the functions concerned.
- 5. No recommendation shall be made to Her Majesty in Council to make an Order under this section unless the cross-border public authority concerned has been consulted.

## Subheading 5: The BBC

### 90A. BBC Trust member for Scotland

- 1. A Minister of the Crown must not exercise without the agreement of the Scottish Ministers functions relating to selection for a particular appointment by which—
  - a. a person is to become a member of the BBC Trust and hold a Scottish post, or
  - b. an existing member of the Trust is to hold a Scottish post.
- 2. “Scottish post” means a position, held as a member of the Trust, with specific reference to Scotland.”

## Subheading 6: Miscellaneous

### 91. Maladministration

- 1. The Parliament shall make provision for the investigation of relevant complaints made to its members in respect of any action taken by or on behalf of—
  - a. a member of the Scottish Executive in the exercise of functions conferred on the Scottish Ministers, or
  - b. any other office-holder in the Scottish Administration.

2. For the purposes of subsection (1), a complaint is a relevant complaint if it is a complaint of a kind which could be investigated under the Parliamentary Commissioner Act 1967 if it were made to a member of the House of Commons in respect of a government department or other authority to which that Act applies.
3. The Parliament may make provision for the investigation of complaints in respect of—
  - a. any action taken by or on behalf of an office-holder in the Scottish Administration,
  - b. any action taken by or on behalf of the Parliamentary corporation,
  - c. any action taken by or on behalf of a Scottish public authority with mixed functions or no reserved functions, or
  - d. any action concerning Scotland and not relating to reserved matters which is taken by or on behalf of a cross-border public authority.
4. In making provision of the kind required by subsection (1), the Parliament shall have regard (among other things) to the Act of 1967.
5. Sections 53 and 117 to 121 shall not apply in relation to functions conferred by or under the Act of 1967.
6. In this section—
  - “action” includes failure to act (and related expressions shall be read accordingly),
  - “provision” means provision by an Act of the Scottish Parliament; and the references to the Act of 1967 are to that Act as it has effect on the commencement of this section.

## 92. Queen’s Printer for Scotland

1. There shall be a Queen’s Printer for Scotland who shall—
  - a. exercise the Queen’s Printer functions in relation to Acts of the Scottish Parliament and subordinate legislation (other than Scottish statutory instruments) to which this section applies, and
  - b. exercise any other functions conferred on her by this Act or any other enactment.
2. In subsection (1), “the Queen’s Printer functions” means the printing functions in relation to Acts of Parliament and subordinate legislation of the Queen’s Printer of Acts of Parliament.
3. The Queen’s Printer for Scotland shall also on behalf of Her Majesty exercise Her rights and privileges in connection with—
  - a. Crown copyright in Acts of the Scottish Parliament,
  - b. Crown copyright in subordinate legislation to which this section applies,

• Provisions for intellectual property

- c. Crown copyright in any existing or future works (other than subordinate legislation) made in the exercise of a function which is exercisable by any office-holder in, or member of the staff of, the Scottish Administration (or would be so exercisable if the function had not ceased to exist),
  - d. other copyright assigned to Her Majesty in works made in connection with the exercise of functions by any such office-holder or member.
4. This section applies to subordinate legislation made, confirmed or approved—
- a. by a member of the Scottish Executive,
  - b. by a Scottish public authority with mixed functions or no reserved functions, or
  - c. within devolved competence by a person other than a Minister of the Crown or such a member or authority.
- 4A. For the purposes of subsection (4)(c), the function of Her Majesty of making an Order in Council under section 15(1) or (2) (power to specify persons disqualified from membership of the Parliament) is to be regarded as being exercisable within devolved competence.
- 4B. If, following an alteration such as is mentioned in section 30(5)—
- a. subordinate legislation is made, confirmed or approved under a provision which continues to have effect by virtue of section 30(6), and
  - b. the making, confirmation or approval would be within devolved competence but for the alteration,
- the subordinate legislation is to be regarded for the purposes of this section as being made, confirmed or approved within devolved competence.
5. The Queen's Printer of Acts of Parliament shall hold the office of Queen's Printer for Scotland.
6. References in this Act to a Scottish public authority include the Queen's Printer for Scotland.

### 93. Agency arrangements

- 1. A Minister of the Crown may make arrangements for any of his specified functions to be exercised on his behalf by the Scottish Ministers; and the Scottish Ministers may make arrangements for any of their specified functions to be exercised on their behalf by a Minister of the Crown.
- 2. An arrangement under this section does not affect a person's responsibility for the exercise of his functions.
- 2A. The collection and management of a devolved tax is a specified function of the Scottish Ministers.
- 3. In this section—
  - "functions" does not include a function of making, confirming or approving subordinate legislation,
  - "Minister of the Crown" includes government department,

- “specified” (subject to subsection (2A)) means specified in an Order in Council made by Her Majesty under this subsection;
- and this section applies to the Lord Advocate as it applies to the Scottish Ministers.

## 94. Private legislation

1. This section applies where a pre-commencement enactment makes provision which has the effect of—
  - a. requiring any order to be confirmed by Act of Parliament, or
  - b. requiring any order (within the meaning of the Statutory Orders (Special Procedure) Act 1945) to be subject to special parliamentary procedure, and power to make, confirm or approve the order in question is exercisable by the Scottish Ministers by virtue of section 53.
2. The provision shall have effect, so far as it relates to the exercise of the power to make, confirm or approve the order by virtue of section 53, as if it required the order—
  - a. to be confirmed by an Act of the Scottish Parliament, or
  - b. (as the case may be) to be subject to such special procedure as may be provided by or under such an Act.

## 95. Appointment and removal of judges

1. It shall continue to be for the Prime Minister to recommend to Her Majesty the appointment of a person as Lord President of the Court of Session or Lord Justice Clerk.
2. The Prime Minister shall not recommend to Her Majesty the appointment of any person who has not been nominated by the First Minister for such appointment.
3. Before nominating persons for such appointment the First Minister shall consult the Lord President and the Lord Justice Clerk (unless, in either case, the office is vacant).
4. It is for the First Minister, after consulting the Lord President, to recommend to Her Majesty the appointment of a person as—
  - a. a judge of the Court of Session (other than the Lord President or the Lord Justice Clerk), or
  - b. a sheriff principal or a sheriff.
5. The First Minister shall comply with any requirement in relation to—
  - a. a nomination under subsection (2), or
  - b. a recommendation under subsection (4), imposed by virtue of any enactment.



6. A judge of the Court of Session and the Chairman of the Scottish Land Court may be removed from office only by Her Majesty; and any recommendation to Her Majesty for such removal shall be made by the First Minister.
7. The First Minister shall make such a recommendation if (and only if) the Parliament, on a motion made by the First Minister, resolves that such a recommendation should be made.
8. Provision shall be made for a tribunal constituted by the First Minister to investigate and report on whether a judge of the Court of Session or the Chairman of the Scottish Land Court is unfit for office by reason of inability, neglect of duty or misbehaviour and for the report to be laid before the Parliament.
9. Such provision shall include provision—
  - a. for the constitution of the tribunal by the First Minister when requested by the Lord President to do so and in such other circumstances as the First Minister thinks fit, and
  - b. for the appointment to chair the tribunal of a member of the Judicial Committee of the Privy Council who holds or has held high judicial office, and may include provision for suspension from office.
10. The First Minister may make a motion under subsection (7) only if—
  - a. he has received from a tribunal constituted in pursuance of subsection (8) a written report concluding that the person in question is unfit for office by reason of inability, neglect of duty or misbehaviour and giving reasons for that conclusion,
  - b. where the person in question is the Lord President or the Lord Justice Clerk, he has consulted the Prime Minister, and
  - c. he has complied with any other requirement imposed by virtue of any enactment.
11. In subsections (8) to (10)—
  - “high judicial office” has the meaning given by section 60 of the Constitutional Reform Act 2005,
  - “provision” means provision by or under an Act of the Scottish Parliament,
  - “tribunal” means a tribunal of at least three persons.

## 96. Provision of information to the Treasury

1. The Treasury may require the Scottish Ministers to provide, within such period as the Treasury may reasonably specify, such information, in such form and prepared in such manner, as the Treasury may reasonably specify.
2. If the information is not in their possession or under their control, their duty under subsection (1) is to take all reasonable steps to comply with the requirement.

- Head of state powers
- Advisory bodies to the head of state

## 97. Assistance for opposition parties

1. Her Majesty may by Order in Council provide for the Parliamentary corporation to make payments to registered political parties for the purpose of assisting members of the Parliament who are connected with such parties to perform their Parliamentary duties.
2. The corporation shall not make any payment to a party in pursuance of such an Order if any of the members of the Parliament who are connected with the party are also members of the Scottish Executive or junior Scottish Ministers.
3. But such an Order may, in any circumstances specified in the Order, require the fact that any members who are connected with a party are also members of the Scottish Executive or junior Scottish Ministers to be disregarded.
4. Such an Order may determine the circumstances in which a member of the Parliament and a registered political party are to be regarded for the purposes of this section as connected.

## Subheading 7: Juridical

## 98. Devolution issues

Schedule 6 (which makes provision in relation to devolution issues) shall have effect.

## 99. Rights and liabilities of the Crown in different capacities

1. Rights and liabilities may arise between the Crown in right of Her Majesty's Government in the United Kingdom and the Crown in right of the Scottish Administration by virtue of a contract, by operation of law or by virtue of an enactment as they may arise between subjects.
2. Property and liabilities may be transferred between the Crown in one of those capacities and the Crown in the other capacity as they may be transferred between subjects; and they may together create, vary or extinguish any property or liability as subjects may.
3. Proceedings in respect of—
  - a. any property or liabilities to which the Crown in one of those capacities is entitled or subject under subsection (1) or (2), or
  - b. the exercise of, or failure to exercise, any function exercisable by an office-holder of the Crown in one of those capacities,
 may be instituted by the Crown in either capacity; and the Crown in the other capacity may be a separate party in the proceedings.
4. This section applies to a unilateral obligation as it applies to a contract.
5. In this section—
  - “office-holder”, in relation to the Crown in right of Her Majesty's Government in the United Kingdom, means any Minister of the Crown or other office-holder under the Crown in that capacity and, in relation to the Crown in right of the Scottish Administration, means any office-holder in the Scottish Administration,
  - “subject” means a person not acting on behalf of the Crown.

## 100. Human rights

- 1. This Act does not enable a person—
  - a. to bring any proceedings in a court or tribunal on the ground that an act is incompatible with the Convention rights, or
  - b. to rely on any of the Convention rights in any such proceedings, unless he would be a victim for the purposes of Article 34 of the Convention (within the meaning of the Human Rights Act 1998) if proceedings in respect of the act were brought in the European Court of Human Rights.
- 2. Subsection (1) does not apply to the Lord Advocate, the Advocate General, the Attorney General, the Advocate General for Northern Ireland or the Attorney General for Northern Ireland.
- 3. This Act does not enable a court or tribunal to award any damages in respect of an act which is incompatible with any of the Convention rights which it could not award if section 8(3) and (4) of the Human Rights Act 1998 applied.
- 3A. Subsection (3B) applies to any proceedings brought by virtue of this Act against the Scottish Ministers or a member of the Scottish Government in a court or tribunal on the ground that an act of the Scottish Ministers or a member of the Scottish Government is incompatible with the Convention rights.
- 3B. Proceedings to which this subsection applies must be brought before the end of—
  - a. the period of one year beginning with the date on which the act complained of took place, or
  - b. such longer period as the court or tribunal considers equitable having regard to all the circumstances, but that is subject to any rule imposing a stricter time limit in relation to the procedure in question.
- 3C. Subsection (3B) does not apply to proceedings brought by the Lord Advocate, the Advocate General, the Attorney General, the Attorney General for Northern Ireland or the Advocate General for Northern Ireland.
- 3D. In subsections (3A) and (3B) “act” does not include the making of any legislation but it does include any other act or failure to act (including a failure to make legislation).
- 3E. In subsection (3B) “rule” has the same meaning as it has in section 7(5) of the Human Rights Act 1998.
- 4. Subject to subsection (3D), in this section “act” means—
  - a. making any legislation,
  - b. any other act or failure to act, if it is the act or failure of a member of the Scottish Executive.

## 101. Interpretation of Acts of the Scottish Parliament etc

- 1. This section applies to—
  - a. any provision of an Act of the Scottish Parliament, or of a Bill for such an Act, and

- b. any provision of subordinate legislation made, confirmed or approved, or purporting to be made, confirmed or approved, by a member of the Scottish Executive,
- which could be read in such a way as to be outside competence.
2. Such a provision is to be read as narrowly as is required for it to be within competence, if such a reading is possible, and is to have effect accordingly.
  3. In this section “competence”—
    - a. in relation to an Act of the Scottish Parliament, or a Bill for such an Act, means the legislative competence of the Parliament, and
    - b. in relation to subordinate legislation, means the powers conferred by virtue of this Act.

## 102. Powers of courts or tribunals to vary retrospective decisions

1. This section applies where any court or tribunal decides that—
  - a. an Act of the Scottish Parliament or any provision of such an Act is not within the legislative competence of the Parliament, or
  - b. a member of the Scottish Executive does not have the power to make, confirm or approve a provision of subordinate legislation that he has purported to make, confirm or approve, or
  - c. any other purported exercise of a function by a member of the Scottish Government was outside devolved competence.
2. The court or tribunal may make an order—
  - a. removing or limiting any retrospective effect of the decision, or
  - b. suspending the effect of the decision for any period and on any conditions to allow the defect to be corrected.
3. In deciding whether to make an order under this section, the court or tribunal shall (among other things) have regard to the extent to which persons who are not parties to the proceedings would otherwise be adversely affected.
4. Where a court or tribunal is considering whether to make an order under this section, it shall order intimation of that fact to be given to—
  - a. the Lord Advocate, and
  - b. the appropriate law officer, where the decision mentioned in subsection (1) relates to a devolution issue (within the meaning of Schedule 6), or to a compatibility issue,

unless the person to whom the intimation would be given is a party to the proceedings.
5. A person to whom intimation is given under subsection (4) may take part as a party in the proceedings so far as they relate to the making of the order.

- 5A. Where the decision mentioned in subsection (1) is a decision of the Supreme Court on a compatibility issue, the power to make an order under this section is exercisable by the High Court of Justiciary instead of the Supreme Court.
6. Paragraphs 36 and 37 of Schedule 6 apply with necessary modifications for the purposes of subsections (4) and (5) as they apply for the purposes of that Schedule.
7. In this section—
- “compatibility issue” has the meaning given by section 288ZA of the Criminal Procedure (Scotland) Act 1995,
  - “intimation” includes notice,
  - “the appropriate law officer” means—
    - a. in relation to proceedings in Scotland, the Advocate General,
    - b. in relation to proceedings in England and Wales, the Attorney General,
    - c. in relation to proceedings in Northern Ireland, the Advocate General for Northern Ireland.

## 103. The Judicial Committee

[Repealed]

## Subheading 8: Supplementary powers

### 104. Power to make provision consequential on legislation of, or scrutinised by, the Parliament

1. Subordinate legislation may make such provision as the person making the legislation considers necessary or expedient in consequence of any provision made by or under any Act of the Scottish Parliament or made by legislation mentioned in subsection (2).
2. The legislation is subordinate legislation under an Act of Parliament made by—
  - a. a member of the Scottish Executive,
  - b. a Scottish public authority with mixed functions or no reserved functions, or
  - c. any other person (not being a Minister of the Crown) if the function of making the legislation is exercisable within devolved competence.
3. For the purposes of subsection (2)(c), the function of Her Majesty of making an Order in Council under section 15(1) or (2) (power to specify persons disqualified from membership of the Parliament) is to be regarded as being exercisable within devolved competence.

• Powers of cabinet  
 • Head of state powers  
 • Advisory bodies to the head of state

## 105. Power to make provision consequential on this Act

Subordinate legislation may make such modifications in any pre-commencement enactment or prerogative instrument or any other instrument or document as appear to the person making the legislation necessary or expedient in consequence of this Act.

## 106. Power to adapt functions

1. Subordinate legislation may make such provision (including, in particular, provision modifying a function exercisable by a Minister of the Crown) as the person making the legislation considers appropriate for the purpose of enabling or otherwise facilitating the transfer of a function to the Scottish Ministers by virtue of section 53 or 63.
2. Subordinate legislation under subsection (1) may, in particular, provide for any function which—
  - a. is not exercisable separately in or as regards Scotland to be so exercisable, or
  - b. is not otherwise exercisable separately within devolved competence to be so exercisable.
3. The reference in subsection (1) to the transfer of a function to the Scottish Ministers shall be read as including the sharing of a function with the Scottish Ministers or its other adaptation.
4. No recommendation shall be made to Her Majesty in Council to make, and no Minister of the Crown shall make, subordinate legislation under this section which modifies a function of observing or implementing an obligation mentioned in subsection (5) unless the Scottish Ministers have been consulted about the modification.
5. The obligation is an international obligation, or an obligation under EU law, to achieve a result defined by reference to a quantity (whether expressed as an amount, proportion or ratio or otherwise), where the quantity relates to the United Kingdom (or to an area including the United Kingdom or to an area consisting of a part of the United Kingdom which includes the whole or part of Scotland).
6. If subordinate legislation under this section modifies a function of observing or implementing such an international obligation so that the function to be transferred to the Scottish Ministers relates only to achieving so much of the result to be achieved under the obligation as is specified in the legislation, references in section 58 to the international obligation are to be read as references to the requirement to achieve that much of the result.
7. If subordinate legislation under this section modifies a function of observing or implementing such an obligation under EU law so that the function to be transferred to the Scottish Ministers relates only to achieving so much of the result to be achieved under the obligation as is specified in the legislation, references in sections 29(2)(d) and 57(2) and paragraph 1 of Schedule 6 to EU law are to be read as including references to the requirement to achieve that much of the result.

- Powers of cabinet
- Head of state powers
- Advisory bodies to the head of state

- Powers of cabinet
- Head of state powers
- Advisory bodies to the head of state

- International law
- International organizations

- International law
- International organizations

- International law

- International organizations

## 107. Legislative power to remedy ultra vires acts

Subordinate legislation may make such provision as the person making the legislation considers necessary or expedient in consequence of—

- a. an Act of the Scottish Parliament or any provision of an Act of the Scottish Parliament which is not, or may not be, within the legislative competence of the Parliament, or
- b. any purported exercise by a member of the Scottish Executive of his functions which is not, or may not be, an exercise or a proper exercise of those functions.

## 108. Agreed redistribution of functions exercisable by the Scottish Ministers etc

1. Her Majesty may by Order in Council provide for any functions exercisable by a member of the Scottish Executive to be exercisable—
  - a. by a Minister of the Crown instead of by the member of the Scottish Executive,
  - b. by a Minister of the Crown concurrently with the member of the Scottish Executive, or
  - c. by the member of the Scottish Executive only with the agreement of, or after consultation with, a Minister of the Crown.
2. Where an Order is made under subsection (1)(a) or (b) in relation to a function of the Scottish Ministers, the First Minister or the Lord Advocate which is exercisable only with the agreement of, or after consultation with, any other of those persons, the function shall, unless the Order provides otherwise, be exercisable by the Minister of the Crown free from any such requirement.
3. An Order under this section may, in particular, provide for any function exercisable by a Minister of the Crown by virtue of an Order under subsection (1)(a) or (b) to be exercisable subject to a requirement for the function to be exercised with the agreement of, or after consultation with, another person.
4. This section does not apply to any retained functions of the Lord Advocate which fall within section 52(6)(a).

## 109. Agreed redistribution of property and liabilities

1. Her Majesty may by Order in Council provide—
  - a. for the transfer to a Minister of the Crown or government department of any property belonging to the Scottish Ministers or the Lord Advocate, or
  - b. for a Minister of the Crown or government department to have such rights or interests in relation to any property belonging to the Scottish Ministers or the Lord Advocate as Her Majesty considers appropriate (whether in connection with a transfer or otherwise).

• Head of state powers  
• Advisory bodies to the head of state

• Head of state powers  
• Advisory bodies to the head of state

2. Her Majesty may by Order in Council provide for the transfer to a Minister of the Crown or government department of any liabilities to which the Scottish Ministers or the Lord Advocate are subject.
3. An Order in Council under this section may only be made in connection with any transfer or sharing of functions of a member of the Scottish Executive by virtue of section 108 or in any other circumstances in which Her Majesty considers it appropriate to do so for the purposes of this Act.

## 110. Scottish taxpayers for social security purposes

1. The Secretary of State may by order provide for individuals of any description specified in the order to be treated for the purposes of any of the matters that are reserved matters by virtue of Head F of Part II of Schedule 5 as if they were, or were not, Scottish taxpayers.
2. The Secretary of State may by order provide in relation to any year of assessment that, for those purposes, the basic rate, higher rate or additional rate in relation to the income of Scottish taxpayers shall be treated as being such rate as is specified in the order (instead of the rate calculated under section 6(2B) of the Income Tax Act 2007).
3. An order under this section may apply in respect of any individuals whether or not they have a close connection with Scotland.
4. In this section “Scottish taxpayer” has the same meaning as in Subheading 2 of Part 4A.

## 111. Regulation of Tweed and Esk fisheries

1. Her Majesty may by Order in Council make provision for or in connection with the conservation, management and exploitation of salmon, trout, eels, lampreys, smelt, shad and freshwater fish in the Border rivers.
2. An Order under subsection (1) may—
  - a. exclude the application of section 53 in relation to any Border rivers function,
  - b. confer power to make subordinate legislation.
3. In particular, provision may be made by such an Order—
  - a. conferring any function on a Minister of the Crown, the Scottish Ministers or a public body in relation to the Border rivers,
  - b. for any Border rivers function exercisable by any person to be exercisable instead by a person (or another person) mentioned in paragraph (a),
  - c. for any Border rivers function exercisable by any person to be exercisable concurrently or jointly with, or with the agreement of or after consultation with, a person (or another person) mentioned in paragraph (a).
4. In this section—
  - “the Border rivers” means the Rivers Tweed and Esk,
  - “Border rivers function” means a function conferred by any enactment, so far as exercisable in relation to the Border rivers,

• Head of state powers  
• Advisory bodies to the head of state

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- “conservation”, in relation to salmon, trout, eels, lampreys, smelt, shad and freshwater fish, includes the protection of their environment,
- “eels”, “fish”, “freshwater fish”, “salmon”, “smelt” and “trout” have the same meanings as in the Salmon and Freshwater Fisheries Act 1975 (as amended by the Marine and Coastal Access Act 2009),
- “the River Tweed” means the Tweed district (as defined in article 2(1) of the Scotland Act 1998 (River Tweed) Order 2006 (S.I. 2006/2913)).
- “the River Esk” means the river of that name which, for part of its length, constitutes the border between England and Scotland including—
  - a. its tributary streams (which for this purpose include the River Sark and its tributary streams), and
  - b. such waters on the landward side of its estuary limits as are determined by an Order under subsection (1),

together with its banks;

- and references to the Border rivers include any part of the Border rivers.
5. An Order under subsection (1) may modify the definitions in subsection (4) of the River Tweed and the River Esk.
  6. An Order under subsection (1) may amend that subsection so as to—
    - a. add any description of fish to it, or
    - b. remove any description of fish from it.

## Part VI: Supplementary

### Subheading 1: Subordinate legislation

#### 112. Subordinate legislation: general

1. Any power to make subordinate legislation conferred by this Act shall, if no other provision is made as to the person by whom the power is exercisable, be exercisable by Her Majesty by Order in Council or by a Minister of the Crown by order.
2. But the power to make subordinate legislation under section 129(1) providing—
  - a. for the appropriation of sums forming part of the Scottish Consolidated Fund, or
  - b. for sums received by any person to be appropriated in aid of sums appropriated as mentioned in paragraph (a),
 shall be exercisable only by Her Majesty by Order in Council.

• Constitution amendment procedure  
 • Head of state powers  
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• Powers of cabinet  
 • Head of state powers  
 • Advisory bodies to the head of state

• Head of state powers  
 • Advisory bodies to the head of state

- Powers of cabinet
- Head of state powers
- Advisory bodies to the head of state

3. References in this Act to an open power are to a power to which subsection (1) applies (and include a power to make subordinate legislation under section 129(1) whether or not the legislation makes provision as mentioned in subsection (2)).
4. An Order in Council under an open power may revoke, amend or re-enact an order, as well as an Order in Council, under the power; and an order under an open power may revoke, amend or re-enact an Order in Council, as well as an order, under the power.
5. Any power to make subordinate legislation conferred by this Act shall, in relation to its exercise by a Minister of the Crown or a member of the Scottish Executive, be exercisable by statutory instrument.
6. Section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) (functions exercisable by Scottish statutory instrument) applies to the function of making an Order in Council under section 15(1) or (2).

- Powers of cabinet
- Head of state powers
- Advisory bodies to the head of state

### 113. Subordinate legislation: scope of powers

1. References in this section to a power are to an open power and to any other power to make subordinate legislation conferred by this Act which is exercisable by Her Majesty in Council or by a Minister of the Crown, and include a power as extended by this section.
  - 1A. Subsections (2) to (11), except subsection (9), apply also to the power of the Scottish Ministers to make an order under section 12.
2. A power may be exercised so as to make different provision for different purposes.
3. A power (as well as being exercisable in relation to all cases to which it extends) may be exercised in relation to—
  - a. those cases subject to specified exceptions, or
  - b. any particular case or class of case.
4. A power includes power to make—
  - a. any supplementary, incidental or consequential provision, and
  - b. any transitory, transitional or saving provision, which the person making the legislation considers necessary or expedient.
5. A power may be exercised by modifying—
  - a. any enactment or prerogative instrument,
  - b. any other instrument or document, if the subordinate legislation (or a statutory instrument containing it) would be subject to any of the types of procedure referred to in Schedule 7.
6. But a power to modify enactments does not (unless otherwise stated) extend to making modifications of this Act or subordinate legislation under it.
7. A power may be exercised so as to make provision for the delegation of functions.
8. A power includes power to make provision for sums to be payable out of the Scottish Consolidated Fund or charged on the Fund.

- Powers of cabinet
- Head of state powers
- Advisory bodies to the head of state

- Constitution amendment procedure

9. A power includes power to make provision for the payment of sums out of money provided by Parliament or for sums to be charged on and paid out of the Consolidated Fund.
- 9A. A power may not be exercised so as to create any criminal offence punishable with any of the penalties specified for the offence in subsection (9B) or (10).
- 9B. In relation to Scotland, the specified penalties are—
- a. where the offence is triable on summary complaint only, imprisonment for a period exceeding 12 months and a fine exceeding level 5 on the standard scale,
  - b. where an offence triable either on indictment or on summary complaint is tried on summary complaint, imprisonment for a period exceeding 12 months and a fine exceeding the statutory maximum,
  - c. where the offence is tried on indictment, imprisonment for a period exceeding two years.
10. In relation to England and Wales and Northern Ireland, the specified penalties are—
- a. where the offence is tried summarily, imprisonment for a period exceeding three months and a fine exceeding—
    - i. in the case of a summary offence, level 5 on the standard scale,
    - ii. in the case of an offence triable either way, the statutory maximum,
  - b. where the offence is tried on indictment, imprisonment for a period exceeding two years.
11. The fact that a power is conferred does not prejudice the extent of any other power.
12. Her Majesty may by Order in Council amend subsection (9B) or (10) so as to change—
- a. any period of imprisonment specified there, or
  - b. the amount of any fine so specified.

## 114. Subordinate legislation: particular provisions

1. A power to make subordinate legislation conferred by any of the following provisions of this Act may be exercised by modifying any enactment comprised in or made under this Act (except Schedules 4 and 5): sections 66(5), 89, 104, 107, 108 and 129(1).
2. The reference in subsection (1) to a power to make subordinate legislation includes a power as extended by section 113.
3. A power to make subordinate legislation conferred by any of the following provisions of this Act may be exercised so as to make provision having retrospective effect: sections 30, 58(4), 104 and 107.

• Constitution amendment procedure

• Powers of cabinet  
 • Head of state powers  
 • Advisory bodies to the head of state

## 115. Subordinate legislation: procedure

1. Schedule 7 (which determines the procedure which is to apply to subordinate legislation under this Act in relation to each House of Parliament and the Scottish Parliament) shall have effect.
2. In spite of the fact that that Schedule provides for subordinate legislation under a particular provision of this Act (or the statutory instrument containing it) to be subject to any type of procedure in relation to the Parliament, the provision conferring the power to make that legislation may be brought into force at any time after the passing of this Act.
3. Accordingly, any subordinate legislation (or the statutory instrument containing it) made in the exercise of the power in the period beginning with that time and ending immediately before the principal appointed day is to be subject to such other type of procedure (if any) as may be specified in subordinate legislation made under section 129(1).

## 116. Transfer of property: supplementary

1. This section applies in relation to subordinate legislation under section 60, 62, 90 or 109 or paragraph 2 of Schedule 2.
2. Any such subordinate legislation may, in particular—
  - a. provide for the creation of rights or interests, or the imposition of liabilities or conditions, in relation to property transferred, or rights or interests acquired, by virtue of such legislation,
  - b. provide for any property, liabilities or conditions to be determined under such legislation,
  - c. make provision (other than provision imposing a charge to tax) as to the tax treatment of anything done by virtue of such legislation.
3. No order shall be made by a Minister of the Crown by virtue of subsection (2)(c), and no recommendation shall be made to Her Majesty in Council to make an Order in Council by virtue of subsection (2)(c), without the agreement of the Treasury.
4. Subordinate legislation to which this section applies shall have effect in relation to any property or liabilities to which it applies despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict the transfer of the property or liabilities.
5. A right of pre-emption, right of irritancy, right of return or other similar right shall not operate or become exercisable as a result of any transfer of property by virtue of any subordinate legislation to which this section applies.
6. Any such right shall have effect in the case of any such transfer as if the transferee were the same person in law as the transferor and as if no transfer of the property had taken place.
7. Such compensation as is just shall be paid to any person in respect of any such right which would, apart from subsection (5), have operated in favour of, or become exercisable by, that person but which, in consequence of the operation of that subsection, cannot subsequently operate in his favour or (as the case may be) become exercisable by him.
8. Any compensation payable by virtue of subsection (7) shall be paid by the transferor or by the transferee or by both.

- Powers of cabinet
- Head of state powers
- Advisory bodies to the head of state

- Powers of cabinet
- Head of state powers
- Advisory bodies to the head of state

- Powers of cabinet
- Head of state powers
- Advisory bodies to the head of state

9. Subordinate legislation under this subsection may provide for the determination of any disputes as to whether and, if so, how much, compensation is payable by virtue of subsection (7) and as to the person to whom or by whom it shall be paid.
10. Subsections (4) to (9) apply in relation to the creation of rights or interests, or the doing of anything else, in relation to property as they apply in relation to a transfer of property; and references to the transferor and transferee shall be read accordingly.
11. A certificate issued by the Secretary of State that any property or liability has, or has not, been transferred by virtue of subordinate legislation under section 60 or 62 or paragraph 2 of Schedule 2 shall be conclusive evidence of the transfer or (as the case may be) the fact that there has not been a transfer.
12. A certificate issued by the Secretary of State and the Scottish Ministers that any property or liability has, or has not, been transferred by virtue of an Order in Council under section 90 or 109 shall be conclusive evidence of the transfer or (as the case may be) the fact that there has not been a transfer.
13. In this section “right of return” means any right under a provision for the return or reversion of property in specified circumstances.

## Subheading 2: General modification of enactments

### 117. Ministers of the Crown

So far as may be necessary for the purpose or in consequence of the exercise of a function by a member of the Scottish Executive within devolved competence, any pre-commencement enactment or prerogative instrument, and any other instrument or document, shall be read as if references to a Minister of the Crown (however described) were or included references to the Scottish Ministers.

### 118. Subordinate instruments

1. Subsection (2) applies in relation to the exercise by a member of the Scottish Executive within devolved competence of a function to make, confirm or approve subordinate legislation.
2. If a pre-commencement enactment makes provision—
  - a. for any instrument or the draft of any instrument made in the exercise of such a function to be laid before Parliament or either House of Parliament,
  - b. for the annulment or approval of any such instrument or draft by or in pursuance of a resolution of either or both Houses of Parliament, or
  - c. prohibiting the making of such an instrument without that approval, the provision shall have effect, so far as it relates to the exercise of the function by a member of the Scottish Executive within devolved competence, as if any reference in it to Parliament or either House of Parliament were a reference to the Scottish Parliament.
3. Where—
  - a. a function of making, confirming or approving subordinate legislation conferred by a pre-commencement enactment is exercisable by a Scottish public authority with mixed functions or no reserved functions, and

- b. a pre-commencement enactment makes such provision in relation to the exercise of the function as is mentioned in subsection (2), the provision shall have effect, so far as it relates to the exercise of the function by that authority, as if any reference in it to Parliament or either House of Parliament were a reference to the Scottish Parliament.
4. Where—
- a. a function of making, confirming or approving subordinate legislation conferred by a pre-commencement enactment is exercisable within devolved competence by a person other than a Minister of the Crown, a member of the Scottish Executive or a Scottish public authority with mixed functions or no reserved functions, and
  - b. a pre-commencement enactment makes such provision in relation to the exercise of the function as is mentioned in subsection (2),  
the provision shall have effect, so far as it relates to the exercise of the function by that person within devolved competence, as if any reference in it to Parliament or either House of Parliament were a reference to the Scottish Parliament.
5. If a pre-commencement enactment applies the Statutory Instruments Act 1946 as if a function of the kind mentioned in subsection (3) or (4) were exercisable by a Minister of the Crown, that Act shall apply, so far as the function is exercisable as mentioned in paragraph (a) of subsection (3) or (as the case may be) (4), as if the function were exercisable by the Scottish Ministers.

## 119. Consolidated Fund etc

1. In this section “Scottish functions” means—
- a. functions of the Scottish Ministers, the First Minister or the Lord Advocate which are exercisable within devolved competence,
  - b. functions of any Scottish public authority with mixed functions or no reserved functions.
2. Subject to subsections (3) and (5), a provision of a pre-commencement enactment which—
- a. requires or authorises the payment of any sum out of the Consolidated Fund or money provided by Parliament, or
  - b. requires or authorises the payment of any sum into the Consolidated Fund, shall cease to have effect in relation to any Scottish functions.
3. A provision of a pre-commencement enactment which—
- a. charges any sum on the Consolidated Fund,
  - b. requires the payment of any sum out of the Consolidated Fund without further appropriation, or
  - c. requires or authorises the payment of any sum into the Consolidated Fund by a person other than a Minister of the Crown,

shall have effect in relation to any Scottish functions as if it provided for the sum to be charged on the Scottish Consolidated Fund or required it to be paid out of that Fund without further approval or required or authorised it to be paid into that Fund (as the case may be).

4. Subsections (2) and (3) do not apply to the words from the beginning of section 2(3) of the European Communities Act 1972 (general implementation of Treaties) to “such Community obligation”.
5. A provision of a pre-commencement enactment which authorises any sums to be applied as money provided by Parliament instead of being paid into the Consolidated Fund shall have effect in relation to any Scottish functions as if it authorised those sums to be applied as if they had been paid out of the Scottish Consolidated Fund in accordance with rules under section 65(1)(c) instead of being paid into that Fund.
6. Where a power to lend money under a pre-commencement enactment is exercisable by the Scottish Ministers, subsection (7) applies to any sums which, for the purpose or as the result of the exercise of the power, would be required (apart from that subsection)—
  - a. to be issued by the Treasury out of the National Loans Fund, or
  - b. to be paid into that Fund.
7. Those sums shall instead—
  - a. be paid out of the Scottish Consolidated Fund without further approval, or
  - b. be paid into that Fund,  
(as the case may be).

## 120. Accounts and audit

A provision of a pre-commencement enactment which—

- a. requires any account to be examined, certified and reported on by, or to be open to the inspection of, the Comptroller and Auditor General, or
- b. requires him to have access to any other document for carrying out any such examination,

shall have effect in relation to any Scottish functions (within the meaning of section 119) as if the references to the Comptroller and Auditor General were to the Auditor General for Scotland.

## 121. Requirements to lay reports etc. before Parliament

1. This section applies where—
  - a. a pre-commencement enactment makes provision for any report to be laid before Parliament or either House of Parliament, and
  - b. the report concerns Scottish functions.
2. If the report only concerns Scottish functions, it shall be laid instead before the Scottish Parliament.

3. In any other case, it shall be laid before the Scottish Parliament as well as before Parliament or (as the case may be) either House of Parliament.
4. In this section—
  - “report” includes accounts and any statement,
  - “Scottish functions” has the same meaning as in section 119.

## 122. Crown land

1. In any provision about the application of any pre-commencement enactment to Crown land—
  - a. references to a Minister of the Crown or government department shall be read as including the Scottish Ministers and the Lord Advocate, and
  - b. references to a Minister of the Crown or government department having the management of the land shall be read as including any member of the Scottish Executive having the management of the land.
2. In this section, “Crown land” has the meaning given by section 242 of the Town and Country Planning (Scotland) Act 1997.

## 123. Stamp duty

In section 55 of the Finance Act 1987 (Crown exemption from stamp duty) references to a Minister of the Crown shall be read as including the Scottish Ministers, the Lord Advocate and the Parliamentary corporation.

## 124. Modification of sections 94 and 117 to 122

1. Subordinate legislation may provide for any provision of sections 94 and 117 to 122 not to apply, or to apply with modifications, in such cases as the person making the legislation considers appropriate.
2. Subordinate legislation made by Her Majesty in Council or a Minister of the Crown under this Act may, in connection with any other provision made by the legislation, also provide for any provision of sections 94 and 117 to 122 not to apply, or to apply with modifications.

## Subheading 3: Amendments and repeals

### 125. Amendments and repeals

1. Schedule 8 (which makes modifications of enactments) shall have effect.
2. The enactments mentioned in Schedule 9 are repealed to the extent specified in that Schedule.



## Subheading 4: Final provisions

### 126. Interpretation

#### 1. In this Act—

- “body” includes unincorporated association,
- “constituencies” and “regions”, in relation to the Parliament, mean the constituencies and regions provided for by Schedule 1,
- “constituency member” means a member of the Parliament for a constituency,
- “the Convention rights” has the same meaning as in the Human Rights Act 1998,
- “document” means anything in which information is recorded in any form (and references to producing a document are to be read accordingly),
- “enactment” includes an Act of the Scottish Parliament, Northern Ireland legislation (within the meaning of the Northern Ireland Act 1998) and an enactment comprised in subordinate legislation, and includes an enactment comprised in, or in subordinate legislation under, an Act of Parliament, whenever passed or made,
- “financial year” means a year ending with 31st March,
- “functions” includes powers and duties, and “confer”, in relation to functions, includes impose,
- “government department” means any department of the Government of the United Kingdom,
- “the Human Rights Convention” means—
  - a. the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950, and
  - b. the Protocols to the Convention,

as they have effect for the time being in relation to the United Kingdom,

- “Minister of the Crown” includes the Treasury,
- “modify” includes amend or repeal,
- “occupational pension scheme”, “personal pension scheme” and “public service pension scheme” have the meanings given by section 1 of the

## Pension Schemes Act 1993,

- “the Parliament” means the Scottish Parliament,
  - “parliamentary”, in relation to constituencies, elections and electors, is to be taken to refer to the Parliament of the United Kingdom,
  - “prerogative instrument” means an Order in Council, warrant, charter or other instrument made under the prerogative,
  - “the principal appointed day” means the day appointed by an order under section 130 which is designated by the order as the principal appointed day,
  - “proceedings”, in relation to the Parliament, includes proceedings of any committee or sub-committee,
  - “property” includes rights and interests of any description,
  - “regional member” means a member of the Parliament for a region,
  - “Scotland” includes so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Scotland,
  - “Scottish public authority” means any public body (except the Parliamentary corporation), public office or holder of such an office whose functions (in each case) are exercisable only in or as regards Scotland,
  - “the Scottish zone” means the sea within British fishery limits (that is, the limits set by or under section 1 of the Fishery Limits Act 1976) which is adjacent to Scotland,
  - “standing orders” means standing orders of the Parliament,
  - “subordinate legislation” has the same meaning as in the Interpretation Act 1978 and also includes an instrument made under an Act of the Scottish Parliament,
  - “tribunal” means any tribunal in which legal proceedings may be brought.
2. Her Majesty may by Order in Council determine, or make provision for determining, for the purposes of this Act any boundary between waters which are to be treated as internal waters or territorial sea of the United Kingdom, or sea within British fishery limits, adjacent to Scotland and those which are not.
  3. For the purposes of this Act—
    - a. the question whether any function of a body, government department, office or office-holder relates to reserved matters is to be determined by reference to the purpose for which the function is exercisable, having regard (among other things) to the likely effects in all the circumstances of any exercise of the function, but

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- b. bodies to which paragraph 3 of Part III of Schedule 5 applies are to be treated as if all their functions were functions which relate to reserved matters.
4. References in this Act to Scots private law are to the following areas of the civil law of Scotland—
- a. the general principles of private law (including private international law),
  - b. the law of persons (including natural persons, legal persons and unincorporated bodies),
  - c. the law of obligations (including obligations arising from contract, unilateral promise, delict, unjustified enrichment and negotiorum gestio),
  - d. the law of property (including heritable and moveable property, trusts and succession), and
  - e. the law of actions (including jurisdiction, remedies, evidence, procedure, diligence, recognition and enforcement of court orders, limitation of actions and arbitration),
- and include references to judicial review of administrative action.
5. References in this Act to Scots criminal law include criminal offences, jurisdiction, evidence, procedure and penalties and the treatment of offenders.
6. References in this Act and in any other enactment to the Scottish Administration are to the office-holders in the Scottish Administration and the members of the staff of the Scottish Administration.
7. For the purposes of this Act—
- a. references to office-holders in the Scottish Administration are to—
    - i. members of the Scottish Executive and junior Scottish Ministers, and
    - ii. the holders of offices in the Scottish Administration which are not ministerial offices, and
  - b. references to members of the staff of the Scottish Administration are to the staff of the persons referred to in paragraph (a).
8. For the purposes of this Act, the offices in the Scottish Administration which are not ministerial offices are—
- a. the Registrar General of Births, Deaths and Marriages for Scotland, the Keeper of the Registers of Scotland and the Keeper of the Records of Scotland, and
  - b. any other office of a description specified in an Order in Council made by Her Majesty under this subsection.

- 9. In this Act—
  - a. all those rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the EU Treaties, and
  - b. all those remedies and procedures from time to time provided for by or under the EU Treaties, are referred to as “EU law”.
- 10. In this Act, “international obligations” means any international obligations of the United Kingdom other than obligations to observe and implement EU law or the Convention rights.
- 11. In this Act, “by virtue of” includes “by” and “under”.

## 127. Index of defined expressions

In this Act, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions listed in the right-hand column.

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## 128. Expenses

1. There shall be paid out of money provided by Parliament—
  - a. any expenditure incurred by a Minister of the Crown by virtue of this Act, and
  - b. any increase attributable to this Act in the sums payable out of money so provided under any other enactment.
2. There shall be paid into the Consolidated Fund any sums received by a Minister of the Crown by virtue of this Act which are not payable into the National Loans Fund.

## 129. Transitional provisions etc

1. Subordinate legislation may make such provision as the person making the legislation considers necessary or expedient for transitory or transitional purposes in connection with the coming into force of any provision of this Act.
2. If any of the following provisions come into force before the Human Rights Act 1998 has come into force (or come fully into force), the provision shall have effect until the time when that Act is fully in force as it will have effect after that time: sections 29(2)(d), 57(2) and (3), 100 and 126(1) and Schedule 6.

## 130. Commencement

1. Sections 19 to 43, Parts II to V, sections 117 to 124 and section 125 (except so far as relating to paragraphs 10, 11, 19 and 23(1) and (6) of Schedule 8) shall

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- come into force on such day as the Secretary of State may by order appoint.
2. Different days may be appointed under this section for different purposes.

## 131. Extent

Section 25 extends only to Scotland.

## 132. Short title

This Act may be cited as the Scotland Act 1998.

## Schedules

**Schedule 1-4: [Schedules 1-4 omitted due to length - full text of schedules can be found online at <http://www.legislation.gov.uk/ukpga/1998/46/schedules>]**

## Schedule 5: Reserved matters

### Part I: General reservations

#### Subheading 1: The Constitution

1. The following aspects of the constitution are reserved matters, that is—
  - a. the Crown, including succession to the Crown and a regency,
  - b. the Union of the Kingdoms of Scotland and England,
  - c. the Parliament of the United Kingdom,
  - d. the continued existence of the High Court of Justiciary as a criminal court of first instance and of appeal,
  - e. the continued existence of the Court of Session as a civil court of first instance and of appeal.
2.
  1. Paragraph 1 does not reserve—
    - a. Her Majesty's prerogative and other executive functions,
    - b. functions exercisable by any person acting on behalf of the Crown, or
    - c. any office in the Scottish Administration.

- First chamber reserved policy areas
- Second chamber reserved policy areas

2. Sub-paragraph (1) does not affect the reservation by paragraph 1 of honours and dignities or the functions of the Lord Lyon King of Arms so far as relating to the granting of arms; but this sub-paragraph does not apply to the Lord Lyon King of Arms in his judicial capacity.
  3. Sub-paragraph (1) does not affect the reservation by paragraph 1 of the management (in accordance with any enactment regulating the use of land) of the Crown Estate.
  4. Sub-paragraph (1) does not affect the reservation by paragraph 1 of the functions of the Security Service, the Secret Intelligence Service and the Government Communications Headquarters.
  5. Sub-paragraph (1) does not affect the reservation by paragraph 1 of the functions exercisable through the Export Credits Guarantee Department.
- 3.
1. Paragraph 1 does not reserve property belonging to Her Majesty in right of the Crown or belonging to any person acting on behalf of the Crown or held in trust for Her Majesty for the purposes of any person acting on behalf of the Crown.
  2. Paragraph 1 does not reserve the ultimate superiority of the Crown or the superiority of the Prince and Steward of Scotland.
  3. Sub-paragraph (1) does not affect the reservation by paragraph 1 of—
    - a. the hereditary revenues of the Crown, other than revenues from bona vacantia, ultimus haeres and treasure trove,
    - b. the royal arms and standard,
    - c. the compulsory acquisition of property held or used by a Minister of the Crown or government department.
- 4.
1. Paragraph 1 does not reserve property held by Her Majesty in Her private capacity.
  2. Sub-paragraph (1) does not affect the reservation by paragraph 1 of the subject-matter of the Crown Private Estates Acts 1800 to 1873.
5. Paragraph 1 does not reserve the use of the Scottish Seal.
- 5A.
1. Paragraph 1 does not reserve a referendum on the independence of Scotland from the rest of the United Kingdom if the following requirements are met.
  2. The date of the poll at the referendum must not be the date of the poll at any other referendum held under provision made by the Parliament.
  3. The date of the poll at the referendum must be no later than 31st December 2014.

4. There must be only one ballot paper at the referendum, and the ballot paper must give the voter a choice between only two responses.

## Subheading 2: Political parties

6. The registration and funding of political parties is a reserved matter but this paragraph does not reserve making payments to any political party for the purpose of assisting members of the Parliament who are connected with the party to perform their Parliamentary duties.

## Subheading 3: Foreign affairs etc

7.
  1. International relations, including relations with territories outside the United Kingdom, the European Union (and their institutions) and other international organisations, regulation of international trade, and international development assistance and co-operation are reserved matters.
  2. Sub-paragraph (1) does not reserve—
    - a. observing and implementing international obligations, obligations under the Human Rights Convention and obligations under EU law,
    - b. assisting Ministers of the Crown in relation to any matter to which that sub-paragraph applies.

## Subheading 4: Public service

8.
  1. The Civil Service of the State is a reserved matter.
  2. Sub-paragraph (1) does not reserve the subject-matter of—
    - a. Part I of the Sheriff Courts and Legal Officers (Scotland) Act 1927 (appointment of sheriff clerks and procurators fiscal etc.),
    - b. Part III of the Administration of Justice (Scotland) Act 1933 (officers of the High Court of Justiciary and of the Court of Session).

## Subheading 5: Defence

9.
  1. The following are reserved matters—
    - a. the defence of the realm,
    - b. the naval, military or air forces of the Crown, including reserve forces,
    - c. visiting forces,

- d. international headquarters and defence organisations,
  - e. trading with the enemy and enemy property.
2. Sub-paragraph (1) does not reserve—
- a. the exercise of civil defence functions by any person otherwise than as a member of any force or organisation referred to in sub-paragraph (1)(b) to (d) or any other force or organisation reserved by virtue of sub-paragraph (1)(a),
  - b. the conferral of enforcement powers in relation to sea fishing.

## Subheading 6: Treason

10. Treason (including constructive treason), treason felony and misprision of treason are reserved matters.

## Part II: Specific reservations

### Subheading 1: Preliminary

1. The matters to which any of the Sections in this Part apply are reserved matters for the purposes of this Act.
2. A Section applies to any matter described or referred to in it when read with any illustrations, exceptions or interpretation provisions in that Section.
3. Any illustrations, exceptions or interpretation provisions in a Section relate only to that Section (so that an entry under the heading “exceptions” does not affect any other Section).

### Subheading 2: Reservations

## Head A: Financial and Economic Matters

### A1. Fiscal, economic and monetary policy

#### Section A1

Fiscal, economic and monetary policy, including the issue and circulation of money, taxes and excise duties, government borrowing and lending, control over United Kingdom public expenditure, the exchange rate and the Bank of England.

#### Exceptions

- Devolved taxes, including their collection and management.
- Local taxes to fund local authority expenditure (for example, council tax and non-domestic rates).

## A2. The currency

### Section A2

Coinage, legal tender and bank notes.

## A3. Financial services

### Section A3

Financial services, including investment business, banking and deposit-taking, collective investment schemes and insurance.

### Exception

The subject-matter of section 1 of the Banking and Financial Dealings Act 1971 (bank holidays).

## A4. Financial markets

### Section A4

Financial markets, including listing and public offers of securities and investments, transfer of securities and insider dealing.

## A5. Money laundering

### Section A5

The subject-matter of the Money Laundering Regulations 1993, but in relation to any type of business.

## Head B: Home Affairs

### B1. Misuse of drugs

#### Section B1

The subject-matter of—

- a. the Misuse of Drugs Act 1971,
- b. sections 12 to 14 of the Criminal Justice (International Co-operation) Act 1990 (substances useful for manufacture of controlled drugs), and
- c. Part V of the Criminal Law (Consolidation) (Scotland) Act 1995 (drug trafficking) and, so far as relating to drug trafficking, the Proceeds of Crime (Scotland) Act 1995.

## B2. Data protection

### Section B2

The subject-matter of—

- a. the Data Protection Act 1998, and
- b. Council Directive 95/46/EC (protection of individuals with regard to the processing of personal data and on the free movement of such data).

### Interpretation

If any provision of the Data Protection Act 1998 is not in force on the principal appointed day, it is to be treated for the purposes of this reservation as if it were.

## B3. Elections

### Section B3

- Elections for membership of the House of Commons, the European Parliament and the Parliament, including the subject-matter of—
  - a. the European Parliamentary Elections Act 2002.
  - b. the Representation of the People Act 1983 and the Representation of the People Act 1985, and
  - c. the Parliamentary Constituencies Act 1986,

so far as those enactments apply, or may be applied, in respect of such membership.

- The franchise at local government elections.

### Interpretation

Paragraph 5(1) of Part 3 of this Schedule does not apply to the subject-matter of the European Parliamentary Elections Act 2002; and the reference to the subject-matter of that Act is to be construed as a reference to it as at the date that Act received Royal Assent.

## B4. Firearms

### Section B4

The subject-matter of the Firearms Acts 1968 to 1997.

## Exception

The regulation of air weapons within the meaning given by section 1(3)(b) of the Firearms Act 1968 (which is subject to the following which remain powers of the Secretary of State—

- a. the power to make rules under section 53 of that Act for the purposes of that provision (specially dangerous weapons requiring firearms certificate), and
- b. the power to make an order under section 1(4) of the Firearms (Amendment) Act 1988 (specially dangerous weapons to be prohibited)).

## B5. Entertainment

### Section B5

- The subject-matter of—
  - a. the Video Recordings Act 1984, and
  - b. sections 1 to 3 and 5 to 16 of the Cinemas Act 1985 (control of exhibitions).
- The classification of films for public exhibition by reference to their suitability for viewing by persons generally or above a particular age, with or without any advice as to the desirability of parental guidance.

## B6. Immigration and nationality

### Section B6

Nationality; immigration, including asylum and the status and capacity of persons in the United Kingdom who are not British citizens; free movement of persons within the European Economic Area; issue of travel documents.

## B7. Scientific procedures on live animals

### Section B7

The subject-matter of the Animals (Scientific Procedures) Act 1986.

## B8. National security, interception of communications, official secrets and terrorism

### Section B8

- National security.
- The interception of communications; but not
  - a. the interception of any communication made to or by a person detained at a place of detention, if the communication-
    - i. is a written communication and is intercepted there, or
    - ii. is intercepted in the course of its transmission by means of a private telecommunication system running there,
  - b. the subject matter of Part III of the Police Act 1997 (authorisation to interfere with property etc.) or surveillance not involving interference with property.
- The subject-matter of—
  - a. the Official Secrets Acts 1911 and 1920, and
  - b. the Official Secrets Act 1989, except so far as relating to any information, document or other article protected against disclosure by section 4(2) (crime) and not by any other provision of sections 1 to 4.
- Special powers, and other special provisions, for dealing with terrorism.

### Interpretation

- “Place of detention” means a prison, young offenders institution, remand centre or legalised police cell (as those expressions are defined for the purposes of the Prisons (Scotland) Act 1989 or a hospital (within the meaning of the given in section 329(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003; and “person detained”, in relation to a hospital, means a person detained there under-
  - a. section 24, 25 or 70 of the Mental Health (Scotland) Act 1984;
  - b. Part 6 of the Criminal Procedure (Scotland) Act 1995;
  - c. the Mental Health (Care and Treatment) (Scotland) Act 2003; or
  - d. regulations under-
    - i. subsection (3) of section 116B of the Army Act 1955;
    - ii. subsection (3) of section 116B of the Air Force Act 1955; or



- iii. section 63B of the Naval Discipline Act 1957.
- “Private telecommunication system” has the meaning given in section 2(1) of the Regulation of Investigatory Powers Act 2000.

## **B9. Betting, gaming and lotteries**

### **Section B9**

Betting, gaming and lotteries.

## **B10. Emergency powers**

### **Section B10**

Emergency powers.

## **B11. Extradition**

### **Section B11**

Extradition.

## **B12. Lieutenancies**

### **Section B12**

The subject-matter of the Lieutenancies Act 1997.

## **B13. Access to information**

### **Section B13**

Public access to information held by public bodies or holders of public offices (including government departments and persons acting on behalf of the Crown).

### **Exception**

Information held by–

- a. the Parliament,
- b. any part of the Scottish Administration,
- c. the Parliamentary corporation,
- d. any Scottish public authority with mixed functions or no reserved functions,

unless supplied by a Minister of the Crown or government department and held in confidence.

## Head C: Trade and Industry

### C1. Business associations

#### Section C1

The creation, operation, regulation and dissolution of types of business association.

#### Exceptions

The creation, operation, regulation and dissolution of—

- a. particular public bodies, or public bodies of a particular type, established by or under any enactment, and
- b. charities.

#### Interpretation

“Business association” means any person (other than an individual) established for the purpose of carrying on any kind of business, whether or not for profit; and “business” includes the provision of benefits to the members of an association.

### C2. Insolvency

#### Section C2

- In relation to business associations—
  - a. the modes of, the grounds for and the general legal effect of winding up, and the persons who may initiate winding up,
  - b. liability to contribute to assets on winding up,
  - c. powers of courts in relation to proceedings for winding up, other than the power to sist proceedings,
  - d. arrangements with creditors, and
  - e. procedures giving protection from creditors.
- Preferred or preferential debts for the purposes of the Bankruptcy (Scotland) Act 1985, the Insolvency Act 1986, and any other enactment relating to the sequestration of the estate of any person or to the winding up of business associations, the preference of such debts against other such debts and the extent of their preference over other types of debt.
- Regulation of insolvency practitioners.

- Co-operation of insolvency courts.

## Exceptions

- In relation to business associations—
  - a. the process of winding up, including the person having responsibility for the conduct of a winding up or any part of it, and his conduct of it or of that part,
  - b. the effect of winding up on diligence, and
  - c. avoidance and adjustment of prior transactions on winding up.
- In relation to business associations which are social landlords, the following additional exceptions—
  - a. the general legal effect of winding up,
  - b. procedures for the initiation of winding up,
  - c. powers of courts in relation to proceedings for winding up, and
  - d. procedures giving protection from creditors,

but only in so far as they relate to a moratorium on the disposal of property held by a social landlord and the management and disposal of such property.

- Floating charges and receivers, except in relation to preferential debts, regulation of insolvency practitioners and co-operation of insolvency courts.

## Interpretation

- “Business association” has the meaning given in Section C1 of this Part of this Schedule, but does not include any person whose estate may be sequestrated under the Bankruptcy (Scotland) Act 1985 or any public body established by or under an enactment.
- “Social landlord” means a body which is—
  - a. a society registered under the Industrial and Provident Societies Act 1965 which has its registered office for the purposes of that Act in Scotland and satisfies the relevant conditions, or
  - b. a company registered under the Companies Act 1985 which has its registered office for the purposes of that Act in Scotland and satisfies the relevant conditions.
- “The relevant conditions” are that the body does not trade for profit and is established for the purpose of, or has among its objects and powers, the provision, construction, improvement or management of—
  - a. houses to be kept available for letting,

- b. houses for occupation by members of the body, where the rules of the body restrict membership to persons entitled or prospectively entitled (as tenants or otherwise) to occupy a house provided or managed by the body, or
- c. hostels,
  - “house” and “hostel” having the meanings given in section 338(1) of the Housing (Scotland) Act 1987.
  - “Winding up”, in relation to business associations, includes winding up of solvent, as well as insolvent, business associations.

## C3. Competition

### Section C3

Regulation of anti-competitive practices and agreements; abuse of dominant position; monopolies and mergers.

#### Exception

Regulation of particular practices in the legal profession for the purpose of regulating that profession or the provision of legal services.

#### Interpretation

“The legal profession” means advocates, solicitors and qualified conveyancers and executry practitioners within the meaning of Part II of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

## C4. Intellectual property

### Section C4

Intellectual property.

#### Exception

The subject-matter of Parts I and II of the Plant Varieties Act 1997 (plant varieties and the Plant Varieties and Seeds Tribunal).

## C5. Import and export control

### Section C5

- The subject-matter of the Import, Export and Customs Powers (Defence) Act 1939.
- Prohibition and regulation of the import and export of endangered species of animals and plants.

## Exceptions

Prohibition and regulation of movement into and out of Scotland of—

- a. food, animals, animal products, plants and plant products for the purposes of protecting human, animal or plant health, animal welfare or the environment or observing or implementing obligations under the Common Agricultural Policy, and
- b. animal feeding stuffs, fertilisers and pesticides (including anything treated as if it were a pesticide by virtue of section 16(16) of the Food and Environment Protection Act 1985) for the purposes of protecting human, animal or plant health or the environment.

## C6. Sea fishing

### Section C6

Regulation of sea fishing outside the Scottish zone (except in relation to Scottish fishing boats).

### Interpretation

“Scottish fishing boat” means a fishing vessel which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Scotland as the port to which the vessel is to be treated as belonging.

## C7. Consumer protection

### Section C7

- Regulation of—
  - a. the sale and supply of goods and services to consumers,
  - b. guarantees in relation to such goods and services,
  - c. hire-purchase, including the subject-matter of Part III of the Hire-Purchase Act 1964,
  - d. trade descriptions, except in relation to food,
  - e. misleading and comparative advertising, except regulation specifically in relation to food, tobacco and tobacco products,
  - f. price indications,
  - g. trading stamps,

- h. auctions and mock auctions of goods and services, and
- i. hallmarking and gun barrel proofing.
- Safety of, and liability for, services supplied to consumers.
- The subject-matter of—
  - a. the Hearing Aid Council Act 1968,
  - b. the Unsolicited Goods and Services Acts 1971 and 1975,
  - c. Parts I to III and XI of the Fair Trading Act 1973,
  - d. the Consumer Credit Act 1974,
  - e. the Estate Agents Act 1979,
  - f. the Timeshare Act 1992,
  - g. the Package Travel, Package Holidays and Package Tours Regulations 1992, and
  - h. the Commercial Agents (Council Directive) Regulations 1993.

## Exception

The subject-matter of section 16 of the Food Safety Act 1990 (food safety and consumer protection).

## C8. Product standards, safety and liability

### Section C8

- Technical standards and requirements in relation to products in pursuance of an obligation under EU law.
- The national accreditation body and the accreditation of bodies which certify or assess conformity to technical standards in relation to products or environmental management systems.
- Product safety and liability.
- Product labelling.

### Exceptions

- Food, agricultural and horticultural produce, fish and fish products, seeds, animal feeding stuffs, fertilisers and pesticides (including anything treated as if it were a pesticide by virtue of section 16(16) of the Food and Environment Protection Act 1985).
- In relation to food safety, materials which come into contact with food.

## C9. Weights and measures

### Section C9

- Units and standards of weight and measurement.
- Regulation of trade so far as involving weighing, measuring and quantities.

## C10. Telecommunications and wireless telegraphy

### Section C10

- Telecommunications and wireless telegraphy.
- Internet services.
- Electronic encryption.
- The subject-matter of Part II of the Wireless Telegraphy Act 1949 (electromagnetic disturbance).

### Exception

The subject-matter of Part III of the Police Act 1997 (authorisation to interfere with property etc.).

## C11. Posts

### Section C11

The subject matter of the Postal Services Act 2000.

### Exception

Financial assistance for the provision of services (other than postal services and services relating to money or postal orders) to be provided from public post offices.

### Interpretation

- Paragraph 5(1) of Part III of this Schedule does not apply to this Section.
- The reference to the subject matter of the Postal Services Act 2000 is to be read as a reference to the subject matter of that Act as at the date when it received Royal Assent.
- “postal services” and “public post offices” have the same meaning as in the Postal Services Act 2000.

## C12. Research Councils

### Section C12

- Research Councils within the meaning of the Science and Technology Act 1965.
- The subject-matter of section 5 of that Act (funding of scientific research) so far as relating to Research Councils.

- The Arts and Humanities Research Council within the meaning of Part 1 of the Higher Education Act 2004.
- The subject-matter of section 10 of that Act (research in arts and humanities) so far as relating to that Council.

## Interpretation

Paragraph 5(1) of Part 3 of this Schedule does not apply to the subject-matter of section 10 of the Higher Education Act 2004; and the reference to the subject-matter of that section is to be construed as a reference to it as at the date that Act received Royal Assent.

## C13. Designation of assisted areas

### Section C13

The subject-matter of section 1 of the Industrial Development Act 1982.

## C14. Industrial Development Advisory Board

### Section C14

The Industrial Development Advisory Board.

## C15. Protection of trading and economic interests

### Section C15

The subject-matter of—

- a. section 2 of the Emergency Laws (Re-enactments and Repeals) Act 1964 (Treasury power in relation to action damaging to economic position of United Kingdom),
- b. Part II of the Industry Act 1975 (powers in relation to transfer of control of important manufacturing undertakings), and
- c. the Protection of Trading Interests Act 1980.

## Head D: Energy

### D1. Electricity

#### Section D1

- Generation, transmission, distribution and supply of electricity.
- The subject-matter of Part II of the Electricity Act 1989.



## Exception

The subject-matter of Part I of the Environmental Protection Act 1990.

## D2. Oil and gas

### Section D2

Oil and gas, including—

- a. the ownership of, exploration for and exploitation of deposits of oil and natural gas,
- b. the subject-matter of section 1 of the Mineral Exploration and Investment Grants Act 1972 (contributions in connection with mineral exploration) so far as relating to exploration for oil and gas,
- c. offshore installations and pipelines,
- d. the subject-matter of the Pipe-lines Act 1962 (including section 5 (deemed planning permission)) so far as relating to pipelines within the meaning of section 65 of that Act,
- e. the application of Scots law and the jurisdiction of the Scottish courts in relation to offshore activities,
- f. pollution relating to oil and gas exploration and exploitation, but only outside controlled waters (within the meaning of section 30A(1) of the Control of Pollution Act 1974),
- g. the subject-matter of Part II of the Food and Environment Protection Act 1985 so far as relating to oil and gas exploration and exploitation, but only in relation to activities outside such controlled waters,
- h. restrictions on navigation, fishing and other activities in connection with offshore activities,
- i. liquefaction of natural gas, and
- j. the conveyance, shipping and supply of gas through pipes.

### Exceptions

- The subject-matter of—
  - a. sections 10 to 12 of the Industry Act 1972 (credits and grants for construction of ships and offshore installations),
  - b. the Offshore Petroleum Development (Scotland) Act 1975, other than sections 3 to 7, and

- c. Part I of the Environmental Protection Act 1990.
- The manufacture of gas.
- The conveyance, shipping and supply of gas other than through pipes.

## D3. Coal

### Section D3

Coal, including its ownership and exploitation, deep and opencast coal mining and coal mining subsidence.

### Exceptions

The subject-matter of—

- a. Part I of the Environmental Protection Act 1990, and
- b. sections 53 (environmental duties in connection with planning) and 54 (obligation to restore land affected by coal-mining operations) of the Coal Industry Act 1994.

## D4. Nuclear energy

### Section D4

Nuclear energy and nuclear installations, including—

- a. nuclear safety, security and safeguards, and
- b. liability for nuclear occurrences.
- c. The Office for Nuclear Regulation.

### Exceptions

The subject-matter of—

- a. Part I of the Environmental Protection Act 1990, and
- b. the Radioactive Substances Act 1993.

## D5. Energy conservation

### Section D5

The subject-matter of the Energy Act 1976, other than section 9.

## Exception

The encouragement of energy efficiency other than by prohibition or regulation.

## Head E: Transport

### E1. Road transport

#### Section E1

- The subject-matter of—
  - a. the Motor Vehicles (International Circulation) Act 1952,
  - b. the Public Passenger Vehicles Act 1981 and the Transport Act 1985, so far as relating to public service vehicle operator licensing,
  - c. section 17 (traffic regulation on special roads), section 25 (pedestrian crossings), Part V (traffic signs) and Part VI (speed limits) of the Road Traffic Regulation Act 1984,
  - d. the Road Traffic Act 1988 and the Road Traffic Offenders Act 1988,
  - e. the Vehicle Excise and Registration Act 1994,
  - f. the Road Traffic (New Drivers) Act 1995, and
  - g. the Goods Vehicles (Licensing of Operators) Act 1995.
- Regulation of proper hours or periods of work by persons engaged in the carriage of passengers or goods by road.
- The conditions under which international road transport services for passengers or goods may be undertaken.
- Regulation of the instruction of drivers of motor vehicles.

#### Exceptions

The subject-matter of sections 39 and 40 (road safety information and training) and 157 to 159 (payments for treatment of traffic casualties) of the Road Traffic Act 1988.

### E2. Rail transport

#### Section E2

- Provision and regulation of railway services.
- Rail transport security.
- The subject-matter of the Channel Tunnel Act 1987.
- The subject-matter of the Railway Heritage Act 1996.

## Exceptions

- Grants so far as relating to railway services; but this exception does not apply in relation to—
  - a. the subject-matter of section 63 of the Railways Act 1993 (government financial assistance where railway administration orders made),
  - b. “railway services” as defined in section 82(1)(b) of the Railways Act 1993 (carriage of goods by railway), or
  - c. the subject-matter of section 136 of the Railways Act 1993 (grants and subsidies).
- Imposing requirements about the preparation and submission of strategies relating to the provision of rail services on Scottish public authorities with mixed functions relating to such services.
- The transfer of functions of passenger transport executives or passenger transport authorities relating to the provision and regulation of rail services conferred by Part II of the Transport Act 1968 and sections 32 to 36 of the Railways Act 1993 to, and the allocation of such functions among, relevant authorities.
- The promotion and construction of railways which start, end and remain in Scotland.

## Interpretation

- “railway” has the meaning given by section 67(1) of the Transport and Works Act 1992.
- “Railway services” has the meaning given by section 82 of the Railways Act 1993 (excluding the wider meaning of “railway” given by section 81(2) of that Act).
- “relevant authority” means—
  - a. the Scottish Ministers; or
  - b. any Scottish public authority (not being a cross-border public authority or an authority exercising functions solely in relation to a reserved matter) which is set up wholly or mainly to exercise functions relating to transport.]

## E3. Marine transport

### Section E3

- The subject-matter of—
  - a. the Coastguard Act 1925,
  - b. the Hovercraft Act 1968, except so far as relating to the regulation of noise and vibration caused by hovercraft,

- c. the Carriage of Goods by Sea Act 1971,
  - d. section 2 of the Protection of Wrecks Act 1973 (prohibition on approaching dangerous wrecks),
  - e. the Merchant Shipping (Liner Conferences) Act 1982,
  - f. the Dangerous Vessels Act 1985,
  - g. the Aviation and Maritime Security Act 1990, other than Part I (aviation security),
  - h. the Carriage of Goods by Sea Act 1992,
  - i. the Merchant Shipping Act 1995,
  - j. the Shipping and Trading Interests (Protection) Act 1995, and
  - k. sections 24 (implementation of international agreements relating to protection of wrecks), 26 (piracy) and 27 and 28 (international bodies concerned with maritime matters) of the Merchant Shipping and Maritime Security Act 1997.
- Navigational rights and freedoms.
  - Financial assistance for shipping services which start or finish or both outside Scotland.

## Exceptions

- Ports, harbours, piers and boatslips, except in relation to the matters reserved by virtue of paragraph (d), (f), (g) or (i).
- Regulation of works which may obstruct or endanger navigation.
- The subject-matter of the Highlands and Islands Shipping Services Act 1960 in relation to financial assistance for bulk freight services.

## E4. Air transport

### Section E4

Regulation of aviation and air transport, including the subject-matter of—

- a. the Carriage by Air Act 1961,
- b. the Carriage by Air (Supplementary Provisions) Act 1962,
- c. the Carriage by Air and Road Act 1979 so far as relating to carriage by air,
- d. the Civil Aviation Act 1982,

- e. the Aviation Security Act 1982,
  - f. the Airports Act 1986, and
  - g. sections 1 (endangering safety at aerodromes) and 48 (powers in relation to certain aircraft) of the Aviation and Maritime Security Act 1990,
- and arrangements to compensate or repatriate passengers in the event of an air transport operator's insolvency.

## Exceptions

- The subject-matter of the following sections of the Civil Aviation Act 1982—
  - a. section 25 (Secretary of State's power to provide aerodromes),
  - b. section 30 (provision of aerodromes and facilities at aerodromes by local authorities),
  - c. section 31 (power to carry on ancillary business in connection with local authority aerodromes),
  - d. section 34 (financial assistance for certain aerodromes),
  - e. section 35 (facilities for consultation at certain aerodromes),
  - f. section 36 (health control at Secretary of State's aerodromes and aerodromes of Civil Aviation Authority), and
  - g. sections 41 to 43 and 50 (powers in relation to land exercisable in connection with civil aviation) where land is to be or was acquired for the purpose of airport development or expansion.
- The subject-matter of Part II (transfer of airport undertakings of local authorities), sections 63 and 64 (airport byelaws) and 66 (functions of operators of designated airports as respects abandoned vehicles) of the Airports Act 1986.
- The subject-matter of sections 59 (acquisition of land and rights over land) and 60 (disposal of compulsorily acquired land) of the Airports Act 1986 where land is to be or was acquired for the purpose of airport development or expansion.
- Imposing requirements about the preparation and submission of strategies relating to the provision of air services on Scottish public authorities with mixed functions relating to such services.

## E5. Other matters

### Section E5

- Transport of radioactive material.
- Technical specifications for public passenger transport for disabled persons, including the subject-matter of—
  - a. section 125(7) and (8) of the Transport Act 1985 (Secretary of State's guidance and consultation with the Disabled Persons Transport Advisory Committee), and
  - b. Part V of the Disability Discrimination Act 1995 (public transport).
- Regulation of the carriage of dangerous goods.

### Interpretation

"Radioactive material" has the same meaning as in section 1(1) of the Radioactive Material (Road Transport) Act 1991.

## Head F: Social Security

### F1. Social security schemes

#### Section F1

- Schemes supported from central or local funds which provide assistance for social security purposes to or in respect of individuals by way of benefits.
- Requiring persons to—
  - a. establish and administer schemes providing assistance for social security purposes to or in respect of individuals, or
  - b. make payments to or in respect of such schemes,

and to keep records and supply information in connection with such schemes.

- The circumstances in which a person is liable to maintain himself or another for the purposes of the enactments relating to social security and the Child Support Acts 1991 and 1995.
- The subject-matter of the Vaccine Damage Payment Scheme.

### Illustrations

National Insurance; Social Fund; recovery of benefits for accident, injury or disease from persons paying damages; deductions from benefits for the purpose of meeting an individual's debts; sharing information between government departments for the purposes of the enactments relating to social security; making decisions for the purposes of schemes mentioned in the reservation and appeals against such decisions.

## Exceptions

- The subject-matter of Part II of the Social Work (Scotland) Act 1968 (social welfare services), section 2 of the Chronically Sick and Disabled Persons Act 1970 (provision of welfare services), section 50 of the Children Act 1975 (payments towards maintenance of children), section 15 of the Enterprise and New Towns (Scotland) Act 1990 (industrial injuries benefit), and sections 22 (promotion of welfare of children in need), 29 and 30 (advice and assistance for young persons formerly looked after by local authorities) of the Children (Scotland) Act 1995.
- Providing occasional financial or other assistance to or in respect of individuals for the purposes of—
  - a. meeting, or helping to meet, an immediate short term need—
    - i. arising out of an exceptional event or exceptional circumstances, and
    - ii. that requires to be met to avoid a risk to the well-being of an individual, or
  - b. enabling qualifying individuals to establish or maintain a settled home, and “qualifying individuals” means individuals who have been or, without the assistance, might otherwise be—
    - i. in prison, hospital, a residential care establishment or other institution, or

But the following are not excepted—

- a. providing financial assistance for the purposes of meeting maternity expenses, funeral expenses or expenses for heating incurred due to cold weather,
- b. the subject-matter of—
  - i. section 138 of the Social Security Contributions and Benefits Act 1992 (payments out of the social fund)(1),
  - ii. section 69 of the Child Support, Pensions and Social Security Act 2000 (discretionary housing payments)(2).”.
- homeless or otherwise living an unsettled way of life.



## Interpretation

- “Benefits” includes pensions, allowances, grants, loans and any other form of financial assistance.
- Providing assistance for social security purposes to or in respect of individuals includes (among other things) providing assistance to or in respect of individuals—
  - a. who qualify by reason of old age, survivorship, disability, sickness, incapacity, injury, unemployment, maternity or the care of children or others needing care,
  - b. who qualify by reason of low income, or
  - c. in relation to their housing costs or liabilities for local taxes.

The reference to the subject-matter of section 138 of the 1992 Act is to be construed as a reference to it as at 8th May 2012 and the reference to the subject-matter of section 69 of the 2000 Act is to be construed as a reference to it as at the date on which the Scotland Act (Modification of Schedule 5) (No. 2) Order 2013 (S.I. 2013/192) came into force; and if any amendment of section 69 of the 2000 Act made by the Welfare Reform Act 2012(3) is not in force on that date, it is to be treated as if it were.

- Paragraph 5(1) of Part 3 of this Schedule does not apply to the subject-matter of—
  - a. section 138 of the Social Security Contributions and Benefits Act 1992, or
- section 69 of the Child Support, Pensions and Social Security Act 2000.

## F2. Child support

### Section F2

The subject-matter of the Child Support Acts 1991 and 1995.

### Exception

The subject-matter of sections 1 to 7 of the Family Law (Scotland) Act 1985 (aliment).

### Interpretation

If section 30(2) of the Child Support Act 1991 (collection of payments other than child support maintenance) is not in force on the principal appointed day, it is to be treated for the purposes of this reservation as if it were.

## F3. Occupational and personal pensions

### Section F3

- The regulation of occupational pension schemes and personal pension schemes, including the obligations of the trustees or managers of such schemes.
- Provision about pensions payable to, or in respect of, any persons, except—
  - a. the persons referred to in section 81(3),
  - b. in relation to a Scottish public authority with mixed functions or no reserved functions, persons who are or have been a member of the public body, the holder of the public office, or a member of the staff of the body, holder or office.
- The subject-matter of the Pensions (Increase) Act 1971.
- Schemes for the payment of pensions which are listed in Schedule 2 to that Act, except those mentioned in paragraphs 38A and 38AB.
- Where pension payable to or in respect of any class of persons under a public service pension scheme is covered by this reservation, so is making provision in their case—
  - a. for compensation for loss of office or employment, for their office or employment being affected by constitutional changes, or circumstances arising from such changes, in any territory or territories or for loss or diminution of emoluments, or
- for benefits in respect of death or incapacity resulting from injury or disease.

### Interpretation

“Pension” includes gratuities and allowances.

## F4. War pensions

### Section F4

- Schemes for the payment of pensions for or in respect of persons who have a disablement or have died in consequence of service as members of the armed forces of the Crown.
- The subject-matter of any scheme under the Personal Injuries (Emergency Provisions) Act 1939, sections 3 to 5 and 7 of the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 or section 1 of the Polish Resettlement Act 1947

Illustration The provision of pensions under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983.

### Interpretation

“Pension” includes grants, allowances, supplements and gratuities.

## Head G: Regulation of the Professions

### G1. Architects

#### Section G1

Regulation of the profession of architect.

### G2. Health professions

#### Section G2

Regulation of the health professions.

#### Exceptions

The subject-matter of—

- a. section 21 of the National Health Service (Scotland) Act 1978 (requirement of suitable experience for medical practitioners), and
- b. section 25 of that Act (arrangements for the provision of general dental services), so far as it relates to vocational training and disciplinary proceedings.

#### Interpretation

“The health professions” means the professions regulated by—

- a. the Pharmacy Act 1954,
- b. the Professions Supplementary to Medicine Act 1960,
- c. the Veterinary Surgeons Act 1966,
- d. the Medical Act 1983,
- e. the Dentists Act 1984,
- f. the Opticians Act 1989,
- g. the Osteopaths Act 1993,
- h. the Chiropractors Act 1994, and
- i. the Nurses, Midwives and Health Visitors Act 1997.

## **G3. Auditors**

### **Section G3**

Regulation of the profession of auditor.

## **Head H: Employment**

### **H1. Employment and industrial relations**

#### **Section H1**

Employment rights and duties and industrial relations, including the subject-matter of—

- a. the Employers' Liability (Compulsory Insurance) Act 1969,
- b. the Employment Agencies Act 1973,
- c. the Pneumoconiosis etc. (Workers' Compensation) Act 1979,
- d. the Transfer of Undertakings (Protection of Employment) Regulations 1981,
- e. the Trade Union and Labour Relations (Consolidation) Act 1992,
- f. the Employment Tribunals Act 1996,
- g. the Employment Rights Act 1996, and
- h. the National Minimum Wage Act 1998.

#### **Exception**

The subject-matter of the Agricultural Wages (Scotland) Act 1949.

### **H2. Health and safety**

#### **Section H2**

The subject-matter of Part I of the Health and Safety at Work etc. Act 1974

## Interpretation

For the purposes of the reservation of the subject-matter of Part I of the Health and Safety at Work etc. Act 1974—

- a. “work” and “at work” in that Part are to be taken to have the meaning they have on the principal appointed day;
- b. that subject-matter includes—
  - i. process fire precautions;
  - ii. fire precautions in relation to petroleum and petroleum spirit; and
  - iii. fire safety on ships and hovercraft, in mines and on offshore installations;
  - iv. [Repealed]but does not include any other aspect of fire safety.

## H3. Job search and support

### Section H3

The subject-matter of—

- a. the Disabled Persons (Employment) Act 1944, and
- b. the Employment and Training Act 1973, except so far as relating to training for employment.

### Exception

The subject-matter of—

- a. sections 8 to 10A of the Employment and Training Act 1973 (careers services), and
- b. the following sections of Part I of the Enterprise and New Towns (Scotland) Act 1990 (Scottish Enterprise and Highlands and Islands Enterprise)—
  - i. section 2(3)(c) (arrangements for the purpose of assisting persons to establish themselves as self-employed persons), and
  - ii. section 12 (disclosure of information).

## Head J: Health and Medicines

### J1. Abortion

#### Section J1

Abortion.

### J2. Xenotransplantation

#### Section J2

Xenotransplantation.

### J3. Embryology, surrogacy and genetics

#### Section J3

- Surrogacy arrangements, within the meaning of the Surrogacy Arrangements Act 1985, including the subject-matter of that Act.
- The subject-matter of the Human Fertilisation and Embryology Act 1990.
- Human genetics.

### J4. Medicines, medical supplies and poisons

#### Section J4

- The subject-matter of—
  - a. the Medicines Act 1968, the Marketing Authorisations for Veterinary Medicinal Products Regulations 1994 and the Medicines for Human Use (Marketing Authorisations Etc.) Regulations 1994,
  - b. the Poisons Act 1972, and
  - c. the Biological Standards Act 1975.
- Regulation of prices charged for medical supplies or medicinal products which (in either case) are supplied for the purposes of the health service established under section 1 of the National Health Service (Scotland) Act 1978.

#### Interpretation

- “Medical supplies” has the same meaning as in section 49(3) of the National Health Service (Scotland) Act 1978.
- “Medicinal products” has the same meaning as in section 130(1) of the Medicines Act 1968.

## **J5. Welfare foods**

### **Section J5**

Schemes made by regulations under section 13 of the Social Security Act 1988 (schemes for distribution of welfare foods).

## **Head K: Media and Culture**

### **K1. Broadcasting**

#### **Section K1**

- The subject-matter of the Broadcasting Act 1990 and the Broadcasting Act 1996.
- The British Broadcasting Corporation.

### **K2. Public lending right**

#### **Section K2**

The subject-matter of the Public Lending Right Act 1979.

### **K3. Government Indemnity Scheme**

#### **Section K3**

The subject-matter of sections 16 and 16A of the National Heritage Act 1980 (public indemnities for objects on loan to museums, art galleries, etc.).

### **K4. Property accepted in satisfaction of tax**

#### **Section K4**

The subject-matter of sections 8 and 9 of the National Heritage Act 1980 (payments to Inland Revenue in respect of property accepted in satisfaction of tax, and disposal of such property).

## **Head L: Miscellaneous**

### **L1. Judicial remuneration**

#### **Section L1**

Determination of the remuneration of—

- a. judges of the Court of Session,

- b. sheriffs principal and sheriffs,
- c. members of the Lands Tribunal for Scotland, and
- d. the Chairman of the Scottish Land Court.

## L2. Equal opportunities

### Section L2

Equal opportunities, including the subject-matter of—

- a. the Equal Pay Act 1970,
- b. the Sex Discrimination Act 1975,
- c. the Race Relations Act 1976, and
- d. the Disability Discrimination Act 1995.

### Exceptions

- The encouragement (other than by prohibition or regulation) of equal opportunities, and in particular of the observance of the equal opportunity requirements.
- Imposing duties on—
  - a. any office-holder in the Scottish Administration, or any Scottish public authority with mixed functions or no reserved functions, to make arrangements with a view to securing that the functions of the office-holder or authority are carried out with due regard to the need to meet the equal opportunity requirements, or
  - b. any cross-border public authority to make arrangements with a view to securing that its Scottish functions are carried out with due regard to the need to meet the equal opportunity requirements.

### Interpretation

- “Equal opportunities” means the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions.
- “Equal opportunity requirements” means the requirements of the law for the time being relating to equal opportunities.
- “Scottish functions” means functions which are exercisable in or as regards Scotland and which do not relate to reserved matters.



## L3. Control of weapons

### Section L3

Control of nuclear, biological and chemical weapons and other weapons of mass destruction.

## L4. Ordnance survey

### Section L4

The subject-matter of the Ordnance Survey Act 1841.

## L5. Time

### Section L5

- Timescales, time zones and the subject-matter of the Summer Time Act 1972.
- The calendar; units of time; the date of Easter.

### Exceptions

- The computation of periods of time.
- The subject-matter of—
  - a. section 1 of the Banking and Financial Dealings Act 1971 (bank holidays), and
  - b. the Term and Quarter Days (Scotland) Act 1990.

## L6. Outer space

### Section L6

Regulation of activities in outer space.

## L7. Antarctica

### Section L7

Antarctica Regulation of activities in Antarctica.

### Interpretation

“Antarctica” has the meaning given by section 1 of the Antarctic Act 1994.

## Part III: General Provisions

### Subheading 1: Scottish public authorities

1. 1. This Schedule does not reserve any Scottish public authority if some of its functions relate to reserved matters and some do not, unless it is a cross-border public authority.
2. Sub-paragraph (1) has effect as regards—
  - a. the constitution of the authority, including its establishment and dissolution, its assets and liabilities and its funding and receipts,
  - b. conferring or removing any functions specifically exercisable in relation to the authority.
3. Sub-paragraph (2)(b) does not apply to any function which is specifically exercisable in relation to a particular function of the authority if the particular function relates to reserved matters.
4. An authority to which this paragraph applies is referred to in this Act as a Scottish public authority with mixed functions.
2. Paragraph 1 of Part I of this Schedule does not reserve any Scottish public authority with functions none of which relate to reserved matters (referred to in this Act as a Scottish public authority with no reserved functions).

### Subheading 2: Reserved bodies

3.
  1. The reservation of any body to which this paragraph applies has effect to reserve—
    - a. its constitution, including its establishment and dissolution, its assets and liabilities and its funding and receipts,
    - b. conferring functions on it or removing functions from it,
    - c. conferring or removing any functions specifically exercisable in relation to it.
  2. This paragraph applies to—
    - a. a body reserved by name by Part II of this Schedule,
    - b. each of the councils reserved by Section C12 of that Part,
    - c. the Commission for Racial Equality, the Equal Opportunities Commission and the Disability Rights Commission.
    - d. the Commission for Equality and Human Rights.

### Subheading 3: Financial assistance to industry

4.
  1. This Schedule does not reserve giving financial assistance to commercial activities for the purpose of promoting or sustaining economic development or employment.
  2. Sub-paragraph (1)—
    - a. does not apply to giving financial assistance to any activities in pursuance of a power exercisable only in relation to activities which are reserved,
    - b. does not apply to Part I of this Schedule, except paragraph 9, or to a body to which paragraph 3 of this Part of this Schedule applies,
    - c. is without prejudice to the exceptions from the reservations in Sections C11, E2 and E3 of Part II of this Schedule.
  3. Sub-paragraph (1) does not affect the question whether any matter other than financial assistance to which that sub-paragraph applies is reserved.

### Subheading 4: Interpretation

5.
  1. References in this Schedule to the subject-matter of any enactment are to be read as references to the subject-matter of that enactment as it has effect on the principal appointed day or, if it ceased to have effect at any time within the period ending with that day and beginning with the day on which this Act is passed, as it had effect immediately before that time.
  2. Subordinate legislation under section 129(1) may, in relation to the operation of this Schedule at any time before the principal appointed day, modify the references to that day in sub-paragraph (1).

### Schedule 6: Devolution issues

#### Part I: Preliminary

1. In this Schedule “devolution issue” means—
  - a. a question whether an Act of the Scottish Parliament or any provision of an Act of the Scottish Parliament is within the legislative competence of the Parliament,
  - b. a question whether any function (being a function which any person has purported, or is proposing, to exercise) is a function of the Scottish Ministers, the First Minister or the Lord Advocate,

• Federal review of subnational legislation

- c. a question whether the purported or proposed exercise of a function by a member of the Scottish Executive is, or would be, within devolved competence,
- d. a question whether a purported or proposed exercise of a function by a member of the Scottish Executive is, or would be, incompatible with any of the Convention rights or with EU law,
- e. a question whether a failure to act by a member of the Scottish Executive is incompatible with any of the Convention rights or with EU law,
- f. any other question about whether a function is exercisable within devolved competence or in or as regards Scotland and any other question arising by virtue of this Act about reserved matters.

But a question arising in criminal proceedings in Scotland that would, apart from this paragraph, be a devolution issue is not a devolution issue if (however formulated) it relates to the compatibility with any of the Convention rights or with EU law of-

- a. an Act of the Scottish Parliament or any provision of an Act of the Scottish Parliament,
  - b. a function,
  - c. the purported or proposed exercise of a function,
  - d. a failure to act.
2. A devolution issue shall not be taken to arise in any proceedings merely because of any contention of a party to the proceedings which appears to the court or tribunal before which the proceedings take place to be frivolous or vexatious.

## Part II: Proceedings in Scotland

### Subheading 1: Application of Part II

- 3. This Part of this Schedule applies in relation to devolution issues in proceedings in Scotland.

### Subheading 2: Institution of proceedings

- 4.
  - 1. Proceedings for the determination of a devolution issue may be instituted by the Advocate General or the Lord Advocate.
  - 2. The Lord Advocate may defend any such proceedings instituted by the Advocate General.
  - 3. This paragraph is without prejudice to any power to institute or defend proceedings exercisable apart from this paragraph by any person.

### Subheading 3: Intimation of devolution issue

- 5. Intimation of any devolution issue which arises in any proceedings before a court or tribunal shall be given to the Advocate General and the Lord Advocate (unless the person to whom the intimation would be given is a party to the proceedings).
- 6. A person to whom intimation is given in pursuance of paragraph 5 may take part as a party in the proceedings, so far as they relate to a devolution issue.

### Subheading 4: Reference of devolution issue to higher court

- 7. A court, other than the Supreme Court or any court consisting of three or more judges of the Court of Session, may refer any devolution issue which arises in proceedings (other than criminal proceedings) before it to the Inner House of the Court of Session.
- 8. A tribunal from which there is no appeal shall refer any devolution issue which arises in proceedings before it to the Inner House of the Court of Session; and any other tribunal may make such a reference.
- 9. A court, other than any court consisting of two or more judges of the High Court of Justiciary, may refer any devolution issue which arises in criminal proceedings before it to the High Court of Justiciary.

### Subheading 5: References from superior courts to Supreme Court

- 10. Any court consisting of three or more judges of the Court of Session may refer any devolution issue which arises in proceedings before it (otherwise than on a reference under paragraph 7 or 8) to the Supreme Court.
- 11. Any court consisting of two or more judges of the High Court of Justiciary may refer any devolution issue which arises in proceedings before it (otherwise than on a reference under paragraph 9) to the Supreme Court.

### Subheading 6: Appeals from superior courts to Supreme Court

- 12. An appeal against a determination of a devolution issue by the Inner House of the Court of Session on a reference under paragraph 7 or 8 shall lie to the Supreme Court.
- 13. An appeal against a determination of a devolution issue by—
  - a. a court of two or more judges of the High Court of Justiciary (whether in the ordinary course of proceedings or on a reference under paragraph 9), or
  - b. a court of three or more judges of the Court of Session from which there is no appeal to the Supreme Court apart from this paragraph,
 shall lie to the Supreme Court, but only with permission of the court from which the appeal lies or, failing such permission, with permission of the Supreme Court.

- 13A.** In criminal proceedings, an application to the High Court for permission under paragraph 13 must be made—
- a. within 28 days of the date of the determination against which the appeal lies, or
  - b. within such longer period as the High Court considers equitable having regard to all the circumstances.
- 13B.** In criminal proceedings, an application to the Supreme Court for permission under paragraph 13 must be made—
- a. within 28 days of the date on which the High Court refused permission under that paragraph, or
  - b. within such longer period as the Supreme Court considers equitable having regard to all the circumstances.

## Part III: Proceedings in England and Wales

### Subheading 1: Application of Part III

- Federal review of subnational legislation
- 14.** This Part of this Schedule applies in relation to devolution issues in proceedings in England and Wales.

### Subheading 2: Institution of proceedings

- 15.**
- 1.** Proceedings for the determination of a devolution issue may be instituted by the Attorney General.
  - 2.** The Lord Advocate may defend any such proceedings.
  - 3.** This paragraph is without prejudice to any power to institute or defend proceedings exercisable apart from this paragraph by any person.

### Subheading 3: Notice of devolution issue

- Federal review of subnational legislation
- 16.** A court or tribunal shall order notice of any devolution issue which arises in any proceedings before it to be given to the Attorney General and the Lord Advocate (unless the person to whom the notice would be given is a party to the proceedings).
- 17.** A person to whom notice is given in pursuance of paragraph 16 may take part as a party in the proceedings, so far as they relate to a devolution issue.

### Subheading 4: Reference of devolution issue to High Court or Court of Appeal

- Federal review of subnational legislation
- 18.** A magistrates' court may refer any devolution issue which arises in proceedings (other than criminal proceedings) before it to the High Court.

**19.**

1. A court may refer any devolution issue which arises in proceedings (other than criminal proceedings) before it to the Court of Appeal.
2. Sub-paragraph (1) does not apply to—
  - a. a magistrates' court, the Court of Appeal or the Supreme Court, or
  - b. the High Court if the devolution issue arises in proceedings on a reference under paragraph 18.

**20.** A tribunal from which there is no appeal shall refer any devolution issue which arises in proceedings before it to the Court of Appeal; and any other tribunal may make such a reference.

**21.** A court, other than the Supreme Court or the Court of Appeal, may refer any devolution issue which arises in criminal proceedings before it to—

- a. the High Court (if the proceedings are summary proceedings), or
- b. the Court of Appeal (if the proceedings are proceedings on indictment).

## **Subheading 5: Appeals from superior courts to Supreme Court**

**23.** An appeal against a determination of a devolution issue by the High Court or the Court of Appeal on a reference under paragraph 18, 19, 20 or 21 shall lie to the Supreme Court, but only with permission of the High Court or (as the case may be) the Court of Appeal or, failing such permission, with permission of the Supreme Court.

## **Part IV: Proceedings in Northern Ireland**

### **Subheading 1: Application of Part IV**

**24.** This Part of this Schedule applies in relation to devolution issues in proceedings in Northern Ireland.

### **Subheading 2: Institution of proceedings**

**25.**

1. Proceedings for the determination of a devolution issue may be instituted by the Advocate General for Northern Ireland.
2. The Lord Advocate may defend any such proceedings.
3. This paragraph is without prejudice to any power to institute or defend proceedings exercisable apart from this paragraph by any person.

### Subheading 3: Notice of devolution issue

- 26. A court or tribunal shall order notice of any devolution issue which arises in any proceedings before it to be given to the Advocate General for Northern Ireland and the Lord Advocate (unless the person to whom the notice would be given is a party to the proceedings).
- 27. A person to whom notice is given in pursuance of paragraph 26 may take part as a party in the proceedings, so far as they relate to a devolution issue.

### Subheading 4: Reference of devolution issue to Court of Appeal

- 28. A court, other than the Supreme Court or the Court of Appeal in Northern Ireland, may refer any devolution issue which arises in any proceedings before it to the Court of Appeal in Northern Ireland.
- 29. A tribunal from which there is no appeal shall refer any devolution issue which arises in any proceedings before it to the Court of Appeal in Northern Ireland; and any other tribunal may make such a reference.

### Subheading 5: References from Court of Appeal to Supreme Court

- 30. The Court of Appeal in Northern Ireland may refer any devolution issue which arises in proceedings before it (otherwise than on a reference under paragraph 28 or 29) to the Supreme Court.

### Subheading 6: Appeals from Court of Appeal to Supreme Court

- 31. An appeal against a determination of a devolution issue by the Court of Appeal in Northern Ireland on a reference under paragraph 28 or 29 shall lie to the Supreme Court, but only with permission of the Court of Appeal in Northern Ireland or, failing such permission, with permission of the Supreme Court.

## Part V: General

### Subheading 1

[Repealed]

- 32. [Repealed]

### Subheading 2: Direct references to Supreme Court

- 33. The Lord Advocate, the Advocate General, the Attorney General or the Advocate General for Northern Ireland may require any court or tribunal to refer to the Supreme Court any devolution issue which has arisen in proceedings before it to which he is a party.
- 34. The Lord Advocate, the Attorney General, the Advocate General or the Advocate General for Northern Ireland may refer to the Supreme Court any devolution issue which is not the subject of proceedings.



**35.**

1. This paragraph applies where a reference is made under paragraph 34 in relation to a devolution issue which relates to the proposed exercise of a function by a member of the Scottish Executive.
2. The person making the reference shall notify a member of the Scottish Executive of that fact.
3. No member of the Scottish Executive shall exercise the function in the manner proposed during the period beginning with the receipt of the notification under sub-paragraph (2) and ending with the reference being decided or otherwise disposed of.
4. Proceedings relating to any possible failure by a member of the Scottish Executive to comply with sub-paragraph (3) may be instituted by the Advocate General.
5. Sub-paragraph (4) is without prejudice to any power to institute proceedings exercisable apart from that sub-paragraph by any person.

**Subheading 3: Expenses****36.**

1. A court or tribunal before which any proceedings take place may take account of any additional expense of the kind mentioned in sub-paragraph (3) in deciding any question as to costs or expenses.
2. In deciding any such question, the court or tribunal may award the whole or part of the additional expense as costs or (as the case may be) expenses to the party who incurred it (whatever the decision on the devolution issue).
3. The additional expense is any additional expense which the court or tribunal considers that any party to the proceedings has incurred as a result of the participation of any person in pursuance of paragraph 6, 17 or 27.

**Subheading 4: Procedure of courts and tribunals**

37. Any power to make provision for regulating the procedure before any court or tribunal shall include power to make provision for the purposes of this Schedule including, in particular, provision—
  - a. for prescribing the stage in the proceedings at which a devolution issue is to be raised or referred,
  - b. for the sisting or staying of proceedings for the purpose of any proceedings under this Schedule, and
  - c. for determining the manner in which and the time within which any intimation or notice is to be given.

## Subheading 5: Interpretation

38. Any duty or power conferred by this Schedule to refer a devolution issue to a court shall be construed as a duty or (as the case may be) power to refer the issue to the court for decision.

**Schedules 7-9: [Schedules 7-9 omitted due to length - full text of schedules can be found online at <http://www.legislation.gov.uk/ukpga/1998/46/schedules>]**

## Human Rights Act 1998

### Preamble

An Act to give further effect to rights and freedoms guaranteed under the European Convention on Human Rights; to make provision with respect to holders of certain judicial offices who become judges of the European Court of Human Rights; and for connected purposes.

[9th November 1998]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Subheading 1: Introduction

#### 1. The Convention Rights

1. In this Act “the Convention rights” means the rights and fundamental freedoms set out in—
  - a. Articles 2 to 12 and 14 of the Convention,
  - b. Articles 1 to 3 of the First Protocol, and
  - c. Article 1 of the Thirteenth Protocol, as read with Articles 16 to 18 of the Convention.
2. Those Articles are to have effect for the purposes of this Act subject to any designated derogation or reservation (as to which see sections 14 and 15).
3. The Articles are set out in Schedule 1.
4. The Secretary of State may by order make such amendments to this Act as he considers appropriate to reflect the effect, in relation to the United Kingdom, of a protocol.
5. In subsection (4) “protocol” means a protocol to the Convention—
  - a. which the United Kingdom has ratified; or
  - b. which the United Kingdom has signed with a view to ratification.

- Constitution amendment procedure
  - Treaty ratification
6. No amendment may be made by an order under subsection (4) so as to come into force before the protocol concerned is in force in relation to the United Kingdom.

## 2. Interpretation of Convention rights

- Constitutional interpretation
  - International human rights treaties
1. A court or tribunal determining a question which has arisen in connection with a Convention right must take into account any—
    - a. judgment, decision, declaration or advisory opinion of the European Court of Human Rights,
    - b. opinion of the Commission given in a report adopted under Article 31 of the Convention,
    - c. decision of the Commission in connection with Article 26 or 27(2) of the Convention, or
    - d. decision of the Committee of Ministers taken under Article 46 of the Convention,

whenever made or given, so far as, in the opinion of the court or tribunal, it is relevant to the proceedings in which that question has arisen.
  2. Evidence of any judgment, decision, declaration or opinion of which account may have to be taken under this section is to be given in proceedings before any court or tribunal in such manner as may be provided by rules.
  3. In this section “rules” means rules of court or, in the case of proceedings before a tribunal, rules made for the purposes of this section—
    - a. by the Lord Chancellor or the Secretary of State, in relation to any proceedings outside Scotland;
    - b. by the Secretary of State, in relation to proceedings in Scotland; or
    - c. by a Northern Ireland department, in relation to proceedings before a tribunal in Northern Ireland—
      - i. which deals with transferred matters; and
      - ii. for which no rules made under paragraph (a) are in force.

## Subheading 2: Legislation

### 3. Interpretation of legislation

- International human rights treaties
  - Constitutionality of legislation
  - Legal status of treaties
1. So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.
  2. This section—
    - a. applies to primary legislation and subordinate legislation whenever enacted;

• Legal status of treaties

b. does not affect the validity, continuing operation or enforcement of any incompatible primary legislation; and

• Legal status of treaties

c. does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if (disregarding any possibility of revocation) primary legislation prevents removal of the incompatibility.

• International human rights treaties  
• Supreme court powers

#### 4. Declaration of incompatibility

• Legal status of treaties  
• Constitutionality of legislation

1. Subsection (2) applies in any proceedings in which a court determines whether a provision of primary legislation is compatible with a Convention right.

• Legal status of treaties  
• Constitutionality of legislation

2. If the court is satisfied that the provision is incompatible with a Convention right, it may make a declaration of that incompatibility.

• Legal status of treaties  
• Constitutionality of legislation

3. Subsection (4) applies in any proceedings in which a court determines whether a provision of subordinate legislation, made in the exercise of a power conferred by primary legislation, is compatible with a Convention right.

• Legal status of treaties  
• Constitutionality of legislation

4. If the court is satisfied—

a. that the provision is incompatible with a Convention right, and

b. that (disregarding any possibility of revocation) the primary legislation concerned prevents removal of the incompatibility, it may make a declaration of that incompatibility.

5. In this section “court” means—

a. the Supreme Court;

b. the Judicial Committee of the Privy Council;

c. the Court Martial Appeal Court;

• Subsidiary unit government

d. in Scotland, the High Court of Justiciary sitting otherwise than as a trial court or the Court of Session;

e. in England and Wales or Northern Ireland, the High Court or the Court of Appeal.

f. the Court of Protection, in any matter being dealt with by the President of the Family Division, the Chancellor of the High Court or a puisne judge of the High Court.

• Legal status of treaties  
• Constitutionality of legislation

6. A declaration under this section (“a declaration of incompatibility”)—

a. does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given; and

b. is not binding on the parties to the proceedings in which it is made.

## 5. Right of Crown to intervene

1. Where a court is considering whether to make a declaration of incompatibility, the Crown is entitled to notice in accordance with rules of court.
2. In any case to which subsection (1) applies—
  - a. a Minister of the Crown (or a person nominated by him),
  - b. a member of the Scottish Executive,
  - c. a Northern Ireland Minister,
  - d. a Northern Ireland department,
 is entitled, on giving notice in accordance with rules of court, to be joined as a party to the proceedings.
3. Notice under subsection (2) may be given at any time during the proceedings.
4. A person who has been made a party to criminal proceedings (other than in Scotland) as the result of a notice under subsection (2) may, with leave, appeal to the Supreme Court against any declaration of incompatibility made in the proceedings.
5. In subsection (4)—
  - “criminal proceedings” includes all proceedings before the Court Martial Appeal Court; and
  - “leave” means leave granted by the court making the declaration of incompatibility or by the Supreme Court

### Subheading 3: Public authorities

## 6. Acts of public authorities

1. It is unlawful for a public authority to act in a way which is incompatible with a Convention right.
2. Subsection (1) does not apply to an act if—
  - a. as the result of one or more provisions of primary legislation, the authority could not have acted differently; or
  - b. in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.
3. In this section “public authority” includes—
  - a. a court or tribunal, and
  - b. any person certain of whose functions are functions of a public nature, but does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament.

4. [Repealed]
5. In relation to a particular act, a person is not a public authority by virtue only of subsection (3)(b) if the nature of the act is private.
6. "An act" includes a failure to act but does not include a failure to—
  - a. introduce in, or lay before, Parliament a proposal for legislation; or
  - b. make any primary legislation or remedial order.

## 7. Proceedings

1. A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) may—
  - a. bring proceedings against the authority under this Act in the appropriate court or tribunal, or
  - b. rely on the Convention right or rights concerned in any legal proceedings, but only if he is (or would be) a victim of the unlawful act.
2. In subsection (1)(a) "appropriate court or tribunal" means such court or tribunal as may be determined in accordance with rules; and proceedings against an authority include a counterclaim or similar proceeding.
3. If the proceedings are brought on an application for judicial review, the applicant is to be taken to have a sufficient interest in relation to the unlawful act only if he is, or would be, a victim of that act.
4. If the proceedings are made by way of a petition for judicial review in Scotland, the applicant shall be taken to have title and interest to sue in relation to the unlawful act only if he is, or would be, a victim of that act.
5. Proceedings under subsection (1)(a) must be brought before the end of—
  - a. the period of one year beginning with the date on which the act complained of took place; or
  - b. such longer period as the court or tribunal considers equitable having regard to all the circumstances, but that is subject to any rule imposing a stricter time limit in relation to the procedure in question.
6. In subsection (1)(b) "legal proceedings" includes—
  - a. proceedings brought by or at the instigation of a public authority; and
  - b. an appeal against the decision of a court or tribunal.
7. For the purposes of this section, a person is a victim of an unlawful act only if he would be a victim for the purposes of Article 34 of the Convention if proceedings were brought in the European Court of Human Rights in respect of that act.
8. Nothing in this Act creates a criminal offence.
9. In this section "rules" means—
  - a. in relation to proceedings before a court or tribunal outside Scotland, rules made by the Lord Chancellor or the Secretary of State for the purposes of this section or rules of court,

• Subsidiary unit government

- b. in relation to proceedings before a court or tribunal in Scotland, rules made by the Secretary of State for those purposes,
- c. in relation to proceedings before a tribunal in Northern Ireland—
  - i. which deals with transferred matters; and
  - ii. for which no rules made under paragraph (a) are in force,

rules made by a Northern Ireland department for those purposes, and includes provision made by order under section 1 of the Courts and Legal Services Act 1990.

10. In making rules, regard must be had to section 9.

• International human rights treaties

11. The Minister who has power to make rules in relation to a particular tribunal may, to the extent he considers it necessary to ensure that the tribunal can provide an appropriate remedy in relation to an act (or proposed act) of a public authority which is (or would be) unlawful as a result of section 6(1), by order add to—

- a. the relief or remedies which the tribunal may grant; or
- b. the grounds on which it may grant any of them.

12. An order made under subsection (11) may contain such incidental, supplemental, consequential or transitional provision as the Minister making it considers appropriate.

13. “The Minister” includes the Northern Ireland department concerned.

## 8. Judicial remedies

• Ultra-vires administrative actions

• International human rights treaties

1. In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.
2. But damages may be awarded only by a court which has power to award damages, or to order the payment of compensation, in civil proceedings.
3. No award of damages is to be made unless, taking account of all the circumstances of the case, including—

- a. any other relief or remedy granted, or order made, in relation to the act in question (by that or any other court), and
- b. the consequences of any decision (of that or any other court) in respect of that act, the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.

• International human rights treaties

4. In determining—
  - a. whether to award damages, or
  - b. the amount of an award,

the court must take into account the principles applied by the European Court of Human Rights in relation to the award of compensation under Article 41 of the Convention.

5. A public authority against which damages are awarded is to be treated—
  - a. in Scotland, for the purposes of section 3 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 as if the award were made in an action of damages in which the authority has been found liable in respect of loss or damage to the person to whom the award is made;
  - b. for the purposes of the Civil Liability (Contribution) Act 1978 as liable in respect of damage suffered by the person to whom the award is made.
6. In this section—
  - “court” includes a tribunal;
  - “damages” means damages for an unlawful act of a public authority; and
  - “unlawful” means unlawful under section 6(1).

## 9. Judicial acts

1. Proceedings under section 7(1)(a) in respect of a judicial act may be brought only—
  - a. by exercising a right of appeal;
  - b. on an application (in Scotland a petition) for judicial review; or
  - c. in such other forum as may be prescribed by rules.
2. That does not affect any rule of law which prevents a court from being the subject of judicial review.
3. In proceedings under this Act in respect of a judicial act done in good faith, damages may not be awarded otherwise than to compensate a person to the extent required by Article 5(5) of the Convention.
4. An award of damages permitted by subsection (3) is to be made against the Crown; but no award may be made unless the appropriate person, if not a party to the proceedings, is joined.
5. In this section—
  - “appropriate person” means the Minister responsible for the court concerned, or a person or government department nominated by him;
  - “court” includes a tribunal;
  - “judge” includes a member of a tribunal, a justice of the peace (or, in Northern Ireland, a lay magistrate) and a clerk or other officer entitled to exercise the jurisdiction of a court;

• Ultra-vires administrative actions

• Right to appeal judicial decisions

• International human rights treaties



- “judicial act” means a judicial act of a court and includes an act done on the instructions, or on behalf, of a judge; and
- “rules” has the same meaning as in section 7(9).

## Subheading 4: Remedial action

### 10. Power to take remedial action

1. This section applies if—
  - a. a provision of legislation has been declared under section 4 to be incompatible with a Convention right and, if an appeal lies—
    - i. all persons who may appeal have stated in writing that they do not intend to do so;
    - ii. the time for bringing an appeal has expired and no appeal has been brought within that time; or
    - iii. an appeal brought within that time has been determined or abandoned; or
  - b. it appears to a Minister of the Crown or Her Majesty in Council that, having regard to a finding of the European Court of Human Rights made after the coming into force of this section in proceedings against the United Kingdom, a provision of legislation is incompatible with an obligation of the United Kingdom arising from the Convention.
2. If a Minister of the Crown considers that there are compelling reasons for proceeding under this section, he may by order make such amendments to the legislation as he considers necessary to remove the incompatibility.
3. If, in the case of subordinate legislation, a Minister of the Crown considers—
  - a. that it is necessary to amend the primary legislation under which the subordinate legislation in question was made, in order to enable the incompatibility to be removed, and
  - b. that there are compelling reasons for proceeding under this section, he may by order make such amendments to the primary legislation as he considers necessary.
4. This section also applies where the provision in question is in subordinate legislation and has been quashed, or declared invalid, by reason of incompatibility with a Convention right and the Minister proposes to proceed under paragraph 2(b) of Schedule 2.
5. If the legislation is an Order in Council, the power conferred by subsection (2) or (3) is exercisable by Her Majesty in Council.
6. In this section “legislation” does not include a Measure of the Church Assembly or of the General Synod of the Church of England.
7. Schedule 2 makes further provision about remedial orders.

## Subheading 5: Other rights and proceedings

### 11. Safeguard for existing human rights

A person's reliance on a Convention right does not restrict—

- a. any other right or freedom conferred on him by or under any law having effect in any part of the United Kingdom; or
- b. his right to make any claim or bring any proceedings which he could make or bring apart from sections 7 to 9.

### 12. Freedom of expression

1. This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.
2. If the person against whom the application for relief is made ("the respondent") is neither present nor represented, no such relief is to be granted unless the court is satisfied—
  - a. that the applicant has taken all practicable steps to notify the respondent; or
  - b. that there are compelling reasons why the respondent should not be notified.
3. No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.
4. The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to—
  - a. the extent to which—
    - i. the material has, or is about to, become available to the public; or
    - ii. it is, or would be, in the public interest for the material to be published;
  - b. any relevant privacy code.
5. In this section—
  - "court" includes a tribunal; and
  - "relief" includes any remedy or order (other than in criminal proceedings).

## 13. Freedom of thought, conscience and religion

1. If a court's determination of any question arising under this Act might affect the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right.
2. In this section "court" includes a tribunal.

## Subheading 6: Derogations and reservations

### 14. Derogations

1. In this Act "designated derogation" means—  
any derogation by the United Kingdom from an Article of the Convention, or of any protocol to the Convention, which is designated for the purposes of this Act in an order made by the Secretary of State.
2. [Repealed]
3. If a designated derogation is amended or replaced it ceases to be a designated derogation.
4. But subsection (3) does not prevent the Secretary of State from exercising his power under subsection (1) to make a fresh designation order in respect of the Article concerned.
5. The Secretary of State must by order make such amendments to Schedule 3 as he considers appropriate to reflect—
  - a. any designation order; or
  - b. the effect of subsection (3).
6. A designation order may be made in anticipation of the making by the United Kingdom of a proposed derogation.

### 15. Reservations

1. In this Act "designated reservation" means—
  - a. the United Kingdom's reservation to Article 2 of the First Protocol to the Convention; and
  - b. any other reservation by the United Kingdom to an Article of the Convention, or of any protocol to the Convention, which is designated for the purposes of this Act in an order made by the Secretary of State .
2. The text of the reservation referred to in subsection (1)(a) is set out in Part II of Schedule 3.
3. If a designated reservation is withdrawn wholly or in part it ceases to be a designated reservation.
4. But subsection (3) does not prevent the Secretary of State from exercising his power under subsection (1)(b) to make a fresh designation order in respect of the Article concerned.

5. Secretary of State must by order make such amendments to this Act as he considers appropriate to reflect—
  - a. any designation order; or
  - b. the effect of subsection (3).

## 16. Period for which designated derogations have effect

1. If it has not already been withdrawn by the United Kingdom, a designated derogation ceases to have effect for the purposes of this Act—
  - a. at the end of the period of five years beginning with the date on which the order designating it was made.
2. At any time before the period—
  - a. fixed by subsection (1), or
  - b. extended by an order under this subsection, comes to an end, the Secretary of State may by order extend it by a further period of five years.
3. An order under section 14(1) ceases to have effect at the end of the period for consideration, unless a resolution has been passed by each House approving the order.
4. Subsection (3) does not affect—
  - a. anything done in reliance on the order; or
  - b. the power to make a fresh order under section 14(1).
5. In subsection (3) “period for consideration” means the period of forty days beginning with the day on which the order was made.
6. In calculating the period for consideration, no account is to be taken of any time during which—
  - a. Parliament is dissolved or prorogued; or
  - b. both Houses are adjourned for more than four days.
7. If a designated derogation is withdrawn by the United Kingdom, the Secretary of State must by order make such amendments to this Act as he considers are required to reflect that withdrawal.

## 17. Periodic review of designated reservations

1. The appropriate Minister must review the designated reservation referred to in section 15(1)(a)—
  - a. before the end of the period of five years beginning with the date on which section 1(2) came into force; and
  - b. if that designation is still in force, before the end of the period of five years beginning with the date on which the last report relating to it was laid under subsection (3).

2. The appropriate Minister must review each of the other designated reservations (if any)—
  - a. before the end of the period of five years beginning with the date on which the order designating the reservation first came into force; and
  - b. if the designation is still in force, before the end of the period of five years beginning with the date on which the last report relating to it was laid under subsection (3).
3. The Minister conducting a review under this section must prepare a report on the result of the review and lay a copy of it before each House of Parliament.

## **Subheading 7: Judges of the European Court of Human Rights**

### **18. Appointment to European Court of Human Rights**

1. In this section “judicial office” means the office of—
  - a. Lord Justice of Appeal, Justice of the High Court or Circuit judge, in England and Wales;
  - b. judge of the Court of Session or sheriff, in Scotland;
  - c. Lord Justice of Appeal, judge of the High Court or county court judge, in Northern Ireland.
2. The holder of a judicial office may become a judge of the European Court of Human Rights (“the Court”) without being required to relinquish his office.
3. But he is not required to perform the duties of his judicial office while he is a judge of the Court.
4. In respect of any period during which he is a judge of the Court—
  - a. a Lord Justice of Appeal or Justice of the High Court is not to count as a judge of the relevant court for the purposes of section 2(1) or 4(1) of the Senior Courts Act 1981 (maximum number of judges) nor as a judge of the Senior Courts for the purposes of section 12(1) to (6) of that Act (salaries etc.);
  - b. a judge of the Court of Session is not to count as a judge of that court for the purposes of section 1(1) of the Court of Session Act 1988 (maximum number of judges) or of section 9(1)(c) of the Administration of Justice Act 1973 (“the 1973 Act”) (salaries etc.);
  - c. a Lord Justice of Appeal or judge of the High Court in Northern Ireland is not to count as a judge of the relevant court for the purposes of section 2(1) or 3(1) of the Judicature (Northern Ireland) Act 1978 (maximum number of judges) nor as a judge of the Court of Judicature of Northern Ireland for the purposes of section 9(1)(d) of the 1973 Act (salaries etc.);
  - d. a Circuit judge is not to count as such for the purposes of section 18 of the Courts Act 1971 (salaries etc.);

- e. a sheriff is not to count as such for the purposes of section 14 of the Sheriff Courts (Scotland) Act 1907 (salaries etc.);
  - f. a county court judge of Northern Ireland is not to count as such for the purposes of section 106 of the County Courts Act Northern Ireland) 1959 (salaries etc.).
5. If a sheriff principal is appointed a judge of the Court, section 11(1) of the Sheriff Courts (Scotland) Act 1971 (temporary appointment of sheriff principal) applies, while he holds that appointment, as if his office is vacant.
6. Schedule 4 makes provision about judicial pensions in relation to the holder of a judicial office who serves as a judge of the Court.
7. The Lord Chancellor or the Secretary of State may by order make such transitional provision (including, in particular, provision for a temporary increase in the maximum number of judges) as he considers appropriate in relation to any holder of a judicial office who has completed his service as a judge of the Court.
- 7A.** The following paragraphs apply to the making of an order under subsection (7) in relation to any holder of a judicial office listed in subsection (1)(a)–
- a. before deciding what transitional provision it is appropriate to make, the person making the order must consult the Lord Chief Justice of England and Wales;
  - b. before making the order, that person must consult the Lord Chief Justice of England and Wales.
- 7B.** The following paragraphs apply to the making of an order under subsection (7) in relation to any holder of a judicial office listed in subsection (1)(c)–
- a. before deciding what transitional provision it is appropriate to make, the person making the order must consult the Lord Chief Justice of Northern Ireland;
  - b. before making the order, that person must consult the Lord Chief Justice of Northern Ireland.
- 7C.** The Lord Chief Justice of England and Wales may nominate a judicial office holder (within the meaning of section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.
- 7D.** The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under this section–
- a. the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
  - b. a Lord Justice of Appeal (as defined in section 88 of that Act).

## Subheading 8: Parliamentary procedure

### 19. Statements of compatibility

1. A Minister of the Crown in charge of a Bill in either House of Parliament must, before Second Reading of the Bill—
  - a. make a statement to the effect that in his view the provisions of the Bill are compatible with the Convention rights (“a statement of compatibility”); or
  - b. make a statement to the effect that although he is unable to make a statement of compatibility the government nevertheless wishes the House to proceed with the Bill.
2. The statement must be in writing and be published in such manner as the Minister making it considers appropriate.

## Subheading 9: Supplemental

### 20. Orders etc. under this Act

1. Any power of a Minister of the Crown to make an order under this Act is exercisable by statutory instrument.
2. The power of the Lord Chancellor or the Secretary of State to make rules (other than rules of court) under section 2(3) or 7(9) is exercisable by statutory instrument.
3. Any statutory instrument made under section 14, 15 or 16(7) must be laid before Parliament.
4. No order may be made by the Lord Chancellor or the Secretary of State under section 1(4), 7(11) or 16(2) unless a draft of the order has been laid before, and approved by, each House of Parliament.
5. Any statutory instrument made under section 18(7) or Schedule 4, or to which subsection (2) applies, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
6. The power of a Northern Ireland department to make—
  - a. rules under section 2(3)(c) or 7(9)(c), or
  - b. an order under section 7(11), is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.
7. Any rules made under section 2(3)(c) or 7(9)(c) shall be subject to negative resolution; and section 41(6) of the Interpretation Act (Northern Ireland) 1954 (meaning of “subject to negative resolution”) shall apply as if the power to make the rules were conferred by an Act of the Northern Ireland Assembly.
8. No order may be made by a Northern Ireland department under section 7(11) unless a draft of the order has been laid before, and approved by, the Northern Ireland Assembly.

## 21. Interpretation, etc

### 1. In this Act—

- “amend” includes repeal and apply (with or without modifications);
- “the appropriate Minister” means the Minister of the Crown having charge of the appropriate authorised government department (within the meaning of the Crown Proceedings Act 1947);
- “the Commission” means the European Commission of Human Rights;
- “the Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950 as it has effect for the time being in relation to the United Kingdom;
- “declaration of incompatibility” means a declaration under section 4;
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;
- “Northern Ireland Minister” includes the First Minister and the deputy First Minister in Northern Ireland;
- “primary legislation” means any—
  - a. public general Act;
  - b. local and personal Act;
  - c. private Act;
  - d. Measure of the Church Assembly;
  - e. Measure of the General Synod of the Church of England;
  - f. Order in Council—
    - i. made in exercise of Her Majesty’s Royal Prerogative;
    - ii. made under section 38(1)(a) of the Northern Ireland Constitution Act 1973 or the corresponding provision of the Northern Ireland Act 1998; or
    - iii. amending an Act of a kind mentioned in paragraph (a), (b) or (c);
- and includes an order or other instrument made under primary legislation (otherwise than by the Welsh Ministers, the First Minister for Wales, the

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Counsel General to the Welsh Assembly Government, a member of the Scottish Executive, a Northern Ireland Minister or a Northern Ireland department) to the extent to which it operates to bring one or more provisions of that legislation into force or amends any primary legislation;

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- “the First Protocol” means the protocol to the Convention agreed at Paris on 20th March 1952;
- [Omitted]
- International human rights treaties
- “the Eleventh Protocol” means the protocol to the Convention (restructuring the control machinery established by the Convention) agreed at Strasbourg on 11th May 1994;
- International human rights treaties
- “the Thirteenth Protocol” means the protocol to the Convention (concerning the abolition of the death penalty in all circumstances) agreed at Vilnius on 3rd May 2002;
- “remedial order” means an order under section 10;
- “subordinate legislation” means any—
  - a. Order in Council other than one—
    - i. made in exercise of Her Majesty’s Royal Prerogative;
    - ii. made under section 38(1)(a) of the Northern Ireland Constitution Act 1973 or the corresponding provision of the Northern Ireland Act 1998; or
    - iii. amending an Act of a kind mentioned in the definition of primary legislation;
  - b. Act of the Scottish Parliament;
  - ba. Measure of the National Assembly for Wales;
  - bb. Act of the National Assembly for Wales;
  - c. Act of the Parliament of Northern Ireland;
  - d. Measure of the Assembly established under section 1 of the Northern Ireland Assembly Act 1973;
  - e. Act of the Northern Ireland Assembly;
  - f. order, rules, regulations, scheme, warrant, byelaw or other instrument made under primary legislation (except to the extent to which it operates to bring one or more provisions of that legislation into force or amends any primary legislation);

g. order, rules, regulations, scheme, warrant, byelaw or other instrument made under legislation mentioned in paragraph (b), (c), (d) or (e) or made under an Order in Council applying only to Northern Ireland;

h. order, rules, regulations, scheme, warrant, byelaw or other instrument made by a member of the Scottish Executive, Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Assembly Government, a Northern Ireland Minister or a Northern Ireland department in exercise of prerogative or other executive functions of Her Majesty which are exercisable by such a person on behalf of Her Majesty;

- “transferred matters” has the same meaning as in the Northern Ireland Act 1998; and

- “tribunal” means any tribunal in which legal proceedings may be brought.

2. The references in paragraphs (b) and (c) of section 2(1) to Articles are to Articles of the Convention as they had effect immediately before the coming into force of the Eleventh Protocol.

3. The reference in paragraph (d) of section 2(1) to Article 46 includes a reference to Articles 32 and 54 of the Convention as they had effect immediately before the coming into force of the Eleventh Protocol.

4. The references in section 2(1) to a report or decision of the Commission or a decision of the Committee of Ministers include references to a report or decision made as provided by paragraphs 3, 4 and 6 of Article 5 of the Eleventh Protocol (transitional provisions).

5. [Repealed]

## 22. Short title, commencement, application and extent

1. This Act may be cited as the Human Rights Act 1998.

2. Sections 18, 20 and 21(5) and this section come into force on the passing of this Act.

3. The other provisions of this Act come into force on such day as the Secretary of State may by order appoint; and different days may be appointed for different purposes.

4. Paragraph (b) of subsection (1) of section 7 applies to proceedings brought by or at the instigation of a public authority whenever the act in question took place; but otherwise that subsection does not apply to an act taking place before the coming into force of that section.

5. This Act binds the Crown.

6. This Act extends to Northern Ireland.

7. [Repealed]

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## SCHEDULES

### SCHEDULE 1: The Articles

#### PART I: The Convention Rights and Freedoms

##### Article 2: Right to life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
  - a. in defence of any person from unlawful violence;
  - b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - c. in action lawfully taken for the purpose of quelling a riot or insurrection.

##### Article 3: Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

##### Article 4: Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this Article the term "forced or compulsory labour" shall not include:
  - a. any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
  - b. any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
  - c. any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
  - d. any work or service which forms part of normal civic obligations.

## Article 5: Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
  - a. the lawful detention of a person after conviction by a competent court;
  - b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
  - c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
  - d. the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
  - e. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
  - f. the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

## Article 6: Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

- Presumption of innocence in trials
  - Guarantee of due process
  - Right to counsel
  - Right to examine evidence/ witnesses
  - Trial in native language of accused
  - Protection from ex post facto laws
  - International law
  - Principle of no punishment without law
  - Regulation of evidence collection
  - Right to privacy
  - Freedom of religion
  - Freedom of opinion/thought/conscience
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
  3. Everyone charged with a criminal offence has the following minimum rights:
    - a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
    - b. to have adequate time and facilities for the preparation of his defence;
    - c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
    - d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
    - e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

## Article 7: No punishment without law

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

## Article 8: Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

## Article 9: Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

## Article 10: Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

## Article 11: Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

## Article 12: Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

## Article 14: Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

## Article 16: Restrictions on political activity of aliens

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

## Article 17: Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

- Freedom of expression
- Freedom of opinion/thought/conscience
- Television

- Freedom of assembly
- Freedom of association
- Right to join trade unions
- Restrictions on the armed forces

- Right to found a family
- Right to marry

- General guarantee of equality
- Equality regardless of gender
- Equality regardless of skin color
- Equality regardless of social status
- Equality regardless of political party
- Equality regardless of parentage
- Equality regardless of origin
- Equality regardless of race
- Equality regardless of language
- Equality regardless of religion

## Article 18: Limitation on use of restrictions on rights

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

## Part II: The First Protocol

### Article 1: Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

### Article 2: Right to education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

### Article 3: Right to free elections

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

## PART III: THE THIRTEENTH PROTOCOL

### Article 1: Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

## SCHEDULE 2: Remedial Orders

### Subheading 1: Orders

1.

1. A remedial order may—

- a. contain such incidental, supplemental, consequential or transitional provision as the person making it considers appropriate;
- b. be made so as to have effect from a date earlier than that on which it is made;

- c. make provision for the delegation of specific functions;
  - d. make different provision for different cases.
2. The power conferred by sub-paragraph (1)(a) includes—
- a. power to amend primary legislation (including primary legislation other than that which contains the incompatible provision); and
  - b. power to amend or revoke subordinate legislation (including subordinate legislation other than that which contains the incompatible provision).
3. A remedial order may be made so as to have the same extent as the legislation which it affects.
4. No person is to be guilty of an offence solely as a result of the retrospective effect of a remedial order.

• Protection from ex post facto laws

## Subheading 2: Procedure

2. No remedial order may be made unless—
- a. a draft of the order has been approved by a resolution of each House of Parliament made after the end of the period of 60 days beginning with the day on which the draft was laid; or
  - b. it is declared in the order that it appears to the person making it that, because of the urgency of the matter, it is necessary to make the order without a draft being so approved.

## Subheading 3: Orders laid in draft

- 3.
1. No draft may be laid under paragraph 2(a) unless—
- a. the person proposing to make the order has laid before Parliament a document which contains a draft of the proposed order and the required information; and
  - b. the period of 60 days, beginning with the day on which the document required by this sub-paragraph was laid, has ended.
2. If representations have been made during that period, the draft laid under paragraph 2(a) must be accompanied by a statement containing—
- a. a summary of the representations; and
  - b. if, as a result of the representations, the proposed order has been changed, details of the changes.



## Subheading 4: Urgent cases

4.
  1. If a remedial order (“the original order”) is made without being approved in draft, the person making it must lay it before Parliament, accompanied by the required information, after it is made.
  2. If representations have been made during the period of 60 days beginning with the day on which the original order was made, the person making it must (after the end of that period) lay before Parliament a statement containing—
    - a. a summary of the representations; and
    - b. if, as a result of the representations, he considers it appropriate to make changes to the original order, details of the changes.
  3. If sub-paragraph (2)(b) applies, the person making the statement must—
    - a. make a further remedial order replacing the original order; and
    - b. lay the replacement order before Parliament.
  4. If, at the end of the period of 120 days beginning with the day on which the original order was made, a resolution has not been passed by each House approving the original or replacement order, the order ceases to have effect (but without that affecting anything previously done under either order or the power to make a fresh remedial order).

## Subheading 5: Definitions

5. In this Schedule—
  - “representations” means representations about a remedial order (or proposed remedial order) made to the person making (or proposing to make) it and includes any relevant Parliamentary report or resolution; and
  - “required information” means—
    - a. an explanation of the incompatibility which the order (or proposed order) seeks to remove, including particulars of the relevant declaration, finding or order; and
    - b. a statement of the reasons for proceeding under section 10 and for making an order in those terms.

## Subheading 6: Calculating periods

6. In calculating any period for the purposes of this Schedule, no account is to be taken of any time during which—
  - a. Parliament is dissolved or prorogued; or
  - b. both Houses are adjourned for more than four days.
7.
  1. This paragraph applies in relation to—
    - a. any remedial order made, and any draft of such an order proposed to be made,—
      - i. by the Scottish Ministers; or
      - ii. within devolved competence (within the meaning of the Scotland Act 1998) by Her Majesty in Council; and
    - b. any document or statement to be laid in connection with such an order (or proposed order).
  2. This Schedule has effect in relation to any such order (or proposed order), document or statement subject to the following modifications.
  3. Any reference to Parliament, each House of Parliament or both Houses of Parliament shall be construed as a reference to the Scottish Parliament.
  4. Paragraph 6 does not apply and instead, in calculating any period for the purposes of this Schedule, no account is to be taken of any time during which the Scottish Parliament is dissolved or is in recess for more than four days.

## SCHEDULE 3: Derogation and Reservation

### Part I

[Repealed]

### Part II: Reservation

At the time of signing the present (First) Protocol, I declare that, in view of certain provisions of the Education Acts in the United Kingdom, the principle affirmed in the second sentence of Article 2 is accepted by the United Kingdom only so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure.

Dated 20 March 1952

Made by the United Kingdom Permanent Representative to the Council of Europe.

## SCHEDULE 4: Judicial Pensions

### Subheading 1: Duty to make orders about pensions

1.
  1. The appropriate Minister must by order make provision with respect to pensions payable to or in respect of any holder of a judicial office who serves as an ECHR judge.
  2. A pensions order must include such provision as the Minister making it considers is necessary to secure that—
    - a. an ECHR judge who was, immediately before his appointment as an ECHR judge, a member of a judicial pension scheme is entitled to remain as a member of that scheme;
    - b. the terms on which he remains a member of the scheme are those which would have been applicable had he not been appointed as an ECHR judge; and
    - c. entitlement to benefits payable in accordance with the scheme continues to be determined as if, while serving as an ECHR judge, his salary was that which would (but for section 18(4)) have been payable to him in respect of his continuing service as the holder of his judicial office.

### Subheading 2: Contributions

2. A pensions order may, in particular, make provision—
  - a. for any contributions which are payable by a person who remains a member of a scheme as a result of the order, and which would otherwise be payable by deduction from his salary, to be made otherwise than by deduction from his salary as an ECHR judge; and
  - b. for such contributions to be collected in such manner as may be determined by the administrators of the scheme.

### Subheading 3: Amendments of other enactments

3. A pensions order may amend any provision of, or made under, a pensions Act in such manner and to such extent as the Minister making the order considers necessary or expedient to ensure the proper administration of any scheme to which it relates.

### Subheading 4: Definitions

4. In this Schedule—
  - “appropriate Minister” means—

- a. in relation to any judicial office whose jurisdiction is exercisable exclusively in relation to Scotland, the Secretary of State; and
- b. otherwise, the Lord Chancellor;
- “ECHR judge” means the holder of a judicial office who is serving as a judge of the Court;
- “judicial pension scheme” means a scheme established by and in accordance with a pensions Act;
- “pensions Act” means—
  - a. the County Courts Act Northern Ireland) 1959;
  - b. the Sheriffs’ Pensions (Scotland) Act 1961;
  - c. the Judicial Pensions Act 1981; or
  - d. the Judicial Pensions and Retirement Act 1993;
  - e. the Public Service Pensions Act 2013; and
- “pensions order” means an order made under paragraph 1.

## House of Lords Act 1999

### Preamble

An Act to restrict membership of the House of Lords by virtue of a hereditary peerage; to make related provision about disqualifications for voting at elections to, and for membership of, the House of Commons; and for connected purposes.

[11th November 1999]

Be it enacted by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### 1. Exclusion of hereditary peers

No-one shall be a member of the House of Lords by virtue of a hereditary peerage.

### 2. Exception from section 1

1. Section 1 shall not apply in relation to anyone excepted from it by or in accordance with Standing Orders of the House.

• Second chamber representation quotas

2. At any one time 90 people shall be excepted from section 1; but anyone excepted as holder of the office of Earl Marshal, or as performing the office of Lord Great Chamberlain, shall not count towards that limit.

• Term length of second chamber

3. Once excepted from section 1, a person shall continue to be so throughout his life (until an Act of Parliament provides to the contrary).

• Replacement of legislators

4. Standing Orders shall make provision for filling vacancies among the people excepted from section 1; and in any case where—

a. the vacancy arises on a death occurring after the end of the first Session of the next Parliament after that in which this Act is passed, and

b. the deceased person was excepted in consequence of an election, that provision shall require the holding of a by-election.

5. A person may be excepted from section 1 by or in accordance with Standing Orders made in anticipation of the enactment or commencement of this section.

6. Any question whether a person is excepted from section 1 shall be decided by the Clerk of the Parliaments, whose certificate shall be conclusive.

• Outside professions of legislators

### 3. Removal of disqualifications in relation to the House of Commons

1. The holder of a hereditary peerage shall not be disqualified by virtue of that peerage for—

a. voting at elections to the House of Commons, or

b. being, or being elected as, a member of that House.

2. Subsection (1) shall not apply in relation to anyone excepted from section 1 by virtue of section 2.

### 4. Amendments and repeals

1. The enactments mentioned in Schedule 1 are amended as specified there.

2. The enactments mentioned in Schedule 2 are repealed to the extent specified there.

### 5. Commencement and transitional provision

1. Sections 1 to 4 (including Schedules 1 and 2) shall come into force at the end of the Session of Parliament in which this Act is passed.

2. Accordingly, any writ of summons issued for the present Parliament in right of a hereditary peerage shall not have effect after that Session unless it has been issued to a person who, at the end of the Session, is excepted from section 1 by virtue of section 2.

3. The Secretary of State may by order make such transitional provision about the entitlement of holders of hereditary peerages to vote at elections to the House of Commons or the European Parliament as he considers appropriate.

4. An order under this section—

a. may modify the effect of any enactment or any provision made under an enactment, and

- b. shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## 6. Interpretation and short title

1. In this Act “hereditary peerage” includes the principality of Wales and the earldom of Chester.
2. This Act may be cited as the House of Lords Act 1999.

# Constitutional Reform Act 2005

## Preamble

An Act to make provision for modifying the office of Lord Chancellor, and to make provision relating to the functions of that office; to establish a Supreme Court of the United Kingdom, and to abolish the appellate jurisdiction of the House of Lords; to make provision about the jurisdiction of the Judicial Committee of the Privy Council and the judicial functions of the President of the Council; to make other provision about the judiciary, their appointment and discipline; and for connected purposes.

[24th March 2005]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## Part 1: The rule of law

### 1. The rule of law

This Act does not adversely affect—

- a. the existing constitutional principle of the rule of law, or
- b. the Lord Chancellor's existing constitutional role in relation to that principle.

## Part 2: Arrangements to modify the office of Lord Chancellor

### Subheading 1: Qualifications for office of Lord Chancellor

#### 2. Lord Chancellor to be qualified by experience

1. A person may not be recommended for appointment as Lord Chancellor unless he appears to the Prime Minister to be qualified by experience.
2. The Prime Minister may take into account any of these—
  - a. experience as a Minister of the Crown;

- b. experience as a member of either House of Parliament;
  - c. experience as a qualifying practitioner;
  - d. experience as a teacher of law in a university;
  - e. other experience that the Prime Minister considers relevant.
3. In this section “qualifying practitioner” means any of these—
- a. a person who has a Senior Courts qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41);
  - b. an advocate in Scotland or a solicitor entitled to appear in the Court of Session and the High Court of Justiciary;
  - c. a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland.

## Subheading 2: Continued judicial independence

### 3. Guarantee of continued judicial independence

- 1. The Lord Chancellor, other Ministers of the Crown and all with responsibility for matters relating to the judiciary or otherwise to the administration of justice must uphold the continued independence of the judiciary.
- 2. Subsection (1) does not impose any duty which it would be within the legislative competence of the Scottish Parliament to impose.
- 3. A person is not subject to the duty imposed by subsection (1) if he is subject to the duty imposed by section 1(1) of the Justice (Northern Ireland) Act 2002 (c. 26).
- 4. The following particular duties are imposed for the purpose of upholding that independence.
- 5. The Lord Chancellor and other Ministers of the Crown must not seek to influence particular judicial decisions through any special access to the judiciary.
- 6. The Lord Chancellor must have regard to—
  - a. the need to defend that independence;
  - b. the need for the judiciary to have the support necessary to enable them to exercise their functions;
  - c. the need for the public interest in regard to matters relating to the judiciary or otherwise to the administration of justice to be properly represented in decisions affecting those matters.
- 7. In this section “the judiciary” includes the judiciary of any of the following—
  - a. the Supreme Court;

• Judicial independence

• Subsidiary unit government

• Subsidiary unit government

- b. any other court established under the law of any part of the United Kingdom;
- c. any international court.

7A. In this section “the judiciary” also includes every person who—

- a. holds an office listed in Schedule 14 or holds an office listed in subsection (7B), and
- b. but for this subsection would not be a member of the judiciary for the purposes of this section.

7B. The offices are those of—

- a. Senior President of Tribunals;
- b. President of Employment Tribunals (Scotland);
- c. Vice President of Employment Tribunals (Scotland);
- d. member of a panel of Employment Judges (Scotland);
- e. member of a panel of members of employment tribunals that is not a panel of Employment Judges;
- f. [Omitted]

8. In subsection (7) “international court” means the International Court of Justice or any other court or tribunal which exercises jurisdiction, or performs functions of a judicial nature, in pursuance of—

- a. an agreement to which the United Kingdom or Her Majesty's Government in the United Kingdom is a party, or
- b. a resolution of the Security Council or General Assembly of the United Nations.

#### 4. Guarantee of continued judicial independence: Northern Ireland

1. For section 1 of the Justice (Northern Ireland) Act 2002 (c. 26) (guarantee of continued judicial independence) substitute—

“ 1 Guarantee of continued judicial independence

(1) The following persons must uphold the continued independence of the judiciary—

- (a) the First Minister,
- (b) the deputy First Minister,
- (c) Northern Ireland Ministers, and
- (d) all with responsibility for matters relating to the judiciary or otherwise to the administration of justice, where that responsibility is to be discharged only in or

• Establishment of labor courts

• International organizations

• Judicial independence  
• Subsidiary unit government



as regards Northern Ireland.

(2) The following particular duty is imposed for the purpose of upholding that independence.

(3) The First Minister, the deputy First Minister and Northern Ireland Ministers must not seek to influence particular judicial decisions through any special access to the judiciary.

(4) In this section “the judiciary” includes the judiciary of any of the following—

(a) the Supreme Court;

(b) any other court established under the law of any part of the United Kingdom;

(c) any international court.

(5) In subsection (4) “international court” means the International Court of Justice or any other court or tribunal which exercises jurisdiction, or performs functions of a judicial nature, in pursuance of—

(a) an agreement to which the United Kingdom or Her Majesty's Government in the United Kingdom is a party, or

(b) a resolution of the Security Council or General Assembly of the United Nations.”

(2) In section 91(2) of that Act (extent: provisions not restricted to Northern Ireland), before paragraph (a) insert—

“(za) section 1.”.

### Subheading 3: Representations by senior judges

## 5. Representations to Parliament

1. The chief justice of any part of the United Kingdom may lay before Parliament written representations on matters that appear to him to be matters of importance relating to the judiciary, or otherwise to the administration of justice, in that part of the United Kingdom.
2. In relation to Scotland those matters do not include matters within the legislative competence of the Scottish Parliament, unless they are matters to which a Bill for an Act of Parliament relates.
3. In relation to Northern Ireland those matters do not include transferred matters within the legislative competence of the Northern Ireland Assembly, unless they are matters to which a Bill for an Act of Parliament relates.
4. In subsection (3) the reference to transferred matters has the meaning given by section 4(1) of the Northern Ireland Act 1998 (c. 47).
5. In this section “chief justice” means—
  - a. in relation to England and Wales or Northern Ireland, the Lord Chief Justice of that part of the United Kingdom;
  - b. in relation to Scotland, the Lord President of the Court of Session.

## 6. Representations to the Northern Ireland Assembly

1. The Lord Chief Justice of Northern Ireland may lay before the Northern Ireland Assembly written representations on matters within subsection (2) that appear to him to be matters of importance relating to the judiciary, or otherwise to the administration of justice, in Northern Ireland.

2. The matters are—
  - a. excepted or reserved matters to which a Bill for an Act of the Northern Ireland Assembly relates;
  - b. transferred matters within the legislative competence of the Northern Ireland Assembly, unless they are matters to which a Bill for an Act of Parliament relates.
3. In subsection (2) references to excepted, reserved and transferred matters have the meaning given by section 4(1) of the Northern Ireland Act 1998.

## Subheading 4: Judiciary and courts in England and Wales

### 7. President of the Courts of England and Wales

1. The Lord Chief Justice holds the office of President of the Courts of England and Wales and is Head of the Judiciary of England and Wales.
2. As President of the Courts of England and Wales he is responsible—
  - a. for representing the views of the judiciary of England and Wales to Parliament, to the Lord Chancellor and to Ministers of the Crown generally;
  - b. for the maintenance of appropriate arrangements for the welfare, training and guidance of the judiciary of England and Wales within the resources made available by the Lord Chancellor;
  - c. for the maintenance of appropriate arrangements for the deployment of the judiciary of England and Wales and the allocation of work within courts.
3. The President of the Courts of England and Wales is president of the courts listed in subsection (4) and is entitled to sit in any of those courts.
4. The courts are—
  - the Court of Appeal
  - the High Court
  - the Crown Court
  - the family court
  - the county court
  - the magistrates' courts.
5. In section 1 of the Supreme Court Act 1981 (c. 54), subsection (2)(Lord Chancellor to be president of the Supreme Court of England and Wales) ceases to have effect.

### 8. Head and Deputy Head of Criminal Justice

1. There is to be a Head of Criminal Justice.

2. The Head of Criminal Justice is—
  - a. the Lord Chief Justice, or
  - b. if the Lord Chief Justice appoints another person, that person.
3. The Lord Chief Justice may appoint a person to be Deputy Head of Criminal Justice.
4. The Lord Chief Justice must not appoint a person under subsection (2)(b) or (3) unless these conditions are met—
  - a. the Lord Chief Justice has consulted the Lord Chancellor;
  - b. the person to be appointed is a judge of the Court of Appeal.
5. A person appointed under subsection (2)(b) or (3) holds the office to which he is appointed in accordance with the terms of his appointment.

## 9. Head and Deputy Head of Family Justice

1. The President of the Family Division is Head of Family Justice.
2. The Lord Chief Justice may appoint a person to be Deputy Head of Family Justice.
3. The Lord Chief Justice must not appoint a person under subsection (2) unless these conditions are met—
  - a. the Lord Chief Justice has consulted the Lord Chancellor;
  - b. the person to be appointed is an ordinary judge of the Court of Appeal.
4. A person appointed as Deputy Head of Family Justice holds that office in accordance with the terms of his appointment.

## Subheading 5: Judiciary and courts in Northern Ireland

10. The Lord Chancellor and Northern Ireland courts
 

In the Judicature (Northern Ireland) Act 1978 (c. 23) after section 68 insert—

“68A Lord Chancellor's duty

(1) The Lord Chancellor is under a duty to ensure that there is an efficient and effective system to support the carrying on of the business of—

  - (a) the Supreme Court,
  - (b) county courts,
  - (c) magistrates' courts, and
  - (d) coroners' courts,

and that appropriate services are provided for those courts.

(2) The Lord Chancellor must, within 18 months of the coming into force of this section, and afterwards annually, prepare and lay before both Houses of Parliament a report as to the way in which he has discharged his duty under subsection (1).”

## 11. Lord Chief Justice of Northern Ireland

For subsection (1) of section 12 of the Justice (Northern Ireland) Act 2002 (c. 26) (role of the Lord Chief Justice) substitute—

“(1A) The Lord Chief Justice holds the office of President of the Courts of Northern Ireland and is Head of the Judiciary of Northern Ireland.

(1B) As President of the Courts of Northern Ireland he is responsible—

(a) for representing the views of the judiciary of Northern Ireland to Parliament, the Lord Chancellor and Ministers of the Crown generally;

(b) for representing the views of the judiciary of Northern Ireland to the Northern Ireland Assembly, the First Minister and deputy First Minister and Northern Ireland Ministers;

(c) for the maintenance of appropriate arrangements for the welfare, training and guidance of the judiciary of Northern Ireland within the resources made available by the Lord Chancellor;

(d) for the maintenance of appropriate arrangements for the deployment of the judiciary of Northern Ireland and the allocation of work within courts.

(1C) The President of the Courts of Northern Ireland is president of the courts listed in subsection (1D) and is entitled to sit in any of those courts.

(1D) The courts are—

the Court of Appeal

the High Court

the Crown Court

the county courts

the magistrates' courts.”

## **Subheading 6: Other provisions about the judiciary and courts**

### **12. Powers to make rules**

1. Part 1 of Schedule 1 sets out a process for the exercise of rule-making powers.
2. Part 2 of the Schedule contains amendments of Acts that contain rule-making powers.
3. Those amendments—
  - a. provide for those powers to be exercised in accordance with the process set out in Part 1 of the Schedule, and
  - b. make consequential provision.

### **13. Powers to give directions**

1. Part 1 of Schedule 2 sets out a process for the exercise of powers to give directions.
2. Part 2 of the Schedule contains amendments of Acts that contain powers to give directions.

3. Those amendments—
  - a. provide for those powers to be exercised in accordance with the process set out in Part 1 of the Schedule, and
  - b. make consequential provision.

## 14. Transfer of appointment functions to Her Majesty

Schedule 3 provides for—

- a. Her Majesty instead of the Lord Chancellor to make appointments to certain offices, and
- b. the modification of enactments relating to those offices.

## 15. Other functions of the Lord Chancellor and organisation of the courts

1. Schedule 4 provides for—
  - a. the transfer of functions to or from the Lord Chancellor,
  - b. the modification of other functions of the Lord Chancellor,
  - c. the modification of enactments relating to those functions, and
  - d. the modification of enactments relating to the organisation of the courts.
2. Schedule 5 makes similar provision about functions under legislation relating to Northern Ireland.

## 16. Functions of the Lord Chief Justice during vacancy or incapacity

1. This section applies during any period when—
  - a. the office of Lord Chief Justice is vacant, or
  - b. the Lord Chief Justice is incapacitated.
2. During such a period—
  - a. any function of the Lord Chief Justice may be exercised by the senior Head of Division;
  - b. anything which falls to be done in relation to the Lord Chief Justice may be done in relation to the senior Head of Division.
3. The senior Head of Division is—
  - a. the Master of the Rolls, or

- b. the President of the Queen's Bench Division, if the office in paragraph (a) is vacant, or
  - c. the President of the Family Division, if the offices in paragraphs (a) and (b) are vacant, or
  - d. the Chancellor of the High Court, if the offices in paragraphs (a), (b) and (c) are vacant.
4. For the purposes of this section—
- a. the Lord Chief Justice is to be regarded as incapacitated only if at least three of the Heads of Division declare in writing that they are satisfied that he is incapacitated;
  - b. in such a case, the Lord Chief Justice is to be regarded as incapacitated until at least three of the Heads of Division declare in writing that they are satisfied that he is no longer incapacitated.
5. In this section—
- a. “Lord Chief Justice” means the Lord Chief Justice of England and Wales;
  - b. “incapacitated”, in relation to the Lord Chief Justice, means unable to exercise the functions of that office;
  - c. “Head of Division” means each of the office holders referred to in subsection (3).

## Subheading 7: Lord Chancellor's oath

### 17. Lord Chancellor's oath

1. In the Promissory Oaths Act 1868 (c. 72) after section 6 insert—
- “6A Lord Chancellor's Oath
- (1) The oath set out in subsection (2) shall be tendered to and taken by the Lord Chancellor, after and in the same manner as the official oath, as soon as may be after his acceptance of office.
- (2) The oath is—
- “I, , do swear that in the office of Lord High Chancellor of Great Britain I will respect the rule of law, defend the independence of the judiciary and discharge my duty to ensure the provision of resources for the efficient and effective support of the courts for which I am responsible. So help me God.”
2. The section inserted by subsection (1) does not apply in the case of acceptance of office before the coming into force of this section.

## Subheading 8: Speakership of the House of Lords

### 18. Speakership of the House of Lords

Schedule 6 contains amendments relating to the Speakership of the House of Lords.

## Subheading 9: Functions subject to transfer, modification or abolition

### 19. Transfer, modification or abolition of functions by order

1. The Lord Chancellor may by order make provision for any of these purposes—
  - a. to transfer an existing function of the Lord Chancellor to another person;
  - b. to direct that an existing function of the Lord Chancellor is to be exercisable concurrently with another person;
  - c. to direct that an existing function of the Lord Chancellor exercisable concurrently with another person is to cease to be exercisable by the Lord Chancellor;
  - d. to modify an existing function of the Lord Chancellor;
  - e. to abolish an existing function of the Lord Chancellor.
2. An order under subsection (1) may in particular—
  - a. amend or repeal any of the following—
    - i. an enactment other than one contained in an Act passed, or Northern Ireland legislation passed or made, after the Session in which this Act is passed;
    - ii. subordinate legislation other than subordinate legislation made under an Act passed, or Northern Ireland legislation passed or made, after the Session in which this Act is passed;
    - iii. any other instrument or document, including a prerogative instrument;
  - b. include—
    - i. any supplementary, incidental or consequential provision, and
    - ii. any transitory, transitional or saving provision,  
  
which the Lord Chancellor considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to, provision made under subsection (1).
3. The amendments that may be made by virtue of subsection (2)(a) are in addition to those made by or under any other provision of this Act.
4. An order under subsection (1) may not include provision that may be made under section 1(1) of the Ministers of the Crown Act 1975 (c. 26) (power to transfer functions to other Ministers etc).

5. An order under subsection (1) may not be made in relation to any function of the Lord Chancellor that is within Schedule 7.

6. An order under subsection (1) may amend Schedule 7 so as to include any function which, by virtue of provision in the order—

a. becomes exercisable by the Lord Chancellor concurrently with another person, or

b. is modified.

7. An order under subsection (1) may not, to the extent that it amends Schedule 7, be revoked by another order under subsection (1).

8. In this section—

• “existing function” means any function other than one that is conferred by—

a. an Act passed, or Northern Ireland legislation passed or made, after the Session in which this Act is passed, or

b. subordinate legislation made under an Act passed, or Northern Ireland legislation passed or made, after the Session in which this Act is passed;

• “prerogative instrument” means an Order in Council, warrant, charter or other instrument made under the prerogative.

## 20. Protected functions not transferable under Ministers of the Crown Act 1975

1. The Ministers of the Crown Act 1975 (c. 26) is amended as follows.

2. In section 1 (power by Order in Council to transfer functions of Ministers), after subsection (5) insert—

“(6) This section does not apply to the functions of the Lord Chancellor that are within Schedule 7 to the Constitutional Reform Act 2005.

(7) An Order in Council under this section may amend Schedule 7 to the Constitutional Reform Act 2005 so as to include any function which, by virtue of provision in the Order in Council—

(a) is transferred to the Lord Chancellor,

(b) becomes exercisable by the Lord Chancellor concurrently with another person, or

(c) remains exercisable by the Lord Chancellor but ceases to be exercisable concurrently with another person.

(8) An Order in Council under this section may not, to the extent that it amends Schedule 7 to the Constitutional Reform Act 2005, be revoked by another Order in Council under this section.”

3. After section 5(3) (Orders under Act to be revocable) insert—

“(3A) Subsection (3) is subject to section 1(8).”



## 21. Amendment of Schedule 7

1. The Lord Chancellor may by order amend Schedule 7 so as to include within that Schedule any function of the Lord Chancellor under an enactment, other than an enactment contained in an Act passed, or Northern Ireland legislation passed or made, after the Session in which this Act is passed.
2. For the purposes of subsection (1) it does not matter whether a function of the Lord Chancellor is exercisable by him alone or concurrently with another person.
3. An order made under this section may not be revoked by an order made under this section.

## Subheading 10: Supplementary

## 22. Transfers: supplementary

1. This section applies where a function of the Lord Chancellor is transferred to another person (“the transferee”) by any provision of this Act or of an order under section 19 (“the amending provision”).
2. Where the transferee is Her Majesty, references to the transferee in the following provisions of this section are to be read as references to the Lord Chancellor.
3. The transfer does not affect the validity of anything done (or having effect as if done) by or in relation to the Lord Chancellor before the commencement of the amending provision.
4. So far as is necessary in consequence of the transfer, an enactment or instrument passed or made before the commencement of the provision has effect, subject to any amendment made by the amending provision or any other provision of this Act, as if—
  - a. a reference to the Lord Chancellor were a reference to the transferee;
  - b. a reference to the Lord Chancellor's Department were a reference to the department of the transferee;
  - c. a reference to an officer of the Lord Chancellor were a reference to an officer of the transferee.
5. Anything done by or in relation to the Lord Chancellor in connection with the function has effect, so far as is necessary for continuing its effect after the commencement of the amending provision, as if done by or in relation to the transferee.
6. Anything which relates to the function and which is in the process of being done by or in relation to the Lord Chancellor at the commencement of the amending provision may be continued by or in relation to the transferee.
7. Legal proceedings to which the Lord Chancellor is party in relation to the function at the commencement of the amending provision may be continued by or against the transferee.
8. Documents or forms printed for use in connection with the function may be used in connection with it even though they contain (or are to be read as containing) references to the Lord Chancellor, his Department or an officer of his.

9. For the purposes of the use of any such documents after the commencement of the amending provision, those references are to be read as references to the transferee, his department or an officer of his.

## Part 3: The Supreme Court

### Subheading 1: The Supreme Court

#### 23. The Supreme Court

1. There is to be a Supreme Court of the United Kingdom.
2. The Court consists of the persons appointed as its judges by Her Majesty by letters patent, but no appointment may cause the full-time equivalent number of judges of the Court at any time to be more than 12.
3. Her Majesty may from time to time by Order in Council amend subsection (2) so as to increase or further increase the maximum full-time equivalent number of judges of the Court.
4. No recommendation may be made to Her Majesty in Council to make an Order under subsection (3) unless a draft of the Order has been laid before and approved by resolution of each House of Parliament.
5. Her Majesty may by letters patent appoint one of the judges to be President and one to be Deputy President of the Court.
6. The judges other than the President and Deputy President are to be styled "Justices of the Supreme Court".
7. The Court is to be taken to be duly constituted despite any vacancy in the office of President or Deputy President.
8. For the purposes of this section, the full-time equivalent number of judges of the Court is to be calculated by taking the number of full-time judges and adding, for each judge who is not a full-time judge, such fraction as is reasonable.

#### 24. First members of the Court

On the commencement of section 23—

- a. the persons who immediately before that commencement are Lords of Appeal in Ordinary become judges of the Supreme Court,
- b. the person who immediately before that commencement is the senior Lord of Appeal in Ordinary becomes the President of the Court, and
- c. the person who immediately before that commencement is the second senior Lord of Appeal in Ordinary becomes the Deputy President of the Court.

## Subheading 2: Appointment of judges

### 25. Qualification for appointment

1. A person is not qualified to be appointed a judge of the Supreme Court unless he has (at any time)—
  - a. held high judicial office for a period of at least 2 years,
  - b. satisfied the judicial-appointment eligibility condition on a 15-year basis, or
  - c. been a qualifying practitioner for a period of at least 15 years.
2. A person is a qualifying practitioner for the purposes of this section at any time when—
  - a. [omitted]
  - b. he is an advocate in Scotland or a solicitor entitled to appear in the Court of Session and the High Court of Justiciary, or
  - c. he is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland.

### 26. Selection of members of the Court

1. This section applies to a recommendation for an appointment to one of the following offices—
  - a. judge of the Supreme Court;
  - b. President of the Court;
  - c. Deputy President of the Court.
2. A recommendation may be made only by the Prime Minister.
3. The Prime Minister—
  - a. must recommend any person who is selected as a result of the convening of a selection commission under this section;
  - b. may not recommend any other person.
4. Where a person who is not a judge of the Court is recommended for appointment as President or Deputy President, the recommendation must also recommend the person for appointment as a judge.
5. If there is a vacancy in the office of President of the Court or in the office of Deputy President of the Court, or it appears to him that there will soon be such a vacancy, the Lord Chancellor must convene a selection commission for the selection of a person to be recommended.

- 5A. If-
- a. the full-time equivalent number of judges of the Court is less than the maximum specified in section 23(2), or it appears to the Lord Chancellor that the full-time equivalent number of judges of the Court will soon be less than that maximum, and
  - b. the Lord Chancellor, or the senior judge of the Court, after consulting the other considers it desirable that a recommendation be made for an appointment to the office of judge of the Court,
- the Lord Chancellor must convene a selection commission for the selection of a person to be recommended.
- 5B. In subsection (5A)(b) “the senior judge of the Court” means—
- a. the President of the Court, or
  - b. if there is no President, the Deputy President, or
  - c. if there is no President and no Deputy President, the senior ordinary judge.
6. Schedule 8 is about selection commissions.
7. Subsections (5) and (5A) are subject to Schedule 8 (cases where duty to convene a selection commission are suspended).
- 7A. For the purposes of this section and Schedule 8, a person is selected as a result of the convening of a selection commission if the person's selection is the final outcome of—
- a. the selection process mentioned in section 27(1) being applied by the commission, and
  - b. any process provided for by regulations under section 27A being applied in the particular case.
8. Section 27 applies where a selection commission is convened under this section.

## 27. Selection process

1. The commission must—
- a. determine the selection process to be applied by it,
  - b. apply the selection process, and
  - c. make a selection accordingly.
2. [Omitted]
3. [Omitted]
4. Subsections (5) to (10) apply to any selection under this section or regulations under section 27A.
5. Selection must be on merit.

**5A. Where two persons are of equal merit—**

- a. section 159 of the Equality Act 2010 (positive action: recruitment etc) does not apply in relation to choosing between them, but
- b. Part 5 of that Act (public appointments etc) does not prevent the commission from preferring one of them over the other for the purpose of increasing diversity within the group of persons who are the judges of the Court.

6. A person may be selected only if he meets the requirements of section 25.

7. A person may not be selected if he is a member of the commission.

8. In making selections for the appointment of judges of the Court the commission must ensure that between them the judges will have knowledge of, and experience of practice in, the law of each part of the United Kingdom.

9. The commission must have regard to any guidance given by the Lord Chancellor as to matters to be taken into account (subject to any other provision of this Act) in making a selection.

10. Any selection must be of one person only.

11. For the purposes of this section a person is non-legally-qualified if the person—

- a. does not hold, and has never held, any of the offices listed in Schedule 1 to the House of Commons Disqualification Act 1975 (judicial offices disqualifying for membership of the House of Commons), and
- b. is not practising or employed as a lawyer, and never has practised or been employed as a lawyer.

**27A. Regulations about selection process**

1. The Lord Chancellor must by regulations made with the agreement of the senior judge of the Supreme Court—

- a. make further provision about membership of selection commissions convened under section 26,
- b. make further provision about the process that is to be applied in any case where a selection commission is required to be convened under section 26, and
- c. secure that, in every such case, there will come a point in the process when a selection has to be accepted, either unconditionally or subject only to matters such as the selected person's willingness and availability, by or on behalf of the Lord Chancellor.

2. The regulations may in particular—

- a. provide for process additional to the selection process applied by a selection commission under section 27(1), including post-acceptance process;
- b. make provision as to things that are, or as to things that are not, to be done by a selection commission—

- i. as part of the selection process applied by it under section 27(1), or
    - ii. in determining what that process is to be;
  - c. provide for the Lord Chancellor to be entitled to require a selection commission to reconsider a selection under section 27(1) or any subsequent selection;
  - d. provide for the Lord Chancellor to be entitled to reject a selection under section 27(1) or any subsequent selection;
  - e. give other functions to the Lord Chancellor;
  - f. provide for particular action to be taken by a selection commission after it has complied with section 27;
  - g. provide for the dissolution of a selection commission;
  - h. provide for section 16(2)(a) or (b) not to apply in relation to functions of the Lord Chief Justice—
    - i. as a member of a selection commission (including functions of chairing a selection commission), or
    - ii. in relation to the nomination or appointment of members of a selection commission;
  - i. provide for a person to cease to be a member of a selection commission where a requirement about the commission's members ceases to be met by the person's membership of the commission;
  - j. provide for a person to become a member of a selection commission already convened where another person ceases to be a member of the commission or where a requirement about the commission's members ceases to be met by another person's membership of the commission;
  - k. provide for payment to a member of a selection commission of amounts by way of allowances or expenses;
  - l. make provision as to what amounts to practice or employment as a lawyer for the purposes of section 27(11)(b).
3. Before making regulations under this section the Lord Chancellor must consult—
- a. the First Minister in Scotland,
  - b. the Northern Ireland Judicial Appointments Commission,
  - c. the First Minister for Wales,

- d. the Lord President of the Court of Session,
  - e. the Lord Chief Justice of Northern Ireland, and
  - f. the Lord Chief Justice of England and Wales.
4. Regulations under this section—
    - a. may make different provision for different purposes;
    - b. may make transitory, transitional or saving provision.
  5. In this section “the senior judge”, in relation to the Court, has the meaning given by section 26(5B).

## 27B. Selection guidance: supplementary

1. Before issuing any selection guidance the Lord Chancellor must—
  - a. consult the senior judge of the Supreme Court;
  - b. after doing so, lay a draft of the proposed guidance before each House of Parliament.
2. If the draft is approved by a resolution of each House of Parliament within the 40-day period the Lord Chancellor must issue the guidance in the form of the draft.
3. In any other case the Lord Chancellor must take no further steps in relation to the proposed guidance.
4. Subsection (3) does not prevent a new draft of the proposed guidance from being laid before each House of Parliament after consultation with the senior judge of the Court.
5. Selection guidance comes into force on such date as the Lord Chancellor may appoint by order.
6. Where selection guidance is in force, the Lord Chancellor may revoke the guidance only by—
  - a. new selection guidance issued in accordance with the previous provisions of this section, or
  - b. an order made after consulting the senior judge of the Court.
7. In this section—
  - “40-day period” in relation to the draft of any proposed selection guidance means—
    - a. if the draft is laid before one House on a day later than the day on which it is laid before the other House, the period of 40 days beginning with the later day, and
    - b. in any other case, the period of 40 days beginning with the day on which the draft is laid before each House,

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- no account being taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days;
  - “the senior judge”, in relation to the Court, has the meaning given by section 26(5B);
  - “selection guidance” means guidance mentioned in section 27(9).
28. [Omitted]
29. [Omitted]
30. [Omitted]
31. [Omitted]

### Subheading 3: Terms of appointment

#### 32. Oath of allegiance and judicial oath

1. A person who is appointed as President of the Court must, as soon as may be after accepting office, take the required oaths in the presence of—
  - a. the Deputy President, or
  - b. if there is no Deputy President, the senior ordinary judge.
2. A person who is appointed as Deputy President of the Supreme Court must, as soon as may be after accepting office, take the required oaths in the presence of—
  - a. the President, or
  - b. if there is no President, the senior ordinary judge.
3. A person who is appointed as a judge of the Supreme Court must, as soon as may be after accepting office, take the required oaths in the presence of—
  - a. the President, or
  - b. if there is no President, the Deputy President, or
  - c. if there is no President and no Deputy President, the senior ordinary judge.
4. Subsections (1) and (2) apply whether or not the person appointed as President or Deputy President has previously taken the required oaths in accordance with this section after accepting another office.
5. Subsection (3) does not apply where a person is first appointed as a judge of the Court upon appointment to the office of President or Deputy President.
6. In this section “required oaths” means—
  - a. the oath of allegiance, and
  - b. the judicial oath,



as set out in the Promissory Oaths Act 1868 (c. 72).

### 33. Tenure

A judge of the Supreme Court holds that office during good behaviour, but may be removed from it on the address of both Houses of Parliament.

### 34. Salaries and allowances

1. A judge of the Supreme Court is entitled to a salary.
2. The amount of the salary is to be determined by the Lord Chancellor with the agreement of the Treasury.
3. Until otherwise determined under subsection (2), the amount is that of the salary of a Lord of Appeal in Ordinary immediately before the commencement of section 23.
4. A determination under subsection (2) may increase but not reduce the amount.
5. Salaries payable under this section are to be charged on and paid out of the Consolidated Fund of the United Kingdom.
6. Any allowance determined by the Lord Chancellor with the agreement of the Treasury may be paid to a judge of the Court out of money provided by Parliament.

### 35. Resignation and retirement

1. A judge of the Supreme Court may at any time resign that office by giving the Lord Chancellor notice in writing to that effect.
2. The President or Deputy President of the Court may at any time resign that office (whether or not he resigns his office as a judge) by giving the Lord Chancellor notice in writing to that effect.
3. In section 26(4)(a) of and Schedule 5 to the Judicial Pensions and Retirement Act 1993 (c. 8) (retirement), for “Lord of Appeal in Ordinary” substitute “Judge of the Supreme Court”.

### 36. Medical retirement

1. This section applies if the Lord Chancellor is satisfied by means of a medical certificate that a person holding office as a judge of the Supreme Court—
  - a. is disabled by permanent infirmity from the performance of the duties of his office, and
  - b. is for the time being incapacitated from resigning his office.
2. The Lord Chancellor may by instrument under his hand declare the person's office to have been vacated.
3. A declaration by instrument under subsection (2) has the same effect for all purposes as if the person had, on the date of the instrument, resigned his office.
4. But such a declaration has no effect unless it is made—
  - a. in the case of an ordinary judge, with the agreement of the President and Deputy President of the Court;

- b. in the case of the President, with the agreement of the Deputy President and the senior ordinary judge;
- c. in the case of the Deputy President, with the agreement of the President and the senior ordinary judge.

### 37. Pensions

1. In the tables in sections 1 and 16 of the Judicial Pensions Act 1981 (c. 20) (application and interpretation), for “Lord of Appeal in Ordinary” –
  - a. in the first column, substitute “ Judge of the Supreme Court ”, and
  - b. in the second column, in each place substitute “ judge of the Supreme Court ”.
2. In Part 1 of Schedule 1 to the Judicial Pensions and Retirement Act 1993 (qualifying judicial offices: judges), for “Lord of Appeal in Ordinary” substitute “Judge of the Supreme Court”.
3. The amendments made by this section to the 1981 and 1993 Acts do not affect the operation of any provision of or made under those Acts, or anything done under such provision, in relation to the office of, or service as, Lord of Appeal in Ordinary.

### Subheading 4: Acting judges

### 38. Acting judges

1. At the request of the President of the Supreme Court any of the following may act as a judge of the Court –
  - a. a person who holds office as a senior territorial judge;
  - b. a member of the supplementary panel under section 39.
2. A request under subsection (1) may be made by the Deputy President of the Court if there is no President or the President is unable to make that request.
3. In section 26(7) of the Judicial Pensions and Retirement Act 1993 (c. 8) (requirement not to act in certain capacities after the age of 75) for paragraph (b) substitute –
 

“(b) act as a judge of the Supreme Court under section 38 of the Constitutional Reform Act 2005;”.
4. Every person while acting under this section is, subject to subsections (5) and (6), to be treated for all purposes as a judge of the Supreme Court (and so may perform any of the functions of a judge of the Court).
5. A person is not to be treated under subsection (4) as a judge of the Court for the purposes of any statutory provision relating to –
  - a. the appointment, retirement, removal or disqualification of judges of the Court,
  - b. the tenure of office and oaths to be taken by judges of the Court, or

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- c. the remuneration, allowances or pensions of judges of the Court.
- 6. Subject to section 27 of the Judicial Pensions and Retirement Act 1993, a person is not to be treated under subsection (4) as having been a judge of the Court if he has acted in the Court only under this section.
- 7. Such remuneration and allowances as the Lord Chancellor may with the agreement of the Treasury determine may be paid out of money provided by Parliament to any person who acts as a judge of the Court under this section.
- 8. In this section “office as a senior territorial judge” means office as any of the following—
  - a. a judge of the Court of Appeal in England and Wales;
  - b. a judge of the Court of Session, but only if the holder of the office is a member of the First or Second Division of the Inner House of that Court;
  - c. a judge of the Court of Appeal in Northern Ireland, unless the holder holds the office only by virtue of being a puisne judge of the High Court.

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### 39. Supplementary panel

1. There is to be a panel of persons known as the supplementary panel.
2. On the commencement of this section any member of the House of Lords who—
  - a. meets one of the conditions in subsection (3),
  - b. does not hold high judicial office,
  - c. has not attained the age of 75, and
  - d. is not a person who was appointed to the office of Lord Chancellor on or after 12 June 2003,
 becomes a member of the panel.
3. The conditions are—
  - a. that he ceased to hold high judicial office less than 5 years before the commencement of this section;
  - b. that he was a member of the Judicial Committee of the Privy Council immediately before that commencement;
  - c. that he ceased to be a member of that Committee less than 5 years before that commencement.
4. A person becomes a member of the supplementary panel on ceasing to hold office as a judge of the Supreme Court or as a senior territorial judge, but only if, while he holds such office—
  - a. his membership of the panel is approved in writing by the President of the Supreme Court, and

- b. the President of the Court gives the Lord Chancellor notice in writing of the approval.
- 5. Subsection (4) does not apply to a person who ceases to hold office as a judge of the Supreme Court when he ceases to be President of the Court.
- 6. Such a person becomes a member of the supplementary panel on ceasing to be President of the Court, unless—
  - a. while President, he gives the Lord Chancellor notice that he is not to become a member of the panel,
  - b. he ceases to be President on being removed from office as a judge of the Court on the address of both Houses of Parliament, or
  - c. his office is declared vacant under section 36.
- 7. A person does not become a member of the supplementary panel under subsection (4) or (6) if—
  - a. on ceasing to hold office as a judge of the Supreme Court he takes office as a senior territorial judge, or
  - b. on ceasing to hold office as a senior territorial judge he takes office as a judge of the Supreme Court.
- 8. A member of the supplementary panel may resign by notice in writing to the President of the Court.
- 9. Unless he resigns (and subject to sections 26(7)(b) and 27 of the Judicial Pensions and Retirement Act 1993 (c. 8)), a person ceases to be a member of the supplementary panel—
  - a. at the end of 5 years after the last day on which he holds his qualifying office, or
  - b. if earlier, at the end of the day on which he attains the age of 75.
- 10. In this section—
  - a. “office as a senior territorial judge” has the same meaning as in section 38;
  - b. a person's “qualifying office” is the office (that is, high judicial office, membership of the Judicial Committee of the Privy Council, office as a judge of the Supreme Court or office as a senior territorial judge) that he held before becoming a member of the supplementary panel.

## Subheading 5: Jurisdiction, relation to other courts etc

### 40. Jurisdiction

1. The Supreme Court is a superior court of record.
2. An appeal lies to the Court from any order or judgment of the Court of Appeal in England and Wales in civil proceedings.

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3. An appeal lies to the Court from any order or judgment of a court in Scotland if an appeal lay from that court to the House of Lords at or immediately before the commencement of this section.
4. Schedule 9—
  - a. transfers other jurisdiction from the House of Lords to the Court,
  - b. transfers devolution jurisdiction from the Judicial Committee of the Privy Council to the Court, and
  - c. makes other amendments relating to jurisdiction.
5. The Court has power to determine any question necessary to be determined for the purposes of doing justice in an appeal to it under any enactment.
6. An appeal under subsection (2) lies only with the permission of the Court of Appeal or the Supreme Court; but this is subject to provision under any other enactment restricting such an appeal.

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## 41. Relation to other courts etc

1. Nothing in this Part is to affect the distinctions between the separate legal systems of the parts of the United Kingdom.
2. A decision of the Supreme Court on appeal from a court of any part of the United Kingdom, other than a decision on a devolution matter, is to be regarded as the decision of a court of that part of the United Kingdom.
3. A decision of the Supreme Court on a devolution matter—
  - a. is not binding on that Court when making such a decision;
  - b. otherwise, is binding in all legal proceedings.
4. In this section “devolution matter” means—
  - a. a question referred to the Supreme Court under section 99 or 112 of the Government of Wales Act 2006, section 33 of the Scotland Act 1998 (c. 46) or section 11 of the Northern Ireland Act 1998 (c. 47);
  - b. a devolution issue as defined in Schedule 9 to the Government of Wales Act 2006 (c. 38), Schedule 6 to the Scotland Act 1998 or Schedule 10 to the Northern Ireland Act 1998.

## Subheading 6: Composition for proceedings

### 42. Composition

1. The Supreme Court is duly constituted in any proceedings only if all of the following conditions are met—
  - a. the Court consists of an uneven number of judges;
  - b. the Court consists of at least three judges;

- c. more than half of those judges are permanent judges.
2. Paragraphs and of subsection are subject to any directions that in specified proceedings the Court is to consist of a specified number of judges that is both uneven and greater than three.
3. Paragraph of subsection is subject to any directions that in specified descriptions of proceedings the Court is to consist of a specified minimum number of judges that is greater than three.
4. This section is subject to section 43.
5. In this section—
  - a. “directions” means directions given by the President of the Court;
  - b. “specified”, in relation to directions, means specified in those directions;
  - c. references to permanent judges are references to those judges of the Court who are not acting judges under section 38.
6. This section and section 43 apply to the constitution of the Court in any proceedings from the time judges are designated to hear the proceedings.

### 43. Changes in composition

1. This section applies if in any proceedings the Court ceases to be duly constituted in accordance with section 42, or in accordance with a direction under this section, because one or more members of the Court are unable to continue.
2. The presiding judge may direct that the Court is still duly constituted in the proceedings.
3. The presiding judge may give a direction under this section only if—
  - a. the parties agree;
  - b. the Court still consists of at least three judges (whether the number of judges is even or uneven);
  - c. at least half of those judges are permanent judges.
4. Subsections (2) and (3) are subject to directions given by the President of the Court.
5. If in any proceedings the Court is duly constituted under this section with an even number of judges, and those judges are evenly divided, the case is to be re-argued in a Court which is constituted in accordance with section 42.
6. In this section—
  - a. “presiding judge” means the judge who is to preside, or is presiding, over proceedings;
  - b. references to permanent judges have the same meaning as in section 42.

## Subheading 7: Practice and procedure

### 44. Specially qualified advisers

1. If the Supreme Court thinks it expedient in any proceedings, it may hear and dispose of the proceedings wholly or partly with the assistance of one or more specially qualified advisers appointed by it.
2. Any remuneration payable to such an adviser is to be determined by the Court unless agreed between the adviser and the parties to the proceedings.
3. Any remuneration forms part of the costs of the proceedings.

### 45. Making of rules

1. The President of the Supreme Court may make rules (to be known as “Supreme Court Rules”) governing the practice and procedure to be followed in the Court.
2. The power to make Supreme Court Rules includes power to make different provision for different cases, including different provision—
  - a. for different descriptions of proceedings, or
  - b. for different jurisdiction of the Supreme Court.
3. The President must exercise the power to make Supreme Court Rules with a view to securing that—
  - a. the Court is accessible, fair and efficient, and
  - b. the rules are both simple and simply expressed.
4. Before making Supreme Court Rules the President must consult all of the following—
  - a. the Lord Chancellor;
  - b. the bodies listed in subsection (5);
  - c. such other bodies that represent persons likely to be affected by the Rules as the President considers it appropriate to consult.
5. The bodies referred to in subsection (4)(b) are—
  - The General Council of the Bar of England and Wales;
  - The Law Society of England and Wales;
  - The Faculty of Advocates of Scotland;
  - The Law Society of Scotland;
  - The General Council of the Bar of Northern Ireland;
  - The Law Society of Northern Ireland.

## 46. Procedure after rules made

1. Supreme Court Rules made by the President of the Supreme Court must be submitted by him to the Lord Chancellor.
2. Supreme Court Rules submitted to the Lord Chancellor—
  - a. come into force on such day as the Lord Chancellor directs, and
  - b. are to be contained in a statutory instrument to which the Statutory Instruments Act 1946 (c. 36) applies as if the instrument contained rules made by a Minister of the Crown.
3. A statutory instrument containing Supreme Court Rules is subject to annulment in pursuance of a resolution of either House of Parliament.

## 47. Photography etc

1. In section 41 of the Criminal Justice Act 1925 (c. 86) (prohibition on taking photographs etc in court), for subsection (2)(a) substitute—

“(a) the expression “court” means any court of justice (including the court of a coroner), apart from the Supreme Court;”.
2. In section 29 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 N.I.) (prohibition on taking photographs etc in court), for subsection (2)(a) substitute—

“(a) the expression “court” means any court of justice (including the court of a coroner), apart from the Supreme Court;”.

## Subheading 8: Staff and resources

### 48. Chief executive

1. The Supreme Court is to have a chief executive.
2. It is for the President of the Court to appoint the chief executive.
3. The President of the Court may delegate to the chief executive any of these functions—
  - a. functions of the President under section 49(1) or 51A(1)(a) or (b);
  - b. non-judicial functions of the Court.
4. The chief executive must carry out his functions (under subsection (3) or otherwise) in accordance with any directions given by the President of the Court.

### 49. Officers and staff

1. The President of the Supreme Court may appoint officers and staff of the Court.
2. It is for the chief executive of the Supreme Court to determine the following matters—
  - a. the number of officers and staff of the Court;



- b. subject to subsections (2A) and (3), the terms on which officers and staff are to be appointed.
- 2A. Service as the chief executive of the Court, and service as an officer or staff appointed under subsection (1), is service in the civil service of the State.
  3. Accordingly, the civil service pension arrangements for the time being in force apply (with any necessary adaptations) to the chief executive of the Court, and to persons appointed under subsection (1), as they apply to other persons employed in the civil service of the State.
  4. In subsection (3) “the civil service pension arrangements” means—
    - a. the principal civil service pension scheme (within the meaning of section 2 of the Superannuation Act 1972 (c. 11), and
    - b. any other superannuation benefits for which provision is made under or by virtue of section 1 of that Act for or in respect of persons in employment in the civil service of the State.

## 50. Accommodation and other resources

1. The Lord Chancellor must ensure that the Supreme Court is provided with the following—
  - a. such court-houses, offices and other accommodation as the Lord Chancellor thinks are appropriate for the Court to carry on its business;
  - b. such other resources as the Lord Chancellor thinks are appropriate for the Court to carry on its business.
2. The Lord Chancellor may discharge the duty under subsection (1) by—
  - a. providing accommodation or other resources, or
  - b. entering into arrangements with any other person for the provision of accommodation or other resources.
3. The powers to acquire land for the public service conferred by—
  - a. section 2 of the Commissioners of Works Act 1852 (c. 28) (acquisition by agreement), and
  - b. section 228(1) of the Town and Country Planning Act 1990 (c. 8) (compulsory acquisition), are to be treated as including power to acquire land for the purpose of its provision under arrangements under subsection (2)(b).
4. The Scottish Ministers may make payments by way of contribution to the costs incurred by the Lord Chancellor in providing the Court with resources in accordance with subsection (1)(b).
5. In this section “court-house” means any place where the Court sits, including the precincts of any building in which it sits.

## 51. System to support Court in carrying on business

1. The chief executive of the Supreme Court must ensure that the Court's resources are used to provide an efficient and effective system to support the Court in carrying on its business.
2. In particular—
  - a. appropriate services must be provided for the Court;
  - b. the accommodation provided under section 50 must be appropriately equipped, maintained and managed.

### Subheading 8A: Court Security

#### 51A. Security officers

1. A Supreme Court security officer is a person who is—
  - a. appointed by the President of the Supreme Court under section 49(1) or provided under a contract, and
  - b. designated by the President as a Supreme Court security officer.
2. The President may give directions as to—
  - a. training courses to be completed by Supreme Court security officers;
  - b. conditions to be met before a person may be designated as a Supreme Court security officer.
3. For the purposes of sections 51B to 51E, a Supreme Court security officer who is not readily identifiable as such (whether by means of uniform or badge or otherwise) is not to be regarded as acting in the execution of the officer's duty.
4. In those sections “court building” means any building—
  - a. where the business of the Supreme Court, or of the Judicial Committee of the Privy Council, is carried on, and
  - b. to which the public has access.

#### 51B. Powers of search, exclusion, removal and restraint

1. A Supreme Court security officer acting in the execution of the officer's duty may search—
  - a. any person who is in, or seeking to enter, a court building, and
  - b. any article in the possession of such a person.
2. Subsection (1) does not authorise a Supreme Court security officer to require a person to remove any of the person's clothing other than a coat, jacket, headgear, gloves or footwear.

3. A Supreme Court security officer acting in the execution of the officer's duty may exclude or remove from a court building, or a part of a court building, any person who refuses—
  - a. to permit a search under subsection (1), or
  - b. to surrender an article in the person's possession when asked to do so under section 51C(1).
4. A Supreme Court security officer acting in the execution of the officer's duty may—
  - a. restrain any person who is in a court building, or
  - b. exclude or remove any person from a court building, or a part of a court building, if it is reasonably necessary to do so for one of the purposes given in subsection (5).
5. The purposes are—
  - a. enabling business of the Supreme Court, or of the Judicial Committee of the Privy Council, to be carried on without interference or delay;
  - b. maintaining order;
  - c. securing the safety of any person in the court building.
6. A Supreme Court security officer acting in the execution of the officer's duty may remove any person from a courtroom at the request of—
  - a. a judge of the Supreme Court, or
  - b. a member of the Judicial Committee of the Privy Council.
7. The powers given by subsections (3), (4) and (6) include power to use reasonable force, where necessary.

### **51C. Surrender, seizure and retention of knives and other articles**

1. If a Supreme Court security officer acting in the execution of the officer's duty reasonably believes that an article in the possession of a person who is in, or seeking to enter, a court building ought to be surrendered on any of the grounds given in subsection (2), the officer must ask the person to surrender the article; and, if the person refuses to surrender the article, the officer may seize it.
2. The grounds are that the article—
  - a. may jeopardise the maintenance of order in the court building (or a part of it),
  - b. may put the safety of any person in the court building at risk, or
  - c. may be evidence of, or in relation to, an offence.

3. Subject to subsection (4), a Supreme Court security officer may retain an article which was—
  - a. surrendered in response to a request under subsection (1), or
  - b. seized under that subsection, until the time when the person who surrendered it, or from whom it was seized, is leaving the court building.
4. If a Supreme Court security officer reasonably believes that the article may be evidence of, or in relation to, an offence, the officer may retain it until—
  - a. the time when the person who surrendered it, or from whom it was seized, is leaving the court building, or
  - b. the end of the permitted period,
5. In subsection (4) “the permitted period” means such period, not exceeding 24 hours from the time the article was surrendered or seized, as will enable the Supreme Court security officer to draw the article to the attention of a constable.
6. Subsections (3) to (5) do not apply where a knife is—
  - a. surrendered to a Supreme Court security officer in response to a request under subsection (1), or
  - b. seized by a Supreme Court security officer under that subsection, but, instead, the knife must be retained in accordance with regulations under section 51D(3) unless returned or disposed of in accordance with those regulations or regulations under section 51D(1).
7. If a Supreme Court security officer reasonably believes that a retained knife may be evidence of, or in relation to, an offence, nothing in subsection (6) prevents the officer retaining the knife for so long as necessary to enable the officer to draw it to the attention of a constable.
8. In this section “knife” includes—
  - a. a knife-blade, and
  - b. any other article which—
    - i. has a blade or is sharply pointed, and
    - ii. is made or adapted for use for causing injury to the person.

## **51D. Regulations about retention of knives and other articles**

1. The Lord Chancellor may by regulations make provision as to—
  - a. the provision to persons—

- i. by whom articles have been surrendered in response to a request under subsection (1) of section 51C, or
      - ii. from whom articles have been seized under that subsection,
    - of written information about the powers of retention of Supreme Court security officers,
  - b. the keeping of records about articles which have been so surrendered or seized,
  - c. the period for which unclaimed articles have to be kept, and
  - d. the disposal of unclaimed articles at the end of that period.
2. In subsection (1) “unclaimed article” means an article—
- a. which has been retained under section 51C,
  - b. which a person is entitled to have returned,
  - c. which has not been returned, and
  - d. whose return has not been requested by a person entitled to it.
3. Without prejudice to the generality of subsection (1), the Lord Chancellor must by regulations make provision as to—
- a. the procedure to be followed when a knife is retained under section 51C;
  - b. the making of requests by eligible persons for the return of knives so retained;
  - c. the procedure to be followed when returning a knife pursuant to a request made in accordance with the regulations.
4. In subsection (3)—
- “eligible person”, in relation to a knife retained under section 51C, means—
    - a. the person who surrendered the knife under subsection (1) of section 51C or from whom the knife was seized under that subsection, or
    - b. any other person specified in regulations under subsection (3);
  - “knife” has the same meaning as in section 51C.

## 51E. Assaulting and obstructing Supreme Court security officers

1. Any person who assaults a Supreme Court security officer acting in the execution of the officer's duty commits an offence.
2. A person guilty of an offence under subsection (1) is liable on summary conviction—
  - a. to imprisonment for a term not exceeding 12 months, or
  - b. to a fine not exceeding level 5 on the standard scale, or
  - c. to both.
3. Subsection (2) applies—
  - a. in England and Wales in relation to offences committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's power to impose imprisonment), and
  - b. in Northern Ireland, as if the reference to 12 months were a reference to 6 months.
4. A person who resists or wilfully obstructs a Supreme Court security officer acting in the execution of the officer's duty commits an offence.
5. A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”

## Subheading 9: Fees

### 52. Fees

1. The Lord Chancellor may, with the agreement of the Treasury, by order prescribe fees payable in respect of anything dealt with by the Supreme Court.
2. An order under this section may, in particular, contain provision about—
  - a. scales or rates of fees;
  - b. exemptions from fees;
  - c. reductions in fees;
  - d. whole or partial remission of fees.
3. When including any provision in an order under this section, the Lord Chancellor must have regard to the principle that access to the courts must not be denied.
4. Before making an order under this section, the Lord Chancellor must consult all of the following—
  - a. the persons listed in subsection (5);
  - b. the bodies listed in subsection (6).

5. The persons referred to in subsection (4)(a) are—
  - a. the President of the Supreme Court;
  - b. the Lord Chief Justice of England and Wales;
  - c. the Master of the Rolls;
  - d. the Lord President of the Court of Session;
  - e. the Lord Chief Justice of Northern Ireland;
  - f. the Lord Justice Clerk;
  - g. the President of the Queen's Bench Division;
  - h. the President of the Family Division;
  - i. the Chancellor of the High Court.
6. The bodies referred to in subsection (4)(b) are—
  - a. the General Council of the Bar of England and Wales;
  - b. the Law Society of England and Wales;
  - c. the Faculty of Advocates of Scotland;
  - d. the Law Society of Scotland;
  - e. the General Council of the Bar of Northern Ireland;
  - f. the Law Society of Northern Ireland.

### **53. Fees: supplementary**

1. Supreme Court fees are recoverable summarily as a civil debt.
2. The Lord Chancellor must take such steps as are reasonably practicable to bring information about Supreme Court fees to the attention of persons likely to have to pay them.
3. In this section “Supreme Court fees” means fees prescribed in an order under section 52.

## Subheading 10: Annual report

### 54. Annual report

1. As soon as practicable after each financial year, the chief executive of the Supreme Court must prepare a report about the business of the Supreme Court during that year and give a copy of that report to the following persons—
  - a. the Lord Chancellor;
  - b. the First Minister in Scotland;
  - c. the First Minister and the deputy First Minister in Northern Ireland;
  - d. the First Minister for Wales.
2. The Lord Chancellor must lay a copy of any report of which a copy is given under subsection (1)(a) before each House of Parliament.
3. Each of the following is a “financial year” for the purposes of this section—
  - a. the period which begins with the date on which this section comes into force and ends with the following 31 March;
  - b. each successive period of 12 months.

## Subheading 11: Supplementary

### 55. Seal

1. The Supreme Court is to have an official seal.
2. Every document purporting to be sealed with the official seal of the Supreme Court is to be received in evidence in all parts of the United Kingdom without further proof.

### 56. Records of the Supreme Court

1. The Public Records Act 1958 (c. 51) is amended as follows.
2. In section 8 (court records)—
  - a. in subsection (1) after “such records” insert “ other than records of the Supreme Court,”;
  - b. after subsection (1) insert—

“(1A) Records of the Supreme Court for which the Lord Chancellor is responsible under subsection (1) shall be in the custody of the chief executive of that court.”
3. In Schedule 1 (definition of public records), in paragraph 4 (records of courts and tribunals), before sub-paragraph (1)(a) insert—

“(za) records of the Supreme Court;”.



## 57. Proceedings under jurisdiction transferred to the Supreme Court

Schedule 10 contains transitional provision relating to proceedings under jurisdiction which is transferred to the Supreme Court by this Act from the House of Lords or the Judicial Committee of the Privy Council.

## 58. Northern Ireland Act 1998: excepted and reserved matters relating to the Supreme Court

1. The Northern Ireland Act 1998 (c. 47) is amended as follows.
2. In Schedule 2 (excepted matters), after paragraph 11 insert—  
“11A The Supreme Court.”
3. [Omitted]

## 59. Renaming of Supreme Courts of England and Wales and Northern Ireland

1. The Supreme Court of England and Wales is renamed the Senior Courts of England and Wales.
2. The Supreme Court of Judicature of Northern Ireland is renamed the Court of Judicature of Northern Ireland.
3. The Northern Ireland Supreme Court Rules Committee is renamed the Northern Ireland Court of Judicature Rules Committee.
4. Any reference in an enactment, instrument or other document to a court or committee renamed by this section is to be read, so far as necessary for continuing its effect, as a reference to the Senior Courts, the Court of Judicature or the Northern Ireland Court of Judicature Rules Committee (as the case may be).
5. Schedule 11 (which makes amendments in connection with the renaming) has effect.
6. Unless otherwise provided, amendments made by an enactment (A) (whether or not in force) to another enactment (B)—
  - a. are not included in references in that Schedule to enactment A;
  - b. are included in references in that Schedule to enactment B.

## 60. Interpretation of Part 3

1. In this Part—
  - “part of the United Kingdom” means England and Wales, Scotland or Northern Ireland;
  - “the senior judges” means—
    - a. the judges of the Supreme Court;
    - b. the Lord Chief Justice of England and Wales;

- c. the Master of the Rolls;
  - d. the Lord President of the Court of Session;
  - e. the Lord Chief Justice of Northern Ireland;
  - f. the Lord Justice Clerk;
  - g. the President of the Queen's Bench Division;
  - h. the President of the Family Division;
  - i. the Chancellor of the High Court;
- “the Supreme Court” means the Supreme Court of the United Kingdom.
2. In this Part—
- a. “high judicial office” means office as a judge of any of the following courts—
    - i. the Supreme Court;
    - ii. the Court of Appeal in England and Wales;
    - iii. the High Court in England and Wales;
    - iv. the Court of Session;
    - v. the Court of Appeal in Northern Ireland;
    - vi. the High Court in Northern Ireland;or as a Lord of Appeal in Ordinary;
  - b. a person appointed to the office of Lord Chancellor on or after 12 June 2003 who holds, or held, office of a kind referred to in paragraph (a) (“the qualifying office”) is to be regarded as holding, or having held, high judicial office only if—
    - i. he has ceased to be Lord Chancellor by virtue of that appointment, and
    - ii. he holds, or held, the qualifying office otherwise than by virtue of that appointment as Lord Chancellor.
3. In this Part—
- a. “ordinary judge” means a judge of the Supreme Court who is not the President or the Deputy President of the Court;

- b. the senior ordinary judge at any time is, of the ordinary judges at that time, the one who has served longest as a judge of the Court (whether over one or more periods and whether or not including one or more previous periods as President or Deputy President).
- 4. Service as a Lord of Appeal in Ordinary counts as service as a judge of the Court for the purposes of subsection (3)(b).
- 5. [Omitted]

## Part 4: Judicial appointments and discipline

### Chapter 1: Commission and Ombudsman

#### 61. The Judicial Appointments Commission

- 1. There is to be a body corporate called the Judicial Appointments Commission.
- 2. Schedule 12 is about the Commission.

#### 62. Judicial Appointments and Conduct Ombudsman

- 1. There is to be a Judicial Appointments and Conduct Ombudsman.
- 2. Schedule 13 is about the Ombudsman.

### Chapter 2: Appointments

#### Subheading 1: General provisions

#### 63. Merit and good character

- 1. Subsections (2) to (4) apply to any selection under this Part by the Commission or a selection panel (“the selecting body”).
- 2. Selection must be solely on merit.
- 3. A person must not be selected unless the selecting body is satisfied that he is of good character.
- 4. Neither “solely” in subsection (2), nor Part 5 of the Equality Act 2010 (public appointments etc), prevents the selecting body, where two persons are of equal merit, from preferring one of them over the other for the purpose of increasing diversity within—
  - a. the group of persons who hold offices for which there is selection under this Part, or
  - b. a sub-group of that group.

#### 64. Encouragement of diversity

- 1. The Commission, in performing its functions under this Part, must have regard to the need to encourage diversity in the range of persons available for selection for appointments.
- 2. This section is subject to section 63.

## 65. Guidance about procedures

1. The Lord Chancellor may issue guidance about procedures for the performance by the Commission or a selection panel of its functions of—
  - a. identifying persons willing to be considered for selection under this Part, and
  - b. assessing such persons for the purposes of selection.
2. The guidance may, among other things, relate to consultation or other steps in determining such procedures.
3. The purposes for which guidance may be issued under this section include the encouragement of diversity in the range of persons available for selection.
4. The Commission and any selection panel must have regard to the guidance in matters to which it relates.

## 66. Guidance: supplementary

1. Before issuing any guidance the Lord Chancellor must—
  - a. obtain the agreement of the Lord Chief Justice;
  - b. after doing so, lay a draft of the proposed guidance before each House of Parliament.
2. If the draft is approved by a resolution of each House of Parliament within the 40-day period the Lord Chancellor must issue the guidance in the form of the draft.
3. In any other case the Lord Chancellor must take no further steps in relation to the proposed guidance.
4. Subsection (3) does not prevent a new draft of the proposed guidance from being laid before each House of Parliament after consultation with the Lord Chief Justice.
5. Guidance comes into force on such date as the Lord Chancellor may appoint by order.
6. The Lord Chancellor may—
  - a. from time to time revise the whole or part of any guidance and re-issue it;
  - b. after consulting the Lord Chief Justice, by order revoke any guidance.
7. In this section—
  - “40-day period” in relation to the draft of any proposed guidance means—
    - a. if the draft is laid before one House on a day later than the day on which it is laid before the other House, the period of 40 days beginning with the later day, and
    - b. in any other case, the period of 40 days beginning with the day on which the draft is laid before each House,

- no account being taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days;
- “guidance” means guidance issued by the Lord Chancellor under section 65 and includes guidance which has been revised and re-issued.

## Subheading 2: Lord Chief Justice and Heads of Division

### 67. Selection of Lord Chief Justice and Heads of Division

1. Sections 68 to 70 apply to a recommendation for an appointment to one of the following offices—
  - a. Lord Chief Justice;
  - b. Master of the Rolls;
  - c. President of the Queen's Bench Division;
  - d. President of the Family Division;
  - e. Chancellor of the High Court.
2. Any such recommendation must be made in accordance with those sections and section 94C and regulations made under it.

### 68. Duty to fill vacancies

1. The Lord Chancellor must make a recommendation to fill any vacancy in the office of Lord Chief Justice.
2. The Lord Chancellor must make a recommendation to fill any vacancy in any other office listed in section 67(1).
3. Subsection (2) does not apply to a vacancy while the Lord Chief Justice agrees that it may remain unfilled.

### 69. Request for selection

1. The Lord Chancellor may make a request to the Commission for a person to be selected for a recommendation to which this section applies.
2. Before making a request the Lord Chancellor must consult the Lord Chief Justice.
3. Subsection (2) does not apply where the office of Lord Chief Justice is vacant or where the Lord Chief Justice is incapacitated for the purposes of section 16 (functions during vacancy or incapacity).
4. Section 70 applies where the Lord Chancellor makes a request under this section.
5. That section is subject to section 95 (withdrawal and modification of requests).

### 70. Selection process

1. On receiving a request the Commission must appoint a selection panel.

• Ordinary court selection

2. The panel must—
  - a. determine the selection process to be applied by it,
  - b. apply the selection process, and
  - c. make a selection accordingly.

2A. [Omitted]

• Ordinary court selection

3. One person only must be selected for each recommendation to which a request relates.

• Ordinary court selection

4. Subsection (3) applies to selection under this section and to selection under regulations under section 94C.

5. [Omitted]

• Ordinary court selection

6. A selection panel is a committee of the Commission.

**71. [Omitted]**

**71A. [Omitted]**

**71B. [Omitted]**

**72. [Omitted]**

**73. [Omitted]**

**74. [Omitted]**

**75. [Omitted]**

### **Subheading 3: Senior President of Tribunals**

#### **75A. Sections 75B to 75G apply where request made for selection**

1. Section 75B applies where the Lord Chancellor makes a request to the Commission under paragraph 2(5) of Schedule 1 to the Tribunals, Courts and Enforcement Act 2007 (request for person to be selected for recommendation for appointment to the office of Senior President of Tribunals).
2. That section is subject to section 95 (withdrawal and modification of requests).

• Ordinary court selection

#### **75B. Selection process**

1. On receiving a request the Commission must appoint a selection panel.

2. The panel must —
  - a. determine the selection process to be applied by it,
  - b. apply the selection process, and
  - c. make a selection accordingly.
3. As part of the selection process the panel must consult—
  - a. the Lord Chief Justice, if not a member of the panel,
  - b. the Lord President of the Court of Session, if not a member of the panel, and
  - c. the Lord Chief Justice of Northern Ireland, if not a member of the panel.
4. One person only must be selected for the recommendation to which a request relates.
5. Subsection (4) applies to selection under this section and to selection under regulations under section 94C.
6. A selection panel is a committee of the Commission.

### **75C. [Omitted]**

### **75D. [Omitted]**

### **75E. [Omitted]**

### **75F. [Omitted]**

### **75G. [Omitted]**

## **Subheading 4: Lords Justices of Appeal**

### **76. Selection of Lords Justices of Appeal**

1. Sections 77 to 79 apply to a recommendation for appointment as a Lord Justice of Appeal.
2. Any such recommendation must be made in accordance with those sections and section 94C.

### **77. Duty to fill vacancies**

1. The Lord Chancellor must make a recommendation to fill any vacancy in the office of Lord Justice of Appeal.
2. Subsection (1) does not apply to a vacancy while the Lord Chief Justice agrees that it may remain unfilled.

## 78. Request for selection

1. The Lord Chancellor may make a request to the Commission for a person to be selected for a recommendation for appointment as a Lord Justice of Appeal.
2. Before making a request the Lord Chancellor must consult the Lord Chief Justice.
3. A request may relate to more than one recommendation.
4. Section 79 applies where the Lord Chancellor makes a request under this section.
5. That section is subject to section 95 (withdrawal and modification of requests).

## 79. Selection process

1. On receiving a request the Commission must appoint a selection panel.
  - 1A. The panel must have an odd number of members not less than five.
  - 1B. The members of the panel must include—
    - a. at least two who are non-legally-qualified,
    - b. at least two judicial members, and
    - c. at least two members of the Commission, and contributions to meeting more than one of the requirements may be made by the same person's membership of the panel.
2. The panel must—
  - a. determine the selection process to be applied by it,
  - b. apply the selection process, and
  - c. make a selection accordingly.
3. One person only must be selected for each recommendation to which a request relates.
4. Subsection (3) applies to selection under this section and to selection under regulations under section 94C.
5. A selection panel is a committee of the Commission.

**80. [Omitted]**

**81. [Omitted]**

**82. [Omitted]**

**83. [Omitted]**

**84. [Omitted]**



## Subheading 5: Puisne judges and other office holders

### 85. Selection of puisne judges and other office holders

1. Sections 86 to 88 apply to—
  - a. a recommendation for an appointment to the office of puisne judge of the High Court;
  - b. a recommendation for an appointment to an office listed in Part 1 of Schedule 14 in exercise of Her Majesty's function under the enactment listed opposite that office;
  - c. an appointment to an office listed in Table 1 of Part 2 or 3 of that Schedule in exercise of the Lord Chancellor's function under the enactment listed opposite that office;
  - d. an appointment to an office listed in Table 2 of Part 2 of that Schedule in exercise of the Lord Chief Justice's function under the enactment listed opposite that office;
  - e. an appointment to an office listed in Table 2 of Part 3 of that Schedule in exercise of the function of the Senior President of Tribunals under the enactment listed opposite that office.
2. Any such recommendation or appointment must be made in accordance with those sections and section 94C and regulations made under it.
- 2A. This section is subject to—
  - a. section 30(4) of the Courts-Martial (Appeals) Act 1951,
  - b. sections 91(1ZB) and 102(1C) of the Supreme Court Act 1981,
  - c. section 8(1ZC) of the County Courts Act 1984, and
  - d. sections 94A, 94AA and 94B below.
3. The Lord Chancellor may by order make any of the following amendments to Schedule 14—
  - a. an amendment which adds a reference to an enactment under which appointments are made to an office;
  - b. an amendment which adds a reference to an office to which appointments are made under an enactment;
  - c. an amendment consequential on the abolition or change of name of an office;
  - d. an amendment consequential on the substitution of one or more enactments for an enactment under which appointments are made to an office.

4. The Lord Chancellor may by order amend section 94A, 94AA or 94B if he thinks that the amendment is consequential on an amendment made to Schedule 14 by an order under subsection (3).

## 86. Duty to fill vacancies

1. The Lord Chancellor must make a recommendation to fill any vacancy in the office of puisne judge of the High Court or in an office listed in Part 1 of Schedule 14.
  - 1A. The Lord Chancellor must, as soon as is reasonably practicable after being informed by the Lord Chief Justice that a selection under this Chapter for a recommendation for an appointment to an office listed in Table 2 of Part 1 of that Schedule has been accepted unconditionally or subject to conditions that have since been met, make a recommendation of the selected person for an appointment to that office.
  - 1B. The Lord Chancellor must, as soon as is reasonably practicable after being informed by the Senior President of Tribunals that a selection under this Chapter for a recommendation for an appointment to an office listed in Table 3 of Part 1 of that Schedule has been accepted unconditionally or subject to conditions that have since been met, make a recommendation of the selected person for an appointment to that office.
2. The Lord Chancellor must make an appointment to fill any vacancy in an office listed in Table 1 of Part 2 or 3 of that Schedule.
  - 2A. The Lord Chief Justice must make an appointment to fill any vacancy in an office listed in Table 2 of Part 2 of that Schedule.
  - 2B. The Senior President of Tribunals must make an appointment to fill any vacancy in an office listed in Table 2 of Part 3 of that Schedule.
3. Subsections (1) and (2) do not apply to a vacancy while the Lord Chief Justice agrees that it may remain unfilled.
4. Subsections (2A) and (2B) do not apply to a vacancy while the Lord Chancellor agrees that it may remain unfilled.

## 87. Request for selection

1. The Lord Chancellor may request the Commission to select a person for a recommendation or appointment to which this section applies.
  - 1A. The Lord Chancellor may request the Commission to select a person for membership of a pool for requests under section 9(1) of the Senior Courts Act 1981, and a person may become a member of such a pool only by selection on a request under this subsection.
2. Before making a request the Lord Chancellor must consult the Lord Chief Justice.
3. A request may relate to more than one recommendation or appointment.
4. Section 88 applies where the Lord Chancellor makes a request under this section.
5. That section is subject to section 95 (withdrawal and modification of requests).

## 88. Selection process

1. On receiving a request the Commission must—
  - a. determine the selection process to be applied,

- b. apply the selection process, and
  - c. make a selection accordingly.
2. [Omitted]
  3. [Omitted]
  4. One person only may be selected for each recommendation, appointment or pool membership to which a request relates.
  5. Subsection (4) applies to selection under this section and to selection under regulations under section 94C.

## 89. [Omitted]

## 90. [Omitted]

## 91. [Omitted]

## 92. [Omitted]

## 93. [Omitted]

## 94. Power to require persons to be identified for future requests

1. If the Lord Chancellor gives the Commission notice of a request which the Lord Chancellor expects to make under section 87, the Commission must seek to identify persons it considers would be suitable for selection on the request.
2. The Lord Chancellor may, by regulations made with the agreement of the Lord Chief Justice, make provision about how the Commission is to comply with a duty imposed on it by subsection (1).
3. The regulations may in particular—
  - a. make provision as to things that are, or as to things that are not, to be done—
    - i. in complying with such a duty, or
    - ii. in determining how to comply with such a duty;
  - b. provide for the making of reports.
4. Regulations under this section—
  - a. may make different provision for different purposes;
  - b. may make consequential, supplementary, transitory, transitional or saving provision.

• Ordinary court selection

## 94A. Appointments not subject to section 85: courts

1. Where this section applies to an appointment—
  - a. section 85 does not apply, but
  - b. the person who has the power to make the appointment, whether the Lord Chancellor or the Lord Chief Justice, may not make the appointment without the concurrence of the other of them.
2. This section applies to the appointment of a person, on a fee-paid basis, to an office in the table below (the “proposed appointment”) if the person—
  - a. holds the corresponding qualifying office (or one of them) on a salaried basis, or
  - b. ceased to hold the corresponding qualifying office (or one of them) within two years ending with the date when the proposed appointment takes effect and, immediately before ceasing to hold that office, held it on a salaried basis.

### Table

Key: Column 1 = Proposed appointment (fee-paid); Column 2 = Qualifying office (salaried)

#### Row 1

##### Column 1

An office listed in Part 2 of Schedule 14.

##### Column 2

The same office.

#### Row 2

##### Column 1

Deputy District Judge (Magistrates' Courts).

##### Column 2

District Judge (Magistrates' Courts), Senior District Judge (Chief Magistrate), or Deputy Senior District Judge (Chief Magistrate).

## Row 3

### Column 1

Assistant Judge Advocate General, or a person appointed temporarily to assist the Judge Advocate General.

### Column 2

Judge Advocate of Her Majesty's Fleet, Judge Advocate General, Vice Judge Advocate General, or Assistant Judge Advocate General.

3. The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4)) to exercise his function of concurring under subsection (1)(b).
4. In this section "salaried" and "fee-paid" have the meaning given by paragraph 1(2) of Schedule 7 to the Judicial Pensions and Retirement Act 1993 (c. 8).

## 94AA. Appointments not subject to section 85: High Court deputy judge

1. Where this section applies to an appointment, section 85 does not apply.
2. This section applies to the appointment of a person as a deputy judge of the High Court if it appears to the Lord Chief Justice, after consulting the Lord Chancellor, that—
  - a. there is an urgent need to take steps in order to facilitate the disposal of particular business in the High Court or Crown Court,
  - b. it is expedient as a temporary measure to make the appointment in order to facilitate the disposal of the business, and
  - c. there are no other reasonable steps that it is practicable to take within the time available in order to facilitate the disposal of the business.
3. An appointment to which this section applies is to be made—
  - a. so as not to extend beyond the day on which the particular business concerned is concluded, or
  - b. so as not to extend beyond the later of—
    - i. the day on which the business is concluded, or
    - ii. the day expected when the appointment is made to be the day on which the business is concluded."

## 94B. Appointments not subject to section 85: tribunals

1. Where this section applies to a recommendation or appointment—
  - a. section 85 does not apply, but

- b. the person who has the power to make the appointment, whether the Lord Chancellor or the Senior President of Tribunals, may not make the appointment without the concurrence of the other of them.
- 2. In the case of the appointment of a person as a deputy judge of the Upper Tribunal, if the person holds or has held an office listed in section 6(1) of the Tribunals, Courts and Enforcement Act 2007, the Senior President of Tribunals must also consult the Lord Chief Justice before making the appointment.
- 3. This section applies to, or to a recommendation to Her Majesty for, the appointment of a person, on a fee-paid basis, to an office in the table below (the “proposed appointment”) if the person—
  - a. holds the corresponding qualifying office (or one of them) on a salaried basis, or
  - b. subject to subsection (4), ceased to hold the corresponding qualifying office (or one of them) within two years ending with the date when the proposed appointment takes effect and, immediately before ceasing to hold that office, held it on a salaried basis.

**Table**

Key: Column 1 = Proposed appointment (fee-paid); Column 2 = Qualifying office (salaried)

**Row 1**

**Column 1**

An office listed in Part 3 of Schedule 14 (other than the office of Chamber President or Deputy Chamber President of a chamber of the Upper Tribunal or the First-tier Tribunal).

**Column 2**

The same office, or a more senior office, listed in Part 3 of Schedule 14, in the same tribunal or body (but excluding the Upper Tribunal and the First-tier Tribunal).

**Row 2**

[Omitted]

**Row 3**

[Omitted]

**Row 4**

**Column 1**

Deputy judge of the Upper Tribunal.

## Column 2

Ordinary judge of the Court of Appeal in England and Wales, Lord Justice of Appeal in Northern Ireland, Judge of the Court of Session, Puisne judge of the High Court in England and Wales or Northern Ireland, Circuit judge, Sheriff in Scotland, County court judge in Northern Ireland, District judge in England and Wales or Northern Ireland, District Judge (Magistrates' Courts), or Judge of the Upper Tribunal by virtue of any of paragraphs (a) to (f) or (i) of section 5(1) of the Tribunals, Courts and Enforcement Act 2007.

## Row 5

### Column 1

Judge of the First-tier Tribunal by appointment under paragraph 1(1) of Schedule 2 to the Tribunals, Courts and Enforcement Act 2007.

### Column 2

Transferred-in judge of the First-tier Tribunal (see section 31(2) of that Act).

## Row 6

### Column 1

Other member of the First-tier Tribunal by appointment under paragraph 2(1) of Schedule 2 to the Tribunals, Courts and Enforcement Act 2007.

### Column 2

Transferred-in other member of the First-tier Tribunal (see section 31(2) of that Act).

## Row 7

### Column 1

Judge of the Upper Tribunal by appointment under paragraph 1(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007.

### Column 2

Transferred-in judge of the Upper Tribunal (see section 31(2) of that Act).

## Row 8

### Column 1

Other member of the Upper Tribunal by appointment under paragraph 2(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007.

### Column 2

Transferred-in other member of the Upper Tribunal (see section 31(2) of that Act).

## Row 9

### Column 1

Deputy judge of the Upper Tribunal by appointment under paragraph 7(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007.

### Column 2

Deputy judge of the Upper Tribunal under section 31(2) of that Act.

4. In subsection (3)(b) the words “within two years ending with the date when the proposed appointment takes effect” do not apply if—
  - a. the proposed appointment is to the office of deputy judge of the Upper Tribunal, and
  - b. the corresponding qualifying office is—
    - i. ordinary judge of the Court of Appeal in England and Wales,
    - ii. Lord Justice of Appeal in Northern Ireland,
    - iii. judge of the Court of Session, or
    - iv. puisne judge of the High Court in England and Wales or Northern Ireland.
5. In this section “salaried” and “fee-paid” have the meaning given by paragraph 1(2) of Schedule 7 to the Judicial Pensions and Retirement Act 1993.
6. Section 8(1) of the Tribunals, Courts and Enforcement Act 2007 (power of Senior President of Tribunals to delegate functions) does not apply to—
  - a. the Senior President of Tribunals' function of concurring under subsection (1)(b), or
  - b. the Senior President of Tribunals' function under subsection (2).



## Subheading 6: Supplementary provisions about selection

### 94C. Selection Process

1. The Lord Chancellor must by regulations made with the agreement of the Lord Chief Justice—
  - a. make further provision about the process to be applied in a case where the Commission receives a request under section 87;
  - b. make further provision about—
    - i. membership of selection panels appointed under section 70, 75B or 79, and
    - ii. the process that is to be applied in a case where a selection panel is required to be appointed under section 70, 75B or 79;
  - c. secure, subject to section 95 and any provision within subsection (2)(d) that is included in the regulations, that in every case referred to paragraph (a) or (b)(ii) there will come a point in the process when a selection has to be accepted, either unconditionally or subject only to matters such as the selected person's willingness and availability, by or on behalf of the appropriate authority.
2. The regulations may in particular—
  - a. provide for process additional to the selection process applied under section 70(2), 75B(2), 79(2) or 88(1), including post-acceptance process;
  - b. make provision as to things that are, or as to things that are not, to be done—
    - i. as part of the selection process applied under section 70(2), 75B(2), 79(2) or 88(1), or
    - ii. in determining what that process is to be;
  - c. provide for selection on a request under section 87 to be from among persons identified under section 94 in response to advance notice of the request;
  - d. provide for section 88(1)(c) not to apply where, or to the extent that, the Commission decides that the selection process applied under section 88(1) has not identified candidates of sufficient merit for it to comply with section 88(1)(c);
  - e. give functions to the Lord Chancellor, including—
    - i. power to require a selection panel to reconsider a selection under section 70(2), 75B(2) or 79(2) or any subsequent selection,

- ii. power to reject a selection under section 70(2) or any subsequent selection,
  - iii. power to reject a selection under section 75B(2) or 79(2) or any subsequent selection,
  - iv. power to reject, or require the reconsideration of, initial or subsequent selections made on a request under section 87, and
  - v. power to require the reconsideration of a decision mentioned in paragraph (d);
- f. give functions to the Lord Chief Justice in connection with selection for an office listed in Table 2 of Part 1 or 2 of Schedule 14 or in connection with selection for membership of a pool for requests under section 9(1) of the Senior Courts Act 1981, including—
- i. power to reject, or require the reconsideration of, initial or subsequent selections made on a request under section 87, and
  - ii. power to require the reconsideration of a decision mentioned in paragraph (d);
- g. give functions to the Senior President of Tribunals in connection with selection for an office listed in Table 3 of Part 1, or Table 2 of Part 3, of Schedule 14, including—
- i. power to reject, or require the reconsideration of, initial or subsequent selections made on a request under section 87, and
  - ii. power to require the reconsideration of a decision mentioned in paragraph (d);
- h. make provision for or in connection with duties mentioned in section 51 of the Equality Act 2010 being duties of the Lord Chief Justice, or Senior President of Tribunals, in relation to an office within Table 2 or 3 of Part 1 of Schedule 14;
- i. provide for particular action to be taken by the Commission or a selection panel after the panel has complied with section 70, 75B or 79;
  - j. provide for particular action to be taken by the Commission after a selection has been made on a request under section 87;
  - k. provide for the dissolution of a selection panel appointed under section 70, 75B or 79;
  - l. provide for section 16(2)(a) or (b) not to apply in relation to functions of the Lord Chief Justice—

- i. as a member of such a panel (including functions of chairing such a panel), or
    - ii. in relation to the nomination or appointment of members of such a panel;
  - m. provide for a person to cease to be a member of such a panel where the person's membership of the panel ceases to contribute to meeting a requirement about the panel's members;
  - n. provide for a person to become a member of such a panel where another person ceases to be a member of the panel or where another person's membership of the panel ceases to contribute to meeting a requirement about the panel's members;
  - o. make provision for or in connection with assessments, whether pre-acceptance or post-acceptance, of the health of persons selected;
  - p. provide for the Lord Chief Justice to nominate a judicial office holder (as defined in section 109(4)) to exercise functions given to the Lord Chief Justice by the regulations (including functions, such as functions as a consultee, given otherwise than in reliance on paragraph (f));
  - q. make provision prohibiting or restricting delegation by the Senior President of Tribunals of functions given to the Senior President of Tribunals by the regulations (including functions, such as functions as a consultee, given otherwise than in reliance on paragraph (g));
  - r. make provision as to the meaning of "non-legally-qualified" and "judicial member" in sections 70, 75B and 79.
3. Regulations under this section—
- a. may make different provision for different purposes;
  - b. may make transitory, transitional or saving provision.
4. In subsection (1)(c) "the appropriate authority" means—
- a. the Lord Chancellor where the selection—
    - i. is on a request under section 69 or 78,
    - ii. relates to the office of Senior President of Tribunals or puisne judge of the High Court, or
    - iii. relates to an office listed in Table 1 of Part 1, 2 or 3 of Schedule 14;
  - b. the Lord Chief Justice where the selection relates to an office listed in Table 2 of Part 1 or 2 of that Schedule;

- c. the Senior President of Tribunals where the selection relates to an office listed in Table 3 of Part 1, or Table 2 of Part 3, of that Schedule.
5. This section is subject to section 95.

## 95. Withdrawal and modification of requests

1. This section applies to a request under section 69, 78 or 87 or paragraph 2(5) of Schedule 1 to the Tribunals, Courts and Enforcement Act 2007.
2. The Lord Chancellor may withdraw or modify a request only as follows—
  - za. the Lord Chancellor may withdraw or modify a request in consequence of a vacancy, or perceived need for an additional office-holder, having been filled or partly filled by change in the amount of time required to be devoted to the duties of office by an existing holder of the office concerned;
  - a. so far as a request relates to any recommendation or appointment to fill a vacancy, he may withdraw or modify it with the agreement of the Lord Chief Justice;
  - b. so far as a request relates to any recommendation or appointment otherwise than to fill a vacancy, he may withdraw or modify it after consulting the Lord Chief Justice;
  - ba. so far as a request relates to any pool membership, the Lord Chancellor may withdraw or modify it after consulting the Lord Chief Justice;
  - c. the Lord Chancellor may withdraw a request as respects all recommendations, appointments or pool memberships to which it relates if, after consulting the Lord Chief Justice, the Lord Chancellor considers the selection process determined by the Commission or selection panel is not satisfactory, or has not been applied satisfactorily.
3. If a request is withdrawn in part or modified, the Commission or selection panel may, if it thinks it appropriate because of the withdrawal or modification, change any selection already made pursuant to the request, except a selection already accepted unconditionally or subject only to matters such as the selected person's willingness and availability.
4. The Lord Chancellor may not withdraw a request under subsection (2)(c) if a selection made pursuant to the request—
  - a. has been accepted unconditionally or subject only to matters such as the selected person's willingness and availability, or
  - b. in exercise of power conferred by regulations under section 94C, has been rejected or required to be reconsidered.
5. Any withdrawal or modification of a request must be by notice in writing to the Commission.
6. The notice must state whether the withdrawal or modification is under subsection (2)(a), (b) or (c).

7. In the case of a withdrawal under subsection (2)(c), the notice must state why the Lord Chancellor considers the selection process determined by the Commission or selection panel is not satisfactory, or has not been applied satisfactorily.
8. If or to the extent that a request is withdrawn—
  - a. the preceding provisions of this Part cease to apply in relation to it, and
  - b. any selection made on it is to be disregarded.
9. Withdrawal of a request to any extent does not affect the power of the Lord Chancellor to make another request in the same or different terms.

## 96. [Omitted]

## 97. Scotland and Northern Ireland

1. Subsections (2) and (3) apply to consultation that a person is required to undertake under any of these provisions—
  - a. section 87(2);
  - b. [Omitted];
  - c. [Omitted];
  - ca. section 94B(2);
  - d. section 95(2)(b) or (c),
  - e. [Omitted].
2. If the consultation appears to that person to relate to the appointment (or a recommendation for the appointment) of a person to exercise functions wholly or mainly in Scotland, any reference in the provision to the Lord Chief Justice is to be read as a reference to the Lord President of the Court of Session.
3. If the consultation appears to that person to relate to the appointment (or a recommendation for the appointment) of a person to exercise functions wholly or mainly in Northern Ireland, any reference in the provision to the Lord Chief Justice is to be read as a reference to the Lord Chief Justice of Northern Ireland.
4. Subsections (2) and (3) apply to the reference in section 94A(1) or 95(2)(a) to the Lord Chancellor obtaining the concurrence of the Lord Chief Justice as they apply to a reference in a provision specified in subsection (1) to the Lord Chancellor consulting the Lord Chief Justice.
5. The Lord President of the Court of Session may nominate any of the following to exercise his function under section 94A(1)(b)—
  - a. a judge who is a member of the First or Second Division of the Inner House of the Court of Session;
  - b. the Senior President of Tribunals.

6. The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his function under section 94A(1)(b)—
  - a. the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
  - b. a Lord Justice of Appeal (as defined in section 88 of that Act);
  - c. the Senior President of Tribunals.

## **Subheading 7: Assistance in connection with other appointments**

### **98. Assistance in connection with other appointments**

1. The Commission must provide any assistance requested by the Lord Chancellor under this section.
2. The Lord Chancellor may request assistance for the making by him or by another Minister of the Crown of an appointment or recommendation for appointment, other than one to which section 26 or a provision of this Part applies.
3. The Lord Chancellor may only request assistance under this section if it appears to him appropriate because of the Commission's other functions under this Part and the nature of the appointment concerned.
4. Without limiting the assistance that may be requested, it may include—
  - a. determining a selection process;
  - b. applying a selection process;
  - c. selecting a person;
  - d. selecting a short list;
  - e. advice on any of those matters.
5. Before making a request the Lord Chancellor must consult—
  - a. the Lord Chief Justice, and
  - b. the Commission.
6. In this section “appointment” includes the conferring of any public function.
7. In this Part references to selection under this Part include references to selection by the Commission pursuant to a request under this section (and references to a person selected under this Part are to be read accordingly).

## **Subheading 8: Complaints and references**

### **99. Complaints: interpretation**

1. This section applies for the purposes of this Part.

2. A Commission complaint is a complaint by a qualifying complainant of maladministration by the Commission or a committee of the Commission.
3. A departmental complaint is a complaint by a qualifying complainant of maladministration by the Lord Chancellor or his department in connection with any of the following—
  - a. selection under this Part;
  - b. recommendation for or appointment to an office listed in Schedule 14.
- 3A. An LCJ complaint is a complaint by a qualifying complainant of maladministration by the Lord Chief Justice or the Lord Chief Justice's nominee, or anyone acting on behalf of either of them, in connection with—
  - a. selection under this Part for an office listed in Table 2 of Part 1 or 2 of Schedule 14,
  - b. appointment to an office listed in Table 2 of Part 2 of that Schedule, or
  - c. selection under this Part for membership of a pool for requests under section 9(1) of the Senior Courts Act 1981,  
or of maladministration by the Lord Chief Justice or the Master of the Rolls or the Lord Chief Justice's nominee, or anyone acting on behalf of any of them, in connection with the making of requests under section 9(1) of that Act.
- 3B. An SPT complaint is a complaint by a qualifying complainant of maladministration by the Senior President of Tribunals or a person to whom the Senior President has delegated functions, or anyone acting on behalf of either of them, in connection with—
  - a. selection under this Part for an office listed in Table 3 of Part 1 of Schedule 14 or in Table 2 of Part 3 of that Schedule, or
  - b. appointment to an office listed in Table 2 of Part 3 of that Schedule.
4. A qualifying complainant is a complainant who claims to have been adversely affected, as an applicant for selection or as a person selected under this Part, by the maladministration complained of.

## 100. Complaints to the Commission or the Lord Chancellor

1. The Commission must make arrangements for investigating any Commission complaint made to it.
2. The Lord Chancellor must make arrangements for investigating any departmental complaint made to him.
- 2A. The Lord Chief Justice must make arrangements for investigating any LCJ complaint made to the Lord Chief Justice.
- 2B. The Senior President of Tribunals must make arrangements for investigating any SPT complaint made to the Senior President of Tribunals.
3. Arrangements under this section need not apply to a complaint made more than 28 days after the matter complained of.

• Ombudsman

## 101. Complaints to the Ombudsman

1. Subsections (2) and (3) apply to a complaint which the complainant—
  - a. has made to the Commission, the Lord Chancellor, the Lord Chief Justice or the Senior President of Tribunals in accordance with arrangements under section 100, and
  - b. makes to the Ombudsman not more than 28 days after being notified of the decision of the Commission, the Lord Chancellor, the Lord Chief Justice or the Senior President of Tribunals on the complaint.
2. If the Ombudsman considers that investigation of the complaint is not necessary, he must inform the complainant.
3. Otherwise he must investigate the complaint.
4. The Ombudsman may investigate a complaint which the complainant—
  - a. has made to the Commission, the Lord Chancellor, the Lord Chief Justice or the Senior President of Tribunals in accordance with arrangements under section 100, and
  - b. makes to the Ombudsman at any time.
5. The Ombudsman may investigate a transferred complaint made to him, and no such complaint may be made under the Judicial Appointments Order after the commencement of this section.
6. The Judicial Appointments Order is the Judicial Appointments Order in Council 2001, which sets out the functions of Her Majesty's Commissioners for Judicial Appointments.
7. A transferred complaint is a complaint that lay to those Commissioners (whether or not it was made to them) in respect of the application of appointment procedures before the commencement of this section, but not a complaint that those Commissioners had declined to investigate or on which they had concluded their investigation.
8. Any complaint to the Ombudsman under this section must be in a form approved by him.

• Ombudsman

## 102. Report and recommendations

1. The Ombudsman must prepare a report on any complaint he has investigated under section 101.
2. The report must state—
  - a. what findings the Ombudsman has made;
  - b. whether he considers the complaint should be upheld in whole or part;
  - c. if he does, what if any action he recommends should be taken by the Commission, the Lord Chancellor, the Lord Chief Justice or the Senior President of Tribunals as a result of the complaint.
3. The recommendations that may be made under subsection (2)(c) include recommendations for the payment of compensation.



4. Such a recommendation must relate to loss which appears to the Ombudsman to have been suffered by the complainant as a result of maladministration and not as a result of any failure to be appointed to an office, or selected for membership of a pool, to which the complaint related.

### 103. Report procedure

1. This section applies to a report under section 102.
2. The Ombudsman must submit a draft of the report to the Lord Chancellor and to—
  - a. the Commission if the complaint was a Commission complaint;
  - b. the Lord Chief Justice if the complaint was an LCJ complaint;
  - c. the Senior President of Tribunals if the complaint was an SPT complaint.
3. In finalising the report the Ombudsman—
  - a. must have regard to any proposal by the Lord Chancellor, the Commission, the Lord Chief Justice or the Senior President of Tribunals for changes in the draft report;
  - b. must include in the report a statement of any such proposal not given effect to.
4. The report must be signed by the Ombudsman.
5. If the complaint was a Commission complaint the Ombudsman must send the report in duplicate to the Lord Chancellor and the Commission.
- 5A. If the complaint was an LCJ complaint the Ombudsman must send the report in duplicate to the Lord Chancellor and the Lord Chief Justice.
- 5B. If the complaint was an SPT complaint the Ombudsman must send the report in duplicate to the Lord Chancellor and the Senior President of Tribunals.
6. Otherwise the Ombudsman must send the report to the Lord Chancellor.
7. The Ombudsman must send a copy of the report to the complainant, but that copy must not include information—
  - a. which relates to an identified or identifiable individual other than the complainant, and
  - b. whose disclosure by the Ombudsman to the complainant would (apart from this subsection) be contrary to section 139.

### 104. References by the Lord Chancellor

1. If the Lord Chancellor, the Lord Chief Justice or the Senior President of Tribunals refers to the Ombudsman any matter relating to the procedures of the Commission or a committee of the Commission, the Ombudsman must investigate it.
2. The matter may relate to such procedures generally or in a particular case.
3. The Ombudsman must report to the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals on any investigation under this section.

4. The report must state—
  - a. what findings the Ombudsman has made;
  - b. what if any action he recommends should be taken by any person in relation to the matter.
5. The report must be signed by the Ombudsman.

## 105. Information

The Commission, the Lord Chief Justice, the Senior President of Tribunals and the Lord Chancellor must provide the Ombudsman with such information as he may reasonably require relating to the subject matter of any investigation by him under section 101 or 104.

## Subheading 9: Miscellaneous

### 106. Consultation on appointment of lay justices

In section 10 of the Courts Act 2003 (c. 39) (appointment of lay justices etc.) after subsection (2) insert—

“(2A) The Lord Chancellor must ensure that arrangements for the exercise, so far as affecting any local justice area, of functions under subsections (1) and (2) include arrangements for consulting persons appearing to him to have special knowledge of matters relevant to the exercise of those functions in relation to that area.”

### 107. Disclosure of information to the Commission

1. Information which is held by or on behalf of a permitted person (whether obtained before or after this section comes into force) may be disclosed to the Commission or a committee of the Commission for the purposes of selection under this Part.
2. A disclosure under this section is not to be taken to breach any restriction on the disclosure of information (however imposed).
3. But nothing in this section authorises the making of a disclosure—
  - a. which contravenes the Data Protection Act 1998 (c. 29), or
  - b. which is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23).
4. This section does not affect a power to disclose which exists apart from this section.
5. The following are permitted persons—
  - a. a chief officer of police of a police force in England and Wales;
  - b. the chief constable of the Police Service of Scotland;
  - c. the Chief Constable of the Police Service of Northern Ireland;

- d. the Director General of the National Criminal Intelligence Service;
  - e. the Director General of the National Crime Squad;
  - f. the Commissioners of Inland Revenue;
  - g. the Commissioners of Customs and Excise.
6. The Lord Chancellor may by order designate as permitted persons other persons who exercise functions which he considers are of a public nature (including a body or person discharging regulatory functions in relation to any description of activities).
  7. Information must not be disclosed under this section on behalf of the Commissioners of Inland Revenue or on behalf of the Commissioners of Customs and Excise unless the Commissioners concerned authorise the disclosure.
  8. The power to authorise a disclosure under subsection (7) may be delegated (either generally or for a specific purpose)—
    - a. in the case of the Commissioners of Inland Revenue, to an officer of the Board of Inland Revenue,
    - b. in the case of the Commissioners of Customs and Excise, to a customs officer.
  9. For the purposes of this section a customs officer is a person commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979 (c. 2).

## Chapter 3: Discipline

### 108. Disciplinary powers

1. Any power of the Lord Chancellor to remove a person from an office listed in Schedule 14 is exercisable only after the Lord Chancellor has complied with prescribed procedures (as well as any other requirements to which the power is subject).
2. The Lord Chief Justice may exercise any of the following powers but only with the agreement of the Lord Chancellor and only after complying with prescribed procedures.
3. The Lord Chief Justice may give a judicial office holder formal advice, or a formal warning or reprimand, for disciplinary purposes (but this section does not restrict what he may do informally or for other purposes or where any advice or warning is not addressed to a particular office holder).
4. He may suspend a person from a judicial office for any period during which any of the following applies—
  - a. the person is subject to criminal proceedings;
  - b. the person is serving a sentence imposed in criminal proceedings;

- c. the person has been convicted of an offence and is subject to prescribed procedures in relation to the conduct constituting the offence.
- 5. He may suspend a person from a judicial office for any period if—
  - a. the person has been convicted of a criminal offence,
  - b. it has been determined under prescribed procedures that the person should not be removed from office, and
  - c. it appears to the Lord Chief Justice with the agreement of the Lord Chancellor that the suspension is necessary for maintaining confidence in the judiciary.
- 6. He may suspend a person from office as a senior judge for any period during which the person is subject to proceedings for an Address.
- 7. He may suspend the holder of an office listed in Schedule 14 for any period during which the person—
  - a. is under investigation for an offence, or
  - b. is subject to prescribed procedures.
- 8. While a person is suspended under this section from any office he may not perform any of the functions of the office (but his other rights as holder of the office are not affected).

## 109. Disciplinary powers: interpretation

- 1. This section has effect for the purposes of section 108.
- 2. A person is subject to criminal proceedings if in any part of the United Kingdom proceedings against him for an offence have been begun and have not come to an end, and the times when proceedings are begun and come to an end for the purposes of this subsection are such as may be prescribed.
- 3. A person is subject to proceedings for an Address from the time when notice of a motion is given in each House of Parliament for an Address for the removal of the person from office, until the earliest of the following events—
  - a. either notice is withdrawn;
  - b. either motion is amended so that it is no longer a motion for an address for removal of the person from office;
  - c. either motion is withdrawn, lapses or is disagreed to;
  - d. where an Address is presented by each House, a message is brought to each House from Her Majesty in answer to the Address.
- 4. “Judicial office” means—
  - a. office as a senior judge, or

- b. an office listed in Schedule 14; and “judicial office holder” means the holder of a judicial office.
- 5. “Senior judge” means any of these—
  - a. Master of the Rolls;
  - b. President of the Queen's Bench Division;
  - c. President of the Family Division;
  - d. Chancellor of the High Court;
  - da. Senior President of Tribunals;
  - e. Lord Justice of Appeal;
  - f. puisne judge of the High Court.
- 6. “Sentence” includes any sentence other than a fine (and “serving” is to be read accordingly).
- 7. The times when a person becomes and ceases to be subject to prescribed procedures for the purposes of section 108(4) or (7) are such as may be prescribed.
- 8. “Under investigation for an offence” has such meaning as may be prescribed.

## Subheading 1: Applications for review and references

### 110. Applications to the Ombudsman

- 1. This section applies if an interested party makes an application to the Ombudsman for the review of the exercise by any person of a regulated disciplinary function, on the grounds that there has been—
  - a. a failure to comply with prescribed procedures, or
  - b. some other maladministration.
- 2. The Ombudsman must carry out a review if the following three conditions are met.
- 3. The first condition is that the Ombudsman considers that a review is necessary.
- 4. The second condition is that—
  - a. the application is made within the permitted period,
  - b. the application is made within such longer period as the Ombudsman considers appropriate in the circumstances, or
  - c. the application is made on grounds alleging undue delay and the Ombudsman considers that the application has been made within a reasonable time.

5. The third condition is that the application is made in a form approved by the Ombudsman.
6. But the Ombudsman may not review the merits of a decision made by any person.
7. If any of the conditions in subsections (3) to (5) is not met, or if the grounds of the application relate only to the merits of a decision, the Ombudsman—
  - a. may not carry out a review, and
  - b. must inform the applicant accordingly.
8. In this section and sections 111 to 113, “regulated disciplinary function” means any of the following—
  - a. any function of the Lord Chancellor that falls within section 108(1);
  - b. any function conferred on the Lord Chief Justice by section 108(3) to (7);
  - c. any function exercised under prescribed procedures in connection with a function falling within paragraph (a) or (b).
9. In this section, in relation to an application under this section for a review of the exercise of a regulated disciplinary function—
  - “interested party” means—
    - a. the judicial office holder in relation to whose conduct the function is exercised, or
    - b. any person who has made a complaint about that conduct in accordance with prescribed procedures;
  - “permitted period” means the period of 28 days beginning with the latest of—
    - a. the failure or other maladministration alleged by the applicant;
    - b. where that failure or maladministration occurred in the course of an investigation, the applicant being notified of the conclusion or other termination of that investigation;
    - c. where that failure or maladministration occurred in the course of making a determination, the applicant being notified of that determination.
10. References in this section and section 111 to the exercise of a function include references to a decision whether or not to exercise the function.

## 111. Review by the Ombudsman

1. Where the Ombudsman is under a duty to carry out a review on an application under section 110, he must—
  - a. on the basis of any findings he makes about the grounds for the application, decide to what extent the grounds are established;
  - b. decide what if any action to take under subsections (2) to (7).
2. If he decides that the grounds are established to any extent, he may make recommendations to the Lord Chancellor and Lord Chief Justice.
3. A recommendation under subsection (2) may be for the payment of compensation.
4. Such a recommendation must relate to loss which appears to the Ombudsman to have been suffered by the applicant as a result of any failure or maladministration to which the application relates.
5. If the Ombudsman decides that a determination made in the exercise of a function under review is unreliable because of any failure or maladministration to which the application relates, he may set aside the determination.
6. If a determination is set aside under subsection (5)—
  - a. the prescribed procedures apply, subject to any prescribed modifications, as if the determination had not been made, and
  - b. for the purposes of those procedures, any investigation or review leading to the determination is to be disregarded.
7. Subsection (6) is subject to any direction given by the Ombudsman under this subsection—
  - a. for a previous investigation or review to be taken into account to any extent, or
  - b. for any investigation or review which may form part of the prescribed procedures to be undertaken, or undertaken again.
8. This section is subject to section 112.

## 112. Reports on reviews

1. In this section references to the Ombudsman's response to an application are references to the findings and decisions referred to in section 111(1).
2. Before determining his response to an application the Ombudsman must prepare a draft of a report of the review carried out on the application.
3. The draft report must state the Ombudsman's proposed response.
4. The Ombudsman must submit the draft report to the Lord Chancellor and the Lord Chief Justice.
5. If the Lord Chancellor or the Lord Chief Justice makes a proposal that the Ombudsman's response to the application should be changed, the Ombudsman must consider whether or not to change it to give effect to that proposal.

6. The Ombudsman must produce a final report that sets out—
  - a. the Ombudsman's response to the application, including any changes made to it to give effect to a proposal under subsection (5);
  - b. a statement of any proposal under subsection (5) that is not given effect to.
7. The Ombudsman must send a copy of the final report to each of the Lord Chancellor and the Lord Chief Justice.
8. The Ombudsman must also send a copy of the final report to the applicant, but that copy must not include information—
  - a. which relates to an identified or identifiable individual other than the applicant, and
  - b. whose disclosure by the Ombudsman to the applicant would (apart from this subsection) be contrary to section 139.
9. Each copy must be signed by the Ombudsman.
10. No part of the Ombudsman's response to an application has effect until he has complied with subsections (2) to (9).

### 113. References to the Ombudsman relating to conduct

1. The Ombudsman must investigate any matter referred to him by the Lord Chancellor or the Lord Chief Justice that relates to the exercise of one or more regulated disciplinary functions.
2. A matter referred to the Ombudsman under subsection (1) may relate to the particular exercise of a regulated disciplinary function or to specified descriptions of the exercise of such functions.

### 114. Reports on references

1. Where the Ombudsman carries out an investigation under section 113 he must prepare a draft of a report of the investigation.
2. If the investigation relates to a matter which is the subject of a review on an application under section 110, subsection (1) applies only when the Ombudsman has sent a copy of the final report on that review to the Lord Chancellor, the Lord Chief Justice and the applicant.
3. The draft report must state the Ombudsman's proposals as to—
  - a. the findings he will make;
  - b. any recommendations he will make for action to be taken by any person in relation to the matter subject to investigation.
4. Those findings and recommendations are referred to in this section as the Ombudsman's response on the investigation.
5. The Ombudsman must submit the draft report to the Lord Chancellor and the Lord Chief Justice.
6. If the Lord Chancellor or the Lord Chief Justice makes a proposal that the Ombudsman's response on the investigation should be changed, the Ombudsman must consider whether or not to change it to give effect to that proposal.

• Supreme/ordinary court judge removal  
• Ombudsman

• Supreme/ordinary court judge removal  
• Ombudsman



7. The Ombudsman must produce a final report that sets out—
  - a. the Ombudsman's response on the investigation, including any changes made to it to give effect to a proposal under subsection (6);
  - b. a statement of any proposal under subsection (6) that is not given effect to.
8. The Ombudsman must send a copy of the final report to each of the Lord Chancellor and the Lord Chief Justice.
9. Each copy must be signed by the Ombudsman.

## Subheading 2: General

### 115. Regulations about procedures

The Lord Chief Justice may, with the agreement of the Lord Chancellor, make regulations providing for the procedures that are to be followed in—

- a. the investigation and determination of allegations by any person of misconduct by judicial office holders;
- b. reviews and investigations (including the making of applications or references) under sections 110 to 112.

### 116. Contents of regulations

1. Regulations under section 115(a) may include provision as to any of the following—
  - a. circumstances in which an investigation must or may be undertaken (on the making of a complaint or otherwise);
  - b. steps to be taken by a complainant before a complaint is to be investigated;
  - c. the conduct of an investigation, including steps to be taken by the office holder under investigation or by a complainant or other person;
  - d. time limits for taking any step and procedures for extending time limits;
  - e. persons by whom an investigation or part of an investigation is to be conducted;
  - f. matters to be determined by the Lord Chief Justice, the Lord Chancellor, the office holder under investigation or any other person;
  - g. requirements as to records of investigations;
  - h. requirements as to confidentiality of communications or proceedings;

• Supreme/ordinary court judge removal  
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• Supreme/ordinary court judge removal  
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- i. requirements as to the publication of information or its provision to any person.
- 2. The regulations—
  - a. may require a decision as to the exercise of functions under section 108, or functions mentioned in subsection (1) of that section, to be taken in accordance with findings made pursuant to prescribed procedures;
  - b. may require that prescribed steps be taken by the Lord Chief Justice or the Lord Chancellor in exercising those functions or before exercising them.
- 3. Where regulations under section 115(a) impose any requirement on the office holder under investigation or on a complainant, a person contravening the requirement does not incur liability other than liability to such procedural penalty if any (which may include the suspension or dismissal of a complaint)—
  - a. as may be prescribed by the regulations, or
  - b. as may be determined by the Lord Chief Justice and the Lord Chancellor or either of them in accordance with provisions so prescribed.
- 4. Regulations under section 115 may—
  - a. provide for any prescribed requirement not to apply if the Lord Chief Justice and the Lord Chancellor so agree;
  - b. make different provision for different purposes.
- 5. Nothing in this section limits the generality of section 115.

## 117. Procedural rules

- 1. Regulations under section 115 may provide for provision of a prescribed description that may be included in the regulations to be made instead by rules made by the Lord Chief Justice with the agreement of the Lord Chancellor.
- 2. But the provision that may be made by rules does not include—
  - a. provision within section 116(2);
  - b. provision made for the purposes of section 108(7) or (8) or 116(3).
- 3. The rules are to be published in such manner as the Lord Chief Justice may determine with the agreement of the Lord Chancellor.

## 118. Extension of discipline provisions to other offices

- 1. This Chapter applies in relation to an office designated by the Lord Chancellor under this section as it would apply if the office were listed in Schedule 14.
- 2. The Lord Chancellor may by order designate any office, not listed in Schedule 14, the holder of which he has power to remove from office.
- 3. An order under this section may be made only with the agreement of the Lord Chief Justice.

## 119. Delegation of functions

1. The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4)) to exercise any of his functions under the relevant sections.
2. The relevant sections are—
  - a. section 108(3) to (7);
  - b. section 111(2);
  - c. section 112;
  - d. section 116(3)(b).

### Subheading 3: Scotland and Northern Ireland

## 120. Scotland

1. In section 108, in relation to a judicial office holder who exercises functions wholly or mainly in Scotland, references to the Lord Chief Justice are to be read as references to the Lord President of the Court of Session.
2. Regulations under section 115 and rules under section 117 do not apply in relation to a judicial office holder who exercises functions wholly or mainly in Scotland unless they are made with the agreement of the Lord President of the Court of Session.
3. In section 116(1)(f), (3)(b) and (4)(a) the references to the Lord Chief Justice include references to the Lord President of the Court of Session.
4. In section 118(3), where the description of offices designated by the order is limited to (or includes) offices in which the holder exercises functions wholly or mainly in Scotland, the reference to the Lord Chief Justice is to be read as (or as including) a reference to the Lord President of the Court of Session.
5. The Lord Chief Justice may by regulations provide for sections 110 to 113 to apply in relation to judicial office holders who exercise functions wholly or mainly in Scotland—
  - a. as if in section 110(8)(b) the reference to the Lord Chief Justice were a reference to the Lord President of the Court of Session, and
  - b. with any other modifications specified in the regulations.
6. Regulations under subsection (5) may be made only with the agreement of the Lord Chancellor and the Lord President of the Court of Session.
7. The Lord President of the Court of Session may nominate a judge of the Court of Session who is a member of the First or Second Division of the Inner House of that Court to exercise any of his functions under the relevant sections.
8. The relevant sections are—
  - a. section 108(3) to (7);
  - b. section 111(2);

- c. section 112;
- d. section 116(3)(b).

## 121. Northern Ireland

1. In section 108, in relation to a judicial office holder who exercises functions wholly or mainly in Northern Ireland, references to the Lord Chief Justice are to be read as references to the Lord Chief Justice of Northern Ireland.
2. Regulations under section 115 and rules under section 117 do not apply in relation to a judicial office holder who exercises functions wholly or mainly in Northern Ireland, unless they are made with the agreement of the Lord Chief Justice of Northern Ireland.
3. In section 116(1)(f), (3)(b) and (4)(a) the references to the Lord Chief Justice include references to the Lord Chief Justice of Northern Ireland.
4. In section 118(3), where the description of offices designated by the order is limited to (or includes) offices in which the holder exercises functions wholly or mainly in Northern Ireland, the reference to the Lord Chief Justice is to be read as (or as including) a reference to the Lord Chief Justice of Northern Ireland.
5. The Lord Chief Justice may by regulations provide for sections 110 to 113 to apply in relation to judicial office holders who exercise functions wholly or mainly in Northern Ireland—
  - a. as if in section 110(8)(b) the reference to the Lord Chief Justice were a reference to the Lord Chief Justice of Northern Ireland, and
  - b. with any other modifications specified in the regulations.
6. Regulations under subsection (5) may be made only with the agreement of the Lord Chancellor and the Lord Chief Justice of Northern Ireland.
7. The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise any of his functions under the relevant sections—
  - a. the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002 (c. 26);
  - b. a Lord Justice of Appeal (as defined in section 88 of that Act).
8. The relevant sections are—
  - a. section 108(3) to (7);
  - b. section 111(2);
  - c. section 112;
  - d. section 116(3)(b).

- Supreme/ordinary court judge removal
- Subsidiary unit government

## Chapter 4: Interpretation of Part 4

### 122. Interpretation of Part 4

In this Part—

- “appoint” includes nominate or designate (and “appointment” is to be read accordingly);
- the “Commission” means the Judicial Appointments Commission;
- “Head of Division” means any of these—
  - a. the Master of the Rolls;
  - b. the President of the Queen's Bench Division;
  - c. the President of the Family Division;
  - d. the Chancellor of the High Court;
- “High Court” means the High Court in England and Wales;
- “high judicial office” has the meaning given by section 60;
- “lay member”, in relation to the Commission, has such meaning as may be given by regulations under paragraph 3C(a) of Schedule 12;
- “Lord Chief Justice”, unless otherwise stated, means the Lord Chief Justice of England and Wales;
- “Lord Justice of Appeal” means a Lord Justice of Appeal in England and Wales;
- “office” includes a position of any description;
- the “Ombudsman” means the Judicial Appointments and Conduct Ombudsman;
- “prescribed” means prescribed by regulations under section 115 or, subject to section 117(2), by rules under section 117;
- “vacancy” in relation to an office to which one of sections 68, 77 and 86 applies, means a vacancy arising on a holder of the office vacating it at any time after the commencement of that section.

## Part 5: Judicial Appointments and Removals: Northern Ireland

### Chapter 1: Appointments

#### Subheading 1: Disclosure of information to Commission

### 123. Disclosure of information to the Northern Ireland Judicial Appointments Commission

1. The Justice (Northern Ireland) Act 2002 (c. 26) (“the 2002 Act”) is amended as follows.

2. After section 5 of the 2002 Act insert—
- “5A Disclosure of information to the Commission
- (1) Information which is held by or on behalf of a permitted person (whether obtained before or after this section comes into force) may be disclosed to the Commission or a committee of the Commission for the purposes of selection under section 5.
- (2) A disclosure under this section is not to be taken to breach any restriction on the disclosure of information (however imposed).
- (3) But nothing in this section authorises the making of a disclosure—
- (a) which contravenes the Data Protection Act 1998, or
- (b) which is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000.
- (4) This section does not affect a power to disclose which exists apart from this section.
- (5) The following are permitted persons—
- (a) a chief officer of police of a police force in England and Wales;
- (b) a chief constable of a police force in Scotland;
- (c) the Chief Constable of the Police Service of Northern Ireland;
- (d) the Director General of the National Criminal Intelligence Service;
- (e) the Director General of the National Crime Squad;
- (f) the Commissioners of Inland Revenue;
- (g) the Commissioners of Customs and Excise.
- (6) The Lord Chancellor may by order designate as permitted persons other persons who exercise functions which he considers are of a public nature (including a body or person discharging regulatory functions in relation to any description of activities).
- (7) Information must not be disclosed under this section on behalf of the Commissioners of Inland Revenue or on behalf of the Commissioners of Customs and Excise unless the Commissioners concerned authorise the disclosure.
- (8) The power to authorise a disclosure under subsection (7) may be delegated (either generally or for a specific purpose)—
- (a) in the case of the Commissioners of Inland Revenue, to an officer of the Board of Inland Revenue,
- (b) in the case of the Commissioners of Customs and Excise, to a customs officer.
- (9) For the purposes of this section a customs officer is a person commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979.”

## Subheading 2: Ombudsman

### 124. Northern Ireland Judicial Appointments Ombudsman

1. The italic cross-heading before section 9 of the 2002 Act is omitted.
2. After that section insert—
 

“The Ombudsman

9A Judicial Appointments Ombudsman

(1) There is to be a Northern Ireland Judicial Appointments Ombudsman.

(2) The Ombudsman is appointed by Her Majesty on the recommendation of the Lord Chancellor.

- (3) Schedule 3A makes further provision about the Ombudsman.”
3. Schedule 15 inserts Schedule 3A to the 2002 Act.

## Subheading 3: Complaints and references

### 125. Complaints: interpretation

After section 9A of the 2002 Act insert—

“9B Complaints: interpretation

- (1) This section applies for the purposes of this Part.
- (2) A Commission complaint is a complaint by a qualifying complainant of maladministration by the Commission or a committee of the Commission.
- (3) A departmental complaint is a complaint by a qualifying complainant of maladministration by the Lord Chancellor or the Northern Ireland Court Service in connection with any of the following—
- (a) recommendation for or appointment to a listed judicial office;
- (b) appointment under section 2 of the Taxes Management Act 1970 as a Commissioner for the general purposes of the income tax for Northern Ireland.
- (4) A qualifying complainant is a complainant who claims to have been adversely affected, as an applicant for selection or as a person selected under this Part, by the maladministration complained of.”

### 126. Complaints to the Commission or the Lord Chancellor

After section 9B of the 2002 Act insert—

“9C Complaints to the Commission or the Lord Chancellor

- (1) The Commission must make arrangements for investigating any Commission complaint made to it.
- (2) The Lord Chancellor must make arrangements for investigating any departmental complaint made to him.
- (3) Arrangements under this section need not apply to a complaint made more than 28 days after the matter complained of.”

### 127. Complaints to the Ombudsman

After section 9C of the 2002 Act insert—

“9D Complaints to the Ombudsman

- (1) Subsections (2) and (3) apply to a complaint which the complainant—
- (a) has made to the Commission or Lord Chancellor in accordance with arrangements under section 9C, and
- (b) makes to the Ombudsman not more than 28 days after being notified of the Commission's or Lord Chancellor's decision on the complaint.
- (2) If the Ombudsman considers that investigation of the complaint is not necessary, he must inform the complainant.
- (3) Otherwise he must investigate the complaint.
- (4) The Ombudsman may investigate a complaint which the complainant—

(a) has made to the Commission or the Lord Chancellor in accordance with arrangements under section 9C, and

(b) makes to the Ombudsman at any time.

(5) The Ombudsman may investigate a transferred complaint made to him, and no such complaint may be made under the Judicial Appointments Order after the commencement of this section.

(6) The Judicial Appointments Order is the Judicial Appointments Order in Council 2001, which sets out the functions of Her Majesty's Commissioners for Judicial Appointments.

(7) A transferred complaint is a complaint that lay to those Commissioners (whether or not it was made to them) in respect of the application of procedures for appointment to listed judicial offices before the commencement of this section, but not a complaint that those Commissioners had declined to investigate or on which they had concluded their investigation.

(8) Any complaint to the Ombudsman under this section must be in a form approved by him."

## 128. Report and recommendations

After section 9D of the 2002 Act insert—

"9E Report and recommendations

(1) The Ombudsman must prepare a report on any complaint he has investigated under section 9D.

(2) The report must state—

(a) what findings the Ombudsman has made;

(b) whether he considers the complaint should be upheld in whole or part;

(c) if he does, what if any action he recommends should be taken by the Commission or the Lord Chancellor as a result of the complaint.

(3) The recommendations that may be made under subsection (2)(c) include recommendations for the payment of compensation.

(4) Such a recommendation must relate to loss which appears to the Ombudsman to have been suffered by the complainant as a result of maladministration and not as a result of any failure to be appointed to an office to which the complaint related."

## 129. Report procedure

After section 9E of the 2002 Act insert—

"9F Report procedure

(1) This section applies to a report under section 9E.

(2) The Ombudsman must submit a draft of the report—

(a) to the Lord Chancellor, and

(b) if the complaint was a Commission complaint, to the Commission.

(3) In finalising the report the Ombudsman—

(a) must have regard to any proposal by the Lord Chancellor or the Commission for changes in the draft report;

(b) must include in the report a statement of any such proposal not given effect to.

• Ombudsman

• Ombudsman



- (4) The report must be signed by the Ombudsman.
- (5) If the complaint was a Commission complaint the Ombudsman must send the report in duplicate to the Lord Chancellor and the Commission.
- (6) Otherwise the Ombudsman must send the report to the Lord Chancellor.
- (7) The Ombudsman must send a copy of the report to the complainant, but that copy must not include information—
  - (a) which relates to an identified or identifiable individual other than the complainant, and
  - (b) whose disclosure by the Ombudsman to the complainant would (apart from this subsection) be contrary to section 9I.”

### 130. References by the Lord Chancellor

After section 9F of the 2002 Act insert—

“9G References by the Lord Chancellor

- (1) If the Lord Chancellor refers to the Ombudsman any matter relating to the procedures of the Commission or a committee of the Commission, the Ombudsman must investigate it.
- (2) The matter may relate to such procedures generally or in a particular case.
- (3) The Ombudsman must report to the Lord Chancellor on any investigation under this section.
- (4) The report must state—
  - (a) what findings the Ombudsman has made;
  - (b) what if any action he recommends should be taken by any person in relation to the matter.
- (5) The report must be signed by the Ombudsman.”

### 131. Information

After section 9G of the 2002 Act insert—

“9H Information

The Commission and the Lord Chancellor must provide the Ombudsman with such information as he may reasonably require relating to the subject matter of an investigation under section 9D or 9G.”

### 132. Confidentiality in relation to judicial appointments and discipline

After section 9H of the 2002 Act insert—

“9I Confidentiality in relation to judicial appointments and discipline

- (1) A person who obtains confidential information, or to whom confidential information is provided, under or for the purposes of a relevant provision must not disclose it except with lawful authority.
- (2) These are the relevant provisions—
  - (a) section 12, 12A and 12B of the Judicature (Northern Ireland) Act 1978 (appointment and removal of Lord Chief Justice, Lords Justices of Appeal and judges of High Court);

(b) sections 3, 5, 7 and 9 to 9H of this Act (appointment and removal of judicial officers, and appointment and removal of lay magistrates) ;

(c) sections 134 and 135 of the Constitutional Reform Act 2005 (removal from judicial offices) ;

(d) section 16 of this Act (complaints about judicial officers) ;

(3) Information is confidential if it relates to an identified or identifiable individual (a “subject”).

(4) Confidential information is disclosed with lawful authority only if and to the extent that any of the following applies—

(a) the disclosure is with the consent of each person who is a subject of the information (but this is subject to subsection (5) ) ;

(b) the disclosure is for (and is necessary for) the exercise by any person of functions under a relevant provision or a decision whether to exercise them;

(c) the disclosure is required, under rules of court or a court order, for the purposes of legal proceedings of any description.

(5) An opinion or other information given by one identified or identifiable individual (A) about another (B) —

(a) is information that relates to both;

(b) must not be disclosed to B without A's consent.

(6) This section does not prevent the disclosure with the agreement of the Lord Chancellor and the Lord Chief Justice of information as to disciplinary action taken in accordance with a relevant provision.

(7) This section does not prevent the disclosure of information which is already, or has previously been, available to the public from other sources.

(8) A contravention of this section in respect of any information is actionable, subject to the defences and other incidents applying to actions for breach of statutory duty.

(9) But it is actionable only at the suit of a person who is a subject of the information.

Transfer of functions of justices of the peace”

## Chapter 2: Removals

### 133. Removal from most senior judicial offices

In the Judicature (Northern Ireland) Act 1978 (c. 23) before section 13 insert—

“12B Tenure of office

(1) The Lord Chief Justice, Lords Justices of Appeal and judges of the High Court hold office during good behaviour (subject to section 26 of, and Schedule 7 to, the Judicial Pensions and Retirement Act 1993) .

(2) Her Majesty may on an address presented to Her Majesty by both Houses of Parliament remove a person from office as Lord Chief Justice, a Lord Justice of Appeal or a judge of the High Court.

(3) A motion for the presentation of an address to Her Majesty for the removal of a person from any of those offices may be made—

(a) to the House of Commons only by the Prime Minister; and

(b) to the House of Lords only by the Lord Chancellor or, if the Lord Chancellor is not a member of that House, by another Minister of the Crown at his request.

(4) No motion for the presentation of such an address may be made unless a tribunal convened under section 135 of the Constitutional Reform Act 2005 has reported to the Lord Chancellor recommending that the person be removed from the office on the ground of misbehaviour.

(5) The Prime Minister shall lay a copy of the report before the House of Commons before making a motion for the presentation of an address in that House; and a person making such a motion in the House of Lords shall lay a copy of the report before that House before making the motion.

(6) If the Prime Minister and Lord Chancellor are considering the making of motions for the presentation of an address to Her Majesty in relation to the Lord Chief Justice, the Prime Minister may suspend him from office; and if they are considering the making of such motions in relation to a Lord Justice of Appeal or a judge of the High Court the Prime Minister may suspend him from office with the agreement of the Lord Chief Justice.

(7) If a person is suspended from an office under subsection (6), he may not perform any of the functions of the office (but his other rights as holder of the office are unaffected)."

• Supreme/ordinary court judge removal

### 134. Removal from listed judicial offices

1. A person holding a listed judicial office other than as a judge of the High Court may be removed from office (and suspended from office pending a decision whether to remove him) but only in accordance with this section.
2. The power to remove or suspend him is exercisable by the Lord Chancellor.
3. He may only be removed if a tribunal convened under section 135 has reported to the Lord Chancellor recommending that he be removed on the ground of misbehaviour or inability to perform the functions of the office.
4. He may only be suspended if the tribunal, at any time when it is considering whether to recommend his removal, has recommended to the Lord Chancellor that he be suspended.
5. He may not be removed or suspended except after consultation with the Lord Chief Justice.
6. If he is suspended he may not perform any of the functions of the office until the decision whether to remove him has been taken (but his other rights as holder of the office are unaffected).

• Supreme/ordinary court judge removal

### 135. Tribunals for considering removal

1. A tribunal to consider the removal of the Lord Chief Justice may be convened by the Lord Chancellor.
2. A tribunal to consider the removal of the holder of any other protected judicial office may be convened—
  - a. by the Lord Chancellor, after consulting the Lord Chief Justice, or
  - b. by the Lord Chief Justice, after consulting the Lord Chancellor.
3. A tribunal to consider the removal of the Lord Chief Justice or a Lord Justice of Appeal may not be convened unless the Prime Minister has been consulted.

4. A tribunal to consider the removal of the Lord Chief Justice, a Lord Justice of Appeal or a judge of the High Court is to consist of—
  - a. a person who holds high judicial office within the meaning of Part 3 and does not hold (and has never held) the office of Lord Chief Justice, Lord Justice of Appeal or judge of the High Court,
  - b. a person who is, or has been, a judge of the Court of Appeal of England and Wales or the Inner House of the Court of Session, and
  - c. a person who does not hold (and has never held) a protected judicial office and is not (and has never been) a barrister or solicitor.
5. A tribunal to consider the removal of the holder of any other protected judicial office is to consist of—
  - a. a person who holds, or has held, the office of Lord Chief Justice or Lord Justice of Appeal,
  - b. a person who holds the office of judge of the High Court, and
  - c. a person who does not hold (and has never held) a protected judicial office and is not (and has never been) a barrister or solicitor.
6. The chairman of a tribunal is the person mentioned in paragraph (a) of subsection (4) or (5).
7. The selection of the persons to be the members of a tribunal under paragraphs (a) and (b) of subsection (4) is to be made by the Lord Chancellor, after consultation with—
  - a. the Lord Chief Justice (unless the tribunal is to consider his removal from office),
  - b. the President of the Supreme Court of the United Kingdom,
  - c. the Lord Chief Justice of England and Wales, and
  - d. the Lord President of the Court of Session.
8. The selection of the persons to be the members of a tribunal under paragraphs (a) and (b) of subsection (5) is to be made by the Lord Chief Justice.
9. The selection of the person who is to be the member of a tribunal under paragraph (c) of subsection (4) or (5) is to be made by the Lord Chancellor.
10. The procedure of a tribunal is to be determined by the Lord Chief Justice except where—
  - a. the office of Lord Chief Justice is vacant,
  - b. he is not available, or
  - c. the tribunal is to consider his removal from office;  
and in such a case its procedure is to be determined by its chairman.

11. The Lord Chancellor may pay to a member of a tribunal any such allowances or fees as he may determine.

## 136. Interpretation of Part 5

In this Part—

- “listed judicial office” means an office listed in Schedule 1 to the Justice (Northern Ireland) Act 2002 (c. 26);
- “Lord Chief Justice”, unless otherwise stated, means the Lord Chief Justice of Northern Ireland;
- “Lord Justice of Appeal” means a person styled as such under section 3 of the Judicature (Northern Ireland) Act 1978 (c. 23);
- “protected judicial office” means the office of Lord Chief Justice, the office of Lord Justice of Appeal or a listed judicial office.

## Part 6: Other provisions relating to the judiciary

### 137. Parliamentary disqualification

1. In Part 1 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (judicial offices disqualifying for membership) at the beginning insert— “Judge of the Supreme Court.”
2. In Part 1 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (judicial offices disqualifying for membership) at the beginning insert— “Judge of the Supreme Court.”
3. A member of the House of Lords is, while he holds any disqualifying judicial office, disqualified for sitting or voting in—
  - a. the House of Lords,
  - b. a committee of that House, or
  - c. a joint committee of both Houses.
4. In subsection (3) “disqualifying judicial office” means any of the judicial offices specified in—
  - a. Part 1 of Schedule 1 to the House of Commons Disqualification Act 1975, or
  - b. Part 1 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975.
5. A member of the House of Lords who is disqualified under subsection (3) is not for that reason disqualified for receiving a writ of summons to attend that House, but any such writ is subject to that subsection.

### 137A. Encouragement of diversity

Each of the Lord Chancellor and the Lord Chief Justice of England and Wales must take such steps as that office-holder considers appropriate for the purpose of encouraging judicial diversity.

## 138. Judicial Committee of the Privy Council

Schedule 16 contains amendments about the Judicial Committee of the Privy Council.

### Part 7: General

## 139. Confidentiality

1. A person who obtains confidential information, or to whom confidential information is provided, under or for the purposes of a relevant provision must not disclose it except with lawful authority.
2. These are the relevant provisions—
  - a. sections 26 and 27 and regulations under section 27A;
  - b. Part 4;
  - c. regulations and rules under Part 4.
3. Information is confidential if it relates to an identified or identifiable individual (a “subject”).
4. Confidential information is disclosed with lawful authority only if and to the extent that any of the following applies—
  - a. the disclosure is with the consent of each person who is a subject of the information (but this is subject to subsection (5));
  - b. the disclosure is for (and is necessary for) the exercise by any person of functions under a relevant provision;
  - c. the disclosure is for (and is necessary for) the exercise of functions under section 11(3A) of the Supreme Court Act 1981 (c. 54) or a decision whether to exercise them;
  - d. the disclosure is for (and is necessary for) the exercise of powers to which section 108 applies, or a decision whether to exercise them;
  - e. the disclosure is required, under rules of court or a court order, for the purposes of legal proceedings of any description.
5. An opinion or other information given by one identified or identifiable individual (A) about another (B)—
  - a. is information that relates to both;
  - b. must not be disclosed to B without A's consent.
6. This section does not prevent the disclosure with the agreement of the Lord Chancellor and the Lord Chief Justice of information as to disciplinary action taken in accordance with a relevant provision.
7. This section does not prevent the disclosure of information which is already, or has previously been, available to the public from other sources.

8. A contravention of this section in respect of any information is actionable, subject to the defences and other incidents applying to actions for breach of statutory duty.
9. But it is actionable only at the suit of a person who is a subject of the information.

## 140. Enactment

1. In this Act “enactment” includes—
  - a. an enactment contained in this Act;
  - b. an enactment contained in a local, personal or private Act;
  - c. except in sections 19 and 143, an enactment contained in subordinate legislation; and any reference to an enactment includes a reference to an enactment whenever passed or made.
2. In section 22 “enactment” also includes an enactment contained in, or in an instrument made under, Northern Ireland legislation.
3. In Part 3 “enactment” also includes—
  - a. an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;
  - b. an enactment contained in, or in an instrument made under, Northern Ireland legislation.
4. In sections 19, 21 and 143 and in paragraph 3 of Schedule 7 “enactment” also includes—
  - a. an enactment contained in Northern Ireland legislation;
  - b. an enactment contained in a Measure of the Church Assembly or of the General Synod of the Church of England.

## 141. Subordinate legislation

1. In this Act “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30).
2. In sections 19 and 143 “subordinate legislation” also includes an enactment contained in an instrument made under Northern Ireland legislation.

## 142. General interpretation

In this Act—

- “functions” includes powers and duties;
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26).

## 143. Supplementary provision etc

1. The Lord Chancellor may by order make—
  - a. any supplementary, incidental or consequential provision, and
  - b. any transitory, transitional or saving provision, which he considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
2. An order under this section may in particular—
  - a. provide for any provision of this Act which comes into force before another such provision has come into force to have effect, until that other provision has come into force, with such modifications as are specified in the order;
  - b. amend or repeal any of the following—
    - i. an enactment other than one contained in an Act passed, or Northern Ireland legislation passed or made, after the Session in which this Act is passed;
    - ii. subordinate legislation other than subordinate legislation made under an Act passed, or Northern Ireland legislation passed or made, after the Session in which this Act is passed;
    - iii. any other instrument or document, including a prerogative instrument;
  - c. amend or repeal an enactment or subordinate legislation, whenever passed or made, in consequence of section 59.
3. The amendments that may be made by virtue of subsection (2)(b) are in addition to those made by or under any other provision of this Act.
4. In this section “prerogative instrument” means an Order in Council, warrant, charter or other instrument made under the prerogative.

## 144. Orders and regulations

1. Any power of a Minister of the Crown to make an order or regulations under this Act is exercisable by statutory instrument, except where subsection (2) applies.
2. Any power of the Lord Chancellor to make an order under section 19(1) or 143 amending an enactment contained in, or in an instrument made under, Northern Ireland legislation is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
3. Regulations under section 115, 120(5) or 121(5) are to be made in the form of a statutory instrument to which the Statutory Instruments Act 1946 (c. 36) applies as if the regulations were made by a Minister of the Crown.
4. A statutory instrument to which this subsection applies may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.



5. Subsection (4) applies to a statutory instrument which contains any of the following—
  - za. regulations under section 27A;
  - a. an order under section 85(3)(a) or (b) which amends Part 1 of Schedule 14;
  - aa. an order under section 85(5);
  - ab. regulations under section 94 or 94C;
  - b. an order under section 19(1) which amends a public general Act, except where the only such amendment is the inclusion in Schedule 7 of a function of the Lord Chancellor;
  - c. an order under section 19(1) which amends subordinate legislation of which a draft was required to be laid before and approved by a resolution of each House of Parliament, except where the only such amendment consists of provision that falls within subsection (2)(b) of section 19;
  - d. an order under section 143 which amends a public general Act;
  - e. regulations under Part 1 of Schedule 12.
6. In any other case a statutory instrument containing an order or regulations under this Act, unless it contains only an order under section 27B(5), 66(5) or 148, is subject to annulment in pursuance of a resolution of either House of Parliament.
7. A statutory rule made under a power to which subsection (2) applies is subject to annulment in pursuance of a resolution of either House of Parliament.

## 145. Minor and consequential amendments

Schedule 17 (minor and consequential amendments) has effect.

## 146. Repeals and revocations

The provisions listed in Schedule 18 are repealed or revoked to the extent specified.

## 147. Extent

1. Sections 7, 8 and 9 extend to England and Wales only.
2. Section 6 and Part 5 extend to Northern Ireland only.
3. Any amendment, repeal or revocation made by this Act has the same extent as the provision to which it relates.
4. Subject to subsections (1) to (3), this Act extends to Northern Ireland.

## 148. Commencement

1. This Act, except the following provisions, comes into force in accordance with provision to be made by the Lord Chancellor by order.

2. The provisions excepted from subsection (1) are—
  - a. section 4;
  - b. sections 18 to 22;
  - c. sections 140 to 144;
  - d. section 147;
  - e. this section;
  - f. section 149;
  - g. Schedules 6 and 7.
3. Section 4 comes into force in accordance with provision to be made by the Secretary of State by order.
4. An order by which section 23(1) comes into force at any time may not be made unless the Lord Chancellor is satisfied that the Supreme Court will at that time be provided with accommodation in accordance with written plans that he has approved.
5. The Lord Chancellor may approve plans only if, having consulted the Lords of Appeal in Ordinary holding office at the time of the approval, he is satisfied that accommodation in accordance with the plans will be appropriate for the purposes of the Court.
6. An order under this section may make different provision for different purposes.

## 149. Short title

This Act may be cited as the Constitutional Reform Act 2005.

[Schedules omitted due to length - full text of schedules can be found online at <http://www.legislation.gov.uk/ukpga/2005/4/schedules>]

# Government of Wales Act 2006

## Preamble

An Act to make provision about the government of Wales.

[25th July 2006]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## Part 1: National Assembly for Wales

### Subheading 1: The Assembly

#### 1. The Assembly

1. There is to be an Assembly for Wales to be known as the National Assembly for Wales or Cynulliad Cenedlaethol Cymru (referred to in this Act as “the Assembly”).
2. The Assembly is to consist of—
  - a. one member for each Assembly constituency (referred to in this Act as “Assembly constituency members”), and
  - b. members for each Assembly electoral region (referred to in this Act as “Assembly regional members”).
3. Members of the Assembly (referred to in this Act as “Assembly members”) are to be returned in accordance with the provision made by and under this Act for—
  - a. the holding of general elections of Assembly members (for the return of the entire Assembly), and
  - b. the filling of vacancies in Assembly seats.
4. The validity of any Assembly proceedings is not affected by any vacancy in its membership.
5. In this Act “Assembly proceedings” means any proceedings of—
  - a. the Assembly,
  - b. committees of the Assembly, or
  - c. sub-committees of such committees.

#### 2. Assembly constituencies and electoral regions

1. The Assembly constituencies are the constituencies specified in the Parliamentary Constituencies and Assembly Electoral Regions (Wales) Order 2006 (S.I. 2006/1041) as amended by—
  - a. the Parliamentary Constituencies and Assembly Electoral Regions (Wales) (Amendment) Order 2008 (S.I. 2008/1791), and
  - b. any Order in Council under the Parliamentary Constituencies Act 1986 giving effect (with or without modifications) to a report falling within section 13(3) or (4) of the Parliamentary Voting System and Constituencies Act 2011.
2. There are five Assembly electoral regions.
3. The Assembly electoral regions are as specified in the Parliamentary Constituencies and Assembly Electoral Regions (Wales) Order 2006.

4. There are four seats for each Assembly electoral region.
5. [Repealed]
6. [Repealed]

## Subheading 2: General Elections

### 3. Ordinary general elections

1. The poll at an ordinary general election is to be held on the first Thursday in May in the fourth calendar year following that in which the previous ordinary general election was held, unless provision is made for the day of the poll by an order under section 4.
2. If the poll is to be held on the first Thursday in May, the Assembly—
  - a. is dissolved by virtue of this section at the beginning of the minimum period which ends with that day, and
  - b. must meet within the period of seven days beginning immediately after the day of the poll.
3. In subsection (2) “the minimum period” means the period determined in accordance with an order under section 13.
4. In calculating any period of days for the purposes of subsection (2)(b), the following days are to be disregarded—
  - a. Saturday and Sunday,
  - b. any day which is a bank holiday in Wales under the Banking and Financial Dealings Act 1971 (c. 80), and
  - c. any day appointed for public thanksgiving or mourning.

### 4. Power to vary date of ordinary general election

1. The Secretary of State may by order provide for the poll at an ordinary general election to be held on a day which is neither—
  - a. more than one month earlier, nor
  - b. more than one month later,  
than the first Thursday in May.
2. An order under this section must make provision for the Assembly—
  - a. to be dissolved on a day specified in the order, and
  - b. to meet within the period of seven days beginning immediately after the day of the poll.
3. In calculating any period of days for the purposes of provision made by virtue of subsection (2)(b), the following days are to be disregarded—
  - a. Saturday and Sunday,

- b. Good Friday,
  - c. any day which is a bank holiday in Wales under the Banking and Financial Dealings Act 1971 (c. 80), and
  - d. any day appointed for public thanksgiving or mourning.
4. An order under this section may make provision for—
- a. any provision of, or made under, the Representation of the People Acts, or
  - b. any other enactment relating to the election of Assembly members, to have effect with such modifications or exceptions as the Secretary of State considers appropriate in connection with the alteration of the day of the poll.
5. No order is to be made under this section unless the Secretary of State has consulted the Welsh Ministers about it.
6. A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

## 5. Extraordinary general elections

1. The Secretary of State must propose a day for the holding of a poll at an extraordinary general election if subsection (2) or (3) applies.
2. This subsection applies if—
  - a. the Assembly resolves that it should be dissolved, and
  - b. the resolution of the Assembly is passed on a vote in which the number of Assembly members voting in favour of it is not less than two-thirds of the total number of Assembly seats.
3. This subsection applies if any period during which the Assembly is required under section 47 to nominate an Assembly member for appointment as the First Minister ends without such a nomination being made.
4. If the Secretary of State proposes a day under subsection (1), Her Majesty may by Order in Council—
  - a. dissolve the Assembly and require an extraordinary general election to be held,
  - b. require the poll at the election to be held on the day proposed, and
  - c. require the Assembly to meet within the period of seven days beginning immediately after the day of the poll.
5. If a poll is held under this section within the period of six months ending with the day on which the poll at the next ordinary general election would be held (disregarding section 4), that ordinary general election is not to be held.
6. But subsection (5) does not affect the year in which the subsequent ordinary general election is to be held.

7. In calculating any period of days for the purposes of subsection (4)(c), the following days are to be disregarded—
  - a. Saturday and Sunday,
  - b. Christmas Eve, Christmas Day and Good Friday,
  - c. any day which is a bank holiday in Wales under the Banking and Financial Dealings Act 1971 (c. 80), and
  - d. any day appointed for public thanksgiving or mourning.

## 6. Voting at general elections

1. Each person entitled to vote at a general election in an Assembly constituency has two votes.
2. One (referred to in this Act as a “constituency vote”) is a vote which may be given for a candidate to be the Assembly constituency member for the Assembly constituency.
3. The other (referred to in this Act as an “electoral region vote”) is a vote which may be given for—
  - a. a registered political party which has submitted a list of candidates to be Assembly regional members for the Assembly electoral region in which the Assembly constituency is included, or
  - b. an individual who is a candidate to be an Assembly regional member for that Assembly electoral region.
4. The Assembly constituency member for the Assembly constituency is to be returned under the simple majority system.
5. The Assembly regional members for the Assembly electoral region are to be returned under the additional member system of proportional representation provided for in this Part.
6. In this Act “registered political party” means a party registered under Part 2 of the Political Parties, Elections and Referendums Act 2000 (c. 41).

## 7. Candidates at general elections

1. At a general election a person may not be a candidate to be the Assembly constituency member for more than one Assembly constituency.
2. Any registered political party may submit a list of candidates for return as Assembly regional members for a particular Assembly electoral region at a general election.
3. The list must be submitted to the regional returning officer.
4. The list must not include more than twelve persons (but may include only one).
5. The list must not include a person—
  - a. who is included on any other list submitted for the Assembly electoral region or any list submitted for another Assembly electoral region,

- b. who is an individual candidate to be an Assembly regional member for the Assembly electoral region or another Assembly electoral region, or
  - c. who is a candidate to be the Assembly constituency member for an Assembly constituency.
6. A person may not be an individual candidate to be an Assembly regional member for the Assembly electoral region if that person is—
- a. included on a list submitted by a registered political party for the Assembly electoral region or another Assembly electoral region,
  - b. an individual candidate to be an Assembly regional member for another Assembly electoral region, or
  - c. a candidate to be the Assembly constituency member for an Assembly constituency.
7. In this Act “regional returning officer”, in relation to an Assembly electoral region, means the person designated as the regional returning officer for the Assembly electoral region in accordance with an order under section 13.

## 8. Calculation of electoral region figures

1. This section and section 9 are about the return of Assembly regional members for an electoral region at a general election.
2. The person who is to be returned as the Assembly constituency member for each Assembly constituency in the Assembly electoral region is to be determined before it is determined who are to be returned as the Assembly regional members for the Assembly electoral region.
3. For each registered political party by which a list of candidates has been submitted for the Assembly electoral region—
  - a. there is to be added together the number of electoral region votes given for the party in the Assembly constituencies included in the Assembly electoral region, and
  - b. the number arrived at under paragraph (a) is then to be divided by the aggregate of one and the number of candidates of the party returned as Assembly constituency members for any of those Assembly constituencies.
4. For each individual candidate to be an Assembly regional member for the Assembly electoral region there is to be added together the number of electoral region votes given for the candidate in the Assembly constituencies included in the Assembly electoral region.
5. The number arrived at—
  - a. in the case of a registered political party, under subsection (3)(b), or
  - b. in the case of an individual candidate, under subsection (4), is referred to in this Act as the electoral region figure for that party or individual candidate.

## 9. Allocation of seats to electoral region members

1. The first seat for the Assembly electoral region is to be allocated to the party or individual candidate with the highest electoral region figure.
2. The second and subsequent seats for the Assembly electoral region are to be allocated to the party or individual candidate with the highest electoral region figure after any recalculation required by subsection (3) has been carried out.
3. This subsection requires a recalculation under paragraph (b) of section 8(3) in relation to a party—
  - a. for the first application of subsection (2), if the application of subsection (1) resulted in the allocation of an Assembly seat to the party, or
  - b. for any subsequent application of subsection (2), if the previous application of that subsection did so,  
and a recalculation is to be carried out after adding one to the aggregate mentioned in that paragraph.
4. An individual candidate already returned as an Assembly regional member is to be disregarded.
5. Seats for the Assembly electoral region which are allocated to a party are to be filled by the persons on the party's list in the order in which they appear on the list.
6. Once a party's list has been exhausted by the return of persons included on it as Assembly regional members by the previous application of subsection (1) or (2), the party is to be disregarded.
7. If (on the application of subsection (1) or any application of subsection (2)) the highest electoral region figure is the electoral region figure of two or more parties or individual candidates, the subsection applies to each of them.
8. However, if subsection (7) would mean that more than the full number of seats for the Assembly electoral region were allocated, subsection (1) or (2) does not apply until—
  - a. a recalculation has been carried out under section 8(3)(b) after adding one to the number of votes given for each party with that electoral region figure, and
  - b. one has been added to the number of votes given for each individual candidate with that electoral region figure.
9. If, after that, the highest electoral region figure is still the electoral region figure of two or more parties or individual candidates, the regional returning officer must decide between them by lots.

### Subheading 3: Vacancies

## 10. Constituency vacancies

1. This section applies if the seat of an Assembly constituency member returned for an Assembly constituency is vacant.
2. Subject to subsection (7), an election must be held in the Assembly constituency to fill the vacancy.



3. At the election, each person entitled to vote only has a constituency vote; and the Assembly constituency member for the Assembly constituency is to be returned under the simple majority system.
4. The date of the poll at the election must be fixed by the Presiding Officer.
5. The date must fall within the period of three months beginning with the occurrence of the vacancy.
6. But if the vacancy does not come to the Presiding Officer's notice within the period of one month beginning with its occurrence, the date must fall within the period of three months beginning when it does come to the Presiding Officer's notice.
7. The election must not be held if it appears to the Presiding Officer that the latest date which may be fixed for the poll would fall within the period of three months ending with the day on which the poll at the next ordinary general election would be held (disregarding section 4).
8. The standing orders must make provision for determining the date on which a vacancy occurs for the purposes of this section.
9. A person may not be a candidate in an election to fill a vacancy if the person is—
  - a. an Assembly member, or
  - b. a candidate in another such election.

## 11. Electoral region vacancies

1. This section applies if the seat of an Assembly regional member returned for an Assembly electoral region is vacant.
2. If the Assembly regional member was returned (under section 9 or this section) from the list of a registered political party, the regional returning officer must notify to the Presiding Officer the name of the person who is to fill the vacancy.
3. A person's name may only be so notified if the person—
  - a. is included on the list submitted by the registered political party for the last general election,
  - b. is willing to serve as an Assembly regional member for the Assembly electoral region, and
  - c. is not a person to whom subsection (4) applies.
4. This subsection applies to a person if—
  - a. the person is not a member of the registered political party, and
  - b. the registered political party gives notice to the regional returning officer that the person's name is not to be notified to the Presiding Officer as the name of the person who is to fill the vacancy.
5. But if there is more than one person who satisfies the conditions in subsection (3), the regional returning officer may only notify the name of whichever of them was the higher, or the highest, on that list.
6. A person whose name is notified under subsection (2) is to be treated as having been declared to be returned as an Assembly regional member for the Assembly electoral region on the day on which notification of the person's name is received by the Presiding Officer.

7. The seat remains vacant until the next general election—
  - a. if the Assembly regional member was returned as an individual candidate, or
  - b. if that Assembly regional member was returned from the list of a registered political party but there is no-one who satisfies the conditions in subsection (3).
8. For the purposes of this section, a person included on the list submitted by a registered political party for the last general election who—
  - a. was returned as an Assembly regional member under section 9 at that election (even if the return was void),
  - b. has subsequently been a candidate in an election held under section 10 (whether or not returned), or
  - c. has subsequently been returned under this section (even if the return was void),is treated on and after the return of the person, or of the successful candidate at the election, as not having been included on the list.

## **Subheading 4: Franchise and conduct of elections**

### **12. Entitlement to vote**

1. The persons entitled to vote at an election of Assembly members (or of an Assembly member) in an Assembly constituency are those who on the day of the poll—
  - a. would be entitled to vote as electors at a local government election in an electoral area wholly or partly included in the Assembly constituency, and
  - b. are registered in the register of local government electors at an address within the Assembly constituency.
2. But a person is not entitled as an elector—
  - a. to cast more than one constituency vote, or more than one electoral region vote, in the same Assembly constituency at any general election,
  - b. to vote in more than one Assembly constituency at any general election, or
  - c. to cast more than one vote in any election held under section 10.

### **13. Power to make provision about elections etc**

1. The Secretary of State may by order make provision as to—
  - a. the conduct of elections for the return of Assembly members,

- b. the questioning of an election for the return of Assembly members and the consequences of irregularities, and
      - c. the return of an Assembly member otherwise than at an election.
2. The provision which may be made under subsection (1)(a) includes, in particular, provision—
  - a. about the registration of electors,
  - b. for disregarding alterations in a register of electors,
  - c. about the limitation of the election expenses of candidates (and the creation of criminal offences in connection with the limitation of such expenses),
  - d. for the combination of polls at elections for the return of Assembly members and other elections, and
  - e. for modifying the operation of sections 6 and 8(2) in a case where the poll at an election for the return of the Assembly constituency member for an Assembly constituency is abandoned (or notice of it is countermanded).
3. The provision that may be made under subsection (1)(c) includes, in particular, provision making modifications to section 11(3) to (5).
4. An order under this section may—
  - a. apply or incorporate, with or without modifications or exceptions, any provision of or made under the election enactments,
  - b. modify any form contained in, or in regulations or rules made under, the Representation of the People Acts so far as may be necessary to enable it to be used both for the original purpose and in relation to elections for the return of Assembly members, and
  - c. so far as may be necessary in consequence of any provision made by this Act or an order under this section, make modifications of any provision made by or under any enactment relating to the registration of parliamentary electors or local government electors.
5. In subsection (4)(a) “the election enactments” means—
  - a. the Representation of the People Acts,
  - b. the Political Parties, Elections and Referendums Act 2000 (c. 41),
  - c. the European Parliamentary Elections Act 2002 (c. 24), and
  - d. any other enactments relating to parliamentary elections, European Parliamentary elections or local government elections.

6. No return of an Assembly member at an election may be questioned except by an election petition under the provisions of Part 3 of the Representation of the People Act 1983 (c. 2) as applied by or incorporated in an order under this section.
7. No order is to be made under this section unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.

## **Subheading 5: Duration of membership**

### **14. Term of office of Assembly members**

The term of office of an Assembly member—

- a. begins when the Assembly member is declared to be returned, and
- b. ends with the dissolution of the Assembly.

### **15. Resignation of members**

An Assembly member may at any time resign by giving notice in writing to the Presiding Officer.

## **Subheading 6: Disqualification**

### **16. Disqualification from being Assembly member**

1. A person is disqualified from being an Assembly member if that person—
  - a. is disqualified from being a member of the House of Commons under paragraphs (a) to (e) of section 1(1) of the House of Commons Disqualification Act 1975 (c. 24) (judges, civil servants, members of the armed forces, members of police forces and members of foreign legislatures),
  - b. holds any of the offices for the time being designated by Order in Council as offices disqualifying persons from being Assembly members,
  - c. holds the office of Auditor General,
  - d. holds the office of Public Services Ombudsman for Wales, or
  - e. is employed as a member of the staff of the Assembly.
2. Subject to section 17(1) and (2), a person is also disqualified from being an Assembly member if that person is disqualified otherwise than under the House of Commons Disqualification Act 1975 (c. 24) (either generally or in relation to a particular constituency) from being a member of the House of Commons or from sitting and voting in it.

3. For the purposes of subsection (2) the references to the Republic of Ireland in section 1 of the Representation of the People Act 1981 (c. 34) (disqualification of offenders detained in, or unlawfully at large from detention in, the British Islands or the Republic of Ireland) are to be treated as references to any member State (other than the United Kingdom).
4. A person who holds office as lord-lieutenant, lieutenant or high sheriff of any area in Wales is disqualified from being an Assembly member for any Assembly constituency or Assembly electoral region wholly or partly included in that area.
5. An Order in Council under paragraph (b) of subsection (1)—
  - a. may designate particular offices or offices of any description, and
  - b. may designate an office by reference to any characteristic of a person holding it,  
and in that paragraph and this subsection “office” includes any post or employment.
6. No recommendation is to be made to Her Majesty in Council to make an Order in Council under subsection (1)(b) unless a draft of the statutory instrument containing the Order in Council has been laid before, and approved by a resolution of, the Assembly.

## 17. Exceptions and relief from disqualification

1. A person is not disqualified from being an Assembly member merely because that person is—
  - a. a peer (whether of the United Kingdom, Great Britain, England or Scotland),  
or
  - b. a Lord Spiritual.
2. A citizen of the European Union who is resident in the United Kingdom is not disqualified from being an Assembly member merely because of section 3 of the Act of Settlement (1700 c. 2) (disqualification of certain persons born outside United Kingdom).
3. The Assembly may resolve that the disqualification of any person who was, or is alleged to have been, disqualified from being an Assembly member on a ground within section 16(1) or (4) is to be disregarded if it appears to the Assembly—
  - a. that the ground has been removed, and
  - b. that it is proper so to resolve.
4. A resolution under subsection (3) does not—
  - a. affect any proceedings under Part 3 of the Representation of the People Act 1983 (c. 2) as applied by or incorporated in an order under section 13,  
or
  - b. enable the Assembly to disregard any disqualification which has been established in such proceedings or in proceedings under section 19.

## 18. Effect of disqualification

1. If a person who is disqualified from being an Assembly member is returned as an Assembly member, the person's return is void and the person's seat is vacant.
2. If a person who is disqualified from being an Assembly member for a particular Assembly constituency or Assembly electoral region is returned as an Assembly member for that Assembly constituency or Assembly electoral region, the person's return is void and the person's seat is vacant.
3. If a person who is an Assembly member becomes disqualified—
  - a. from being an Assembly member, or
  - b. from being an Assembly member for the Assembly constituency or Assembly electoral region for which the person is sitting,  
the person ceases to be an Assembly member (so that the person's seat is vacant).
4. Subsections (1) to (3) have effect subject to any resolution of the Assembly under section 17(3).
5. In addition, subsection (3) has effect subject to—
  - a. [Omitted]
  - b. section 427 of the Insolvency Act 1986 (c. 45) (bankruptcy etc.).
6. If, in consequence of the provision mentioned in subsection (5), the seat of a person who is disqualified from being an Assembly member is not vacant, the person does not cease to be an Assembly member until the person's seat becomes vacant.
7. But for any period for which the person is disqualified but the person's seat is not vacant—
  - a. the person must not participate in any Assembly proceedings, and
  - b. any of the person's other rights and privileges as an Assembly member may be withdrawn by the Assembly.
8. The validity of any Assembly proceedings is not affected by the disqualification of any person—
  - a. from being an Assembly member, or
  - b. from being an Assembly member for the Assembly constituency or Assembly electoral region for which the person purports to sit.

## 19. Judicial proceedings as to disqualification

1. Any person who claims that a person purporting to be an Assembly member is, or at any time since being returned as an Assembly member has been, disqualified from being—
  - a. an Assembly member, or



5. Sums required for the making of payments by virtue of provision under subsection (1) or (3) to or in respect of a person who holds or has held the office of Presiding Officer or Deputy Presiding Officer are to be charged on the Welsh Consolidated Fund.
6. Provision under this section is to be made by determination made by the Board.
7. The Assembly Commission must give effect to any determination made by the Board under this section.
8. In this section (and in sections 22, 24, 53 and 54) “the Board” means the National Assembly for Wales Remuneration Board established by section 1 of the National Assembly for Wales (Remuneration) Measure 2010 (nawm 4 –).

## 21. Limit on salaries of Assembly members

1. The Assembly must make provision to ensure that the amount of the salary payable to an Assembly member in accordance with section 20 is reduced if a salary is payable to the Assembly member—
  - za. under section 4 of the Parliamentary Standards Act 2009 (salaries of members of the House of Commons),
    - a. pursuant to a resolution (or combination of resolutions) of the House of Lords relating to the remuneration of members of that House, or
    - b. under section 1 of the European Parliament (Pay and Pensions) Act 1979 (c. 50) (remuneration of United Kingdom MEPs).
2. The provision made must ensure that the amount of salary is reduced—
  - a. to a particular proportion of what it otherwise would be or to a particular amount, or
  - b. by the amount of any salary payable to the Assembly member as mentioned in subsection (1)(za),(a) or (b), by a particular proportion of that amount or by some other particular amount.
3. Provision may be made under this section by—
  - a. the standing orders, or
  - b. resolutions of the Assembly,  
and may include provision conferring functions on the Assembly Commission.

## 22. Remuneration: supplementary

1. Different provision may be made under section 20 or 21 for different cases.
2. The Assembly Commission must ensure that information concerning—
  - a. the amounts paid to each Assembly member as salary and allowances, and
  - b. the total amount paid to Assembly members as salaries and allowances, is published for each financial year



3. The Assembly Commission must lay before the Assembly every determination made by the Board under section 20(6) as soon as is reasonably practicable after it is made.
4. For the purposes of sections 20 and 21 a person who—
  - a. ceases to be an Assembly member when the Assembly is dissolved, but
  - b. is nominated as a candidate at the subsequent general election, is to be treated as an Assembly member until the end of the day on which the poll at the election is held.
5. Where a person—
  - a. ceases to be an Assembly member when the Assembly is dissolved, but
  - b. continues to hold office as Presiding Officer or as a member of the Assembly Commission by virtue of paragraph 1(1) or (2) of Schedule 2, the fact that the person is no longer an Assembly member does not affect any entitlement under sections 20 and 21 in respect of the holding of office as Presiding Officer or as a member of the Assembly Commission (or both) until the end of the day on which the person ceases to hold it.
6. Provision made under section 20(3) does not affect pensions or allowances in payment before the provision was made.

### **23. Oath or affirmation of allegiance**

1. An Assembly member must take the oath of allegiance in the form set out in section 2 of the Promissory Oaths Act 1868 (c. 72) (or make the corresponding affirmation) as soon as is reasonably practicable after being returned as an Assembly member (whether for the first time or subsequently).
2. The standing orders must specify the person before whom the oath is to be taken (or the affirmation made).
3. Subsection (1) does not require an Assembly member to take the oath of allegiance (or make the corresponding affirmation) again if it has been taken (or made) by the Assembly member in compliance with section 55(2) since being returned (or last returned).
4. Until an Assembly member has taken the oath (or made the affirmation) the Assembly member must not do anything as an Assembly member, other than—
  - a. take part in proceedings of the Assembly at which Assembly members take the oath or make the affirmation, or
  - b. take part in any earlier proceedings for the election of the Presiding Officer or Deputy Presiding Officer.
5. If an Assembly member has not taken the oath (or made the affirmation) within—
  - a. the period of two months beginning with the day on which the Assembly member was declared to be returned, or
  - b. such longer period as the Assembly may have allowed before the end of that period of two months,

at the end of that period of two months or longer period the Assembly member ceases to be an Assembly member (so that the Assembly member's seat is vacant).

6. Until an Assembly member has taken the oath (or made the affirmation), no salary, allowance, gratuity or payment towards the provision of a pension, allowance or gratuity is to be paid under this Act to or in respect of the Assembly member.
7. But subsection (6) does not affect any entitlement to payments in respect of the period before the Assembly member took the oath (or made the affirmation) once the Assembly member has done so.

## 24. Assistance to groups of Assembly members

1. The Assembly Commission must make to (or in respect of) political groups to which Assembly members belong such payments as the Board from time to time determines for the purpose of assisting Assembly members who belong to those political groups to perform their functions as Assembly members.
2. A determination under subsection (1) may make provision—
  - a. for calculating the amount of any payment to (or in respect of) a political group,
  - b. for the conditions subject to which payments to (or in respect of) a political group are to be made, and
  - c. for claims for such payments to be made to the Assembly Commission.
3. A determination under subsection (1) may make different provision for different political groups.
4. [Omitted]
5. The standing orders must include provision for determining for the purposes of this Act whether any Assembly member belongs to a political group and, if so, to which; and (in particular)—
  - a. may include provision for treating an Assembly member as not belonging to a political group unless a specified number of Assembly members belong to it, and
  - b. must include provision requiring the Presiding Officer to decide any questions arising under the provision included by virtue of this subsection.
6. The Assembly Commission must lay before the Assembly every determination made by the Board under section 24(1) as soon as is reasonably practicable after it is made.
7. The Assembly Commission must ensure that information concerning the sums paid under this section is published for each financial year.

## Subheading 8: Presiding Officer and administration

### 25. Presiding Officer etc

1. The Assembly must, at its first meeting following a general election, elect from among the Assembly members—
  - a. a presiding officer (referred to in this Act as “the Presiding Officer”), and
  - b. a deputy presiding officer (referred to in this Act as “the Deputy Presiding Officer”).
2. The person elected under paragraph (a) of subsection (1) is to be known as the Presiding Officer or by such other title as the standing orders may provide; and the person elected under paragraph (b) of that subsection is to be known as the Deputy Presiding Officer or by such other title as the standing orders may provide.
3. The Presiding Officer holds office until the conclusion of the next election of a Presiding Officer under subsection (1).
4. The Deputy Presiding Officer holds office until the Assembly is dissolved.
5. But the Presiding Officer or Deputy Presiding Officer—
  - a. may at any time resign,
  - b. ceases to hold office on ceasing to be an Assembly member otherwise than by reason of a dissolution, and
  - c. may be removed from office by the Assembly.
6. If the Presiding Officer or the Deputy Presiding Officer ceases to hold office under subsection (5) (or dies), the Assembly must elect a replacement from among the Assembly members.
7. Subject to subsection (9), the Presiding Officer and the Deputy Presiding Officer must not belong to—
  - a. the same political group, or
  - b. different political groups both of which are political groups with an executive role.
8. For the purposes of this Act a political group is a political group with an executive role if the First Minister or one or more of the Welsh Ministers appointed under section 48 belong to it.
9. The Assembly may resolve that subsection (7) is not to apply for so long as the resolution so provides; but if the motion for the resolution is passed on a vote it is of no effect unless at least two-thirds of the Assembly members voting support it.
10. The Presiding Officer's functions may be exercised by the Deputy Presiding Officer if—
  - a. the office of Presiding Officer is vacant, or
  - b. the Presiding Officer is for any reason unable to act.

11. The Presiding Officer may (subject to the standing orders) authorise the Deputy Presiding Officer to exercise functions of the Presiding Officer.
12. The standing orders may include provision for the Presiding Officer's functions to be exercisable by any person specified in, or determined in accordance with, the standing orders if—
  - a. the office of Presiding Officer is vacant or the Presiding Officer is for any reason unable to act, and
  - b. the office of Deputy Presiding Officer is vacant or the Deputy Presiding Officer is for any reason unable to act.
13. The standing orders may include provision as to the participation (including voting) in Assembly proceedings of the Presiding Officer and Deputy Presiding Officer and any person acting by virtue of subsection (12).
14. The validity of any act of a person as Presiding Officer or Deputy Presiding Officer, or of any person acting by virtue of subsection (12), is not affected by any defect in the person's appointment by the Assembly.
15. Subsections (10) to (12) are subject to paragraph 11 of Schedule 2.

## 26. Clerk of Assembly

1. The Assembly Commission must appoint a person to be the Clerk of the Assembly (referred to in this Act as “the Clerk”).
2. The person appointed under subsection (1) is to be known as the Clerk of the Assembly or by such other title as the standing orders may provide.
3. The Clerk's functions may be exercised by any other member of the staff of the Assembly (or person seconded to work at the Assembly) authorised by the Assembly Commission if—
  - a. the office of Clerk is vacant, or
  - b. the Clerk is for any reason unable to act.
4. The Clerk may authorise any other member of the staff of the Assembly (or person seconded to work at the Assembly) to exercise functions on the Clerk's behalf.

## 27. Assembly Commission

1. There is to be a body corporate to be known as the National Assembly for Wales Commission or Comisiwn Cynulliad Cenedlaethol Cymru (referred to in this Act as “the Assembly Commission”).
2. The members of the Assembly Commission are to be—
  - a. the Presiding Officer, and
  - b. four other Assembly members.
3. The standing orders must make provision for the appointment of the four other Assembly members as members of the Assembly Commission.
4. The provision included in the standing orders in compliance with subsection (3) must (so far as it is reasonably practicable to do so) secure that not more than one of the members of the Assembly Commission (other than the Presiding Officer) belongs to any one political group.

5. The Assembly Commission must—
  - a. provide to the Assembly, or
  - b. ensure that the Assembly is provided with, the property, staff and services required for the Assembly's purposes.
6. The Assembly may give special or general directions to the Assembly Commission for the purpose of, or in connection with, the exercise of the Assembly Commission's functions.
7. Any property, rights or liabilities acquired or incurred in relation to matters to which the Assembly would otherwise be entitled or subject are to be treated for all purposes as property, rights or liabilities of the Assembly Commission.
8. For further provision about the Assembly Commission see Schedule 2.

## **Subheading 9: Committees**

### **28. Committees and sub-committees**

1. The standing orders may provide—
  - a. for the appointment of committees of the Assembly, and
  - b. for such committees to have power to appoint sub-committees.
2. The members of a committee of the Assembly, or of a sub-committee of such a committee, may not include anyone who is not an Assembly member.
3. The standing orders must make provision about the membership, chairing and procedure of committees of the Assembly and sub-committees of such committees.
4. The standing orders may include provision for excluding from the proceedings of a committee of the Assembly, or a sub-committee of such a committee, an Assembly member who is not a member of the committee or sub-committee.
5. The validity of any proceedings of a committee of the Assembly, or of a sub-committee of such a committee, is not affected by—
  - a. any vacancy in its membership,
  - b. any defect in the appointment of its members or of the person who chairs it, or
  - c. any failure to comply with provisions of the standing orders relating to procedure.

### **29. Composition of committees**

1. The provision included in the standing orders in compliance with section 28(3) must meet the requirements of this section.

2. The provision must secure that the appointments to the places on each committee are (if possible) determined by a resolution of the Assembly—
  - a. which secures that its membership reflects (so far as is reasonably practicable) the balance of the political groups to which Assembly members belong, and
  - b. which (if the motion for it is passed on a vote) has no effect unless at least two-thirds of the Assembly members voting support it.
3. The provision must secure that, if the membership of a committee is not so determined—
  - a. the person appointed to the first place on the committee is an Assembly member belonging to the largest political group, and
  - b. the persons eligible to be appointed to the second and subsequent places on the committee are ascertained in accordance with subsection (5).
4. “The largest political group” means the political group to which the most Assembly members belong.
5. An Assembly member is eligible to be appointed to the second or any subsequent place on the committee if—
  - a. the number produced by subsection (6) in relation to that place for the political group to which the Assembly member belongs, exceeds
  - b. that so produced for each of the other political groups.
6. The number produced for a political group in relation to the second or any subsequent place on the committee is—
  - a. if one or more places are already allocated to the political group, the number of Assembly members belonging to the political group divided by the aggregate of one and the number of places already so allocated, or
  - b. otherwise, the number of Assembly members belonging to the political group.
7. References to a place already allocated to a political group, in relation to the appointment to the second or any subsequent place on the committee, are to a place on the committee to which an Assembly member belonging to the political group is eligible to be appointed—
  - a. (in relation to the second place) by virtue of subsection (3)(a), or
  - b. (in relation to any subsequent place) by virtue of subsection (3)(a) or the previous application of subsection (5) in relation to a place on the committee.
8. The provision must modify the operation of the provision made in compliance with subsections (3) to (7) for cases where—
  - a. the number of Assembly members belonging to two or more political groups is the same and exceeds the number of Assembly members belonging to any other political group, or

- b. the number produced by subsection (6) in relation to any place on a committee is the same for two or more political groups and is greater than that so produced for any other political group.
9. The provision must modify the operation of the provision made in compliance with subsections (2) to (8) with a view to securing that (so far as is reasonably practicable having regard to the total number of places on committees)—
  - a. every Assembly member who does not belong to a political group is entitled to be a member of at least one committee, and
  - b. the total number of places on committees allocated to Assembly members belonging to each political group is at least as great as the number of Assembly members belonging to the political group.
10. The provision must secure that the Presiding Officer decides questions arising under the provision made in compliance with this section.

### **30. Audit Committee**

1. The committees of the Assembly must include one to be known as the Audit Committee or Pwyllgor Archwilio or by such other name as the Assembly may determine; and, if the Assembly makes such a determination, references to the committee in—
  - a. any enactment (including any enactment comprised in or made under this Act) or prerogative instrument, or
  - b. any other instrument or document,  
have effect accordingly.
2. The Audit Committee is to have the number of members specified by the standing orders.
3. None of the following may be a member of the Audit Committee—
  - a. the First Minister or any person designated to exercise the functions of the First Minister,
  - b. a Welsh Minister appointed under section 48,
  - c. the Counsel General or any person designated to exercise the functions of the Counsel General, or
  - d. a Deputy Welsh Minister.
4. The Audit Committee must not be chaired by an Assembly member who is a member of a political group with an executive role.

### **Subheading 10: Proceedings etc**

#### **31. Standing orders**

1. Assembly proceedings are to be regulated by standing orders (referred to in this Act as “the standing orders”).

2. The standing orders must include provision for preserving order in Assembly proceedings, including provision for—
  - a. preventing conduct which would constitute a criminal offence or contempt of court, and
  - b. a sub judice rule.
3. The standing orders may include provision for excluding an Assembly member from Assembly proceedings.
4. The standing orders may include provision for withdrawing from an Assembly member any or all of the rights and privileges of membership of the Assembly.
5. The standing orders—
  - a. must include provision requiring the proceedings of the Assembly to be held in public, and for proceedings of a committee of the Assembly or a sub-committee of such a committee to be held in public except in circumstances provided for in the standing orders, and
  - b. may include provision as to the conditions to be complied with by members of the public attending the proceedings (including provision for excluding any member of the public who does not comply with the conditions).
6. The standing orders must include provision—
  - a. for reporting the proceedings of the Assembly, and for reporting proceedings of committees of the Assembly and sub-committees of such committees which are held in public, and
  - b. for publishing the reports of proceedings as soon as reasonably practicable after the proceedings take place.
7. The Assembly may by resolution remake or revise the standing orders; but if the motion for a resolution to remake or revise the standing orders is passed on a vote, it has no effect unless at least two-thirds of the Assembly members voting support it.
8. The Clerk must from time to time publish the standing orders.

## 32. Participation by UK Ministers etc

1. The Secretary of State for Wales is entitled to participate in proceedings of the Assembly but not to vote.
2. The standing orders must include provision for any documents which—
  - a. contain material relating to any proceedings of the Assembly which have taken place or are to take place, and
  - b. are made available to all Assembly members,  
to be made available to the Secretary of State for Wales no later than the time when they are made available to Assembly members.



3. The standing orders may make provision for—
  - a. the participation of the Secretary of State for Wales in proceedings of any committee of the Assembly, or any sub-committee of any such committee, and
  - b. the participation in any Assembly proceedings of other Ministers of the Crown and of persons serving in the department of the Secretary of State for Wales or of any other Minister of the Crown.
4. The provision made by virtue of subsection (3) may not include provision conferring any right to vote.
5. The standing orders may include provision for the making available of documents or information in connection with participation in Assembly proceedings pursuant to, or to standing orders made under, this section.

### **33. Consultation about UK Government's legislative programme**

1. As soon as is reasonably practicable after the beginning of each session of Parliament, the Secretary of State for Wales must undertake with the Assembly such consultation about the UK Government's legislative programme for the session as appears to the Secretary of State to be appropriate.
2. The consultation in relation to the UK Government's legislative programme for a session must include participating in proceedings of the Assembly relating to it on at least one occasion.
3. For this purpose the UK Government's legislative programme for a session of Parliament consists of the bills which, at the beginning of the session, are intended to be introduced into either House of Parliament during the session by a Minister of the Crown.
4. If, at any time after the beginning of a session of Parliament, it is decided that a bill should be introduced into either House of Parliament during the session by a Minister of the Crown and no consultation about the bill has been undertaken under subsection (1), the Secretary of State for Wales must undertake with the Assembly such consultation about the bill as appears to the Secretary of State to be appropriate.
5. This section does not require the undertaking of consultation with the Assembly about a bill if it appears to the Secretary of State for Wales that there are considerations relating to the bill that make such consultation inappropriate.

### **34. Participation by Counsel General**

1. If not an Assembly member the Counsel General may participate in Assembly proceedings to the extent permitted by the standing orders, but may not vote.
2. And the standing orders may in other respects provide that they are to apply to the Counsel General if not an Assembly member as to an Assembly member.
3. The Counsel General may, in any Assembly proceedings, decline to answer any question or produce any document concerning the operation of the system of criminal prosecution in any particular case if considering that answering the question or producing the document—
  - a. might prejudice criminal proceedings in the case, or
  - b. would otherwise be contrary to the public interest.

## 35. Equality of treatment

1. The Assembly must, in the conduct of Assembly proceedings, give effect, so far as is both appropriate in the circumstances and reasonably practicable, to the principle that the English and Welsh languages should be treated on a basis of equality.
2. The Assembly must make appropriate arrangements with a view to securing that Assembly proceedings are conducted with due regard to the principle that there should be equality of opportunity for all people.

## 36. Integrity

1. The standing orders must include provision—
  - a. for a register of interests of Assembly members, and
  - b. for the register to be published and made available for public inspection.
2. The standing orders must require Assembly members to register in the register of interests registrable interests, as defined for the purposes of this subsection.
3. The standing orders must require any Assembly member who has—
  - a. a financial interest, as defined for the purposes of this subsection, or
  - b. any other interest, or an interest of any other kind, as so defined, in any matter to declare that interest before taking part in Assembly proceedings relating to that matter.
4. The standing orders may include provision for preventing or restricting the participation in any Assembly proceedings of an Assembly member who has an interest within subsection (2) or (3) in any matter to which the proceedings relate.
5. The standing orders must include provision prohibiting an Assembly member from—
  - a. advocating or initiating any cause or matter on behalf of any person, by any means specified in the standing orders, in consideration of any payment or benefit in kind of a description so specified, or
  - b. urging, in consideration of any such payment or benefit in kind, any other Assembly member to advocate or initiate any cause or matter on behalf of any person by any such means.
6. The standing orders must include provision about (or for the making of a code or protocol about) the different roles and responsibilities of Assembly constituency members and Assembly regional members; and—
  - a. Assembly constituency members must not describe themselves in a manner which suggests that they are Assembly regional members, and
  - b. Assembly regional members must not describe themselves in a manner which suggests that they are Assembly constituency members.

7. An Assembly member who—
  - a. takes part in Assembly proceedings without having complied with, or in contravention of, any provision included in the standing orders in pursuance of subsections (2) to (4), or
  - b. contravenes any provision included in the standing orders in pursuance of subsection (5),
 commits an offence.
8. A person guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
9. A prosecution for an offence under subsection (7) cannot be instituted except by or with the consent of the Director of Public Prosecutions.
10. The validity of any Assembly proceedings is not affected by any contravention or failure to comply with any provision included in the standing orders in pursuance of this section.
11. In this section—
  - a. references to an Assembly member (apart from those in subsection (6)) include the Counsel General, if not an Assembly member, and
  - b. “financial interest” includes a benefit in kind.

## Subheading 11: Witnesses and documents

### 37. Power to call

1. Subject as follows, the Assembly may require any person—
  - a. to attend Assembly proceedings for the purpose of giving evidence, or
  - b. to produce for the purposes of the Assembly (or a committee of the Assembly or a sub-committee of such a committee) documents in the possession, or under the control, of the person,
 

concerning any matter relevant to the exercise by the Welsh Ministers of any of their functions, relevant to the exercise of any of the Auditor General for Wales’ functions, or relevant to the oversight and supervision of the Auditor General for Wales, or to the oversight and supervision of the exercise of any of his or her functions.
2. The Assembly may not impose a requirement under subsection (1) on a person who is not involved in the exercise of functions, or the carrying on of activities, in relation to Wales or the Welsh zone.
3. The Assembly may not impose a requirement under subsection (1) on a person who—
  - a. is or has been a Minister of the Crown, or
  - b. serves or has served in the department of a Minister of the Crown, in relation to the exercise of any functions of a Minister of the Crown.

4. The Assembly—
  - a. may not impose a requirement under subsection (1) on a person who is a full-time judge of any court, and
  - b. may not impose such a requirement on a person who is not within paragraph (a) but who is or has been a member of any court or tribunal in connection with the exercise of functions as such a member.
5. Where a requirement under subsection (1) is imposed on a person who is or has been a member of the staff of the Welsh Assembly Government (or a person seconded to work for the Welsh Assembly Government) in relation to the exercise of any functions of the Welsh Ministers, the First Minister or the Counsel General, any of them may issue a direction under subsection (6).
6. A direction under this subsection is a direction—
  - a. that the person on whom the requirement was imposed need not comply with it, and
  - b. that the requirement is instead to be complied with by another person specified in the direction.
7. The powers conferred by subsection (1)—
  - a. may be exercised by and for the purposes of the Audit Committee, and
  - b. may be exercised by and for the purposes of any other committee of the Assembly, or any sub-committee of any committee of the Assembly, if the committee or sub-committee is expressly authorised to do so by the Assembly (whether by the standing orders or otherwise).
8. A person is not obliged under this section to answer any question or produce any document which the person would be entitled to refuse to answer or produce in or for the purposes of proceedings in a court in England and Wales.
9. A person acting as prosecutor in criminal proceedings is not obliged under this section to answer any question or produce any document concerning the operation of the system of criminal prosecution in any particular case if the appropriate officer—
  - a. considers that answering the question or producing the document might prejudice criminal proceedings in the case or would otherwise be contrary to the public interest, and
  - b. has authorised the person to decline to answer the question or produce the document on that ground.
10. In subsection (9) “the appropriate officer” means—
  - a. if the proceedings were instituted by or on behalf of the Welsh Ministers, the First Minister or the Counsel General, the Counsel General, and
  - b. otherwise, the Attorney General.

## 38. Notice

1. A requirement under section 37 is to be imposed on a person by the Clerk giving the person notice in writing specifying—
  - a. whether the requirement is imposed for the purposes of the Assembly or a specified committee or sub-committee, and
  - b. the matters mentioned in either paragraph (a) or paragraph (b) of subsection (2).
2. Those matters are—
  - a. the time and place at which the person is to attend and the particular subject concerning which the person is required to give evidence;
  - b. the documents, or types of documents, which the person is to produce, the date by which and person to whom they are to be produced and the particular subject concerning which they are required.
3. Notice under subsection (1) is to be given—
  - a. in the case of an individual, by sending it in accordance with subsection (4) addressed to the person at the person's usual or last known address or, where the person has given an address for service of the notice, at that address, or
  - b. in any other case, by so sending it addressed to the person at the person's registered or principal office.
4. A notice is sent in accordance with this subsection if it is sent—
  - a. by a registered post service (within the meaning of the Postal Services Act 2000 (c. 26)), or
  - b. by a postal service which provides for its delivery by post to be recorded.
5. If a direction is issued under subsection (6) of section 37 in relation to a requirement imposed under subsection (1) of that section, the person or persons by whom it is issued must give notice in writing that the direction has been issued—
  - a. if the requirement was imposed for the purposes of the Assembly, to the Presiding Officer, and
  - b. otherwise, to the person who chairs the committee or sub-committee for the purposes of which it was imposed.

## 39. Offences

1. A person to whom a notice under section 38(1) has been given commits an offence if the person—
  - a. refuses or fails without reasonable excuse to attend proceedings as required by the notice,

- b. refuses or fails without reasonable excuse, when attending proceedings as required by the notice, to answer any question concerning the subjects specified in the notice,
  - c. refuses or fails without reasonable excuse to produce any document required to be produced by the notice, or
  - d. intentionally alters, suppresses, conceals or destroys any such document.
2. Subsection (1) is subject to sections 34(3) and 37(5), (6), (8) and (9).
  3. If a person charged with an offence under subsection (1)(a), (b) or (c) adduces evidence of a reasonable excuse for the refusal or failure, it is for the prosecution to prove that the person did not have such an excuse.
  4. A person guilty of an offence under subsection (1) is liable on summary conviction—
    - a. to a fine not exceeding level 5 on the standard scale,
    - b. to imprisonment for a term not exceeding 51 weeks, or
    - c. to both.
  5. Where an offence under subsection (1) which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
    - a. a director, manager, secretary or other similar officer of the body corporate, or
    - b. any person who was purporting to act in any such capacity, that person, as well as the body corporate, is guilty of that offence and liable to be proceeded against accordingly.
  6. In subsection (5) “director”, in the case of a body corporate whose affairs are managed by its members, means a member of the body corporate.

## 40. General

1. The Presiding Officer or such other person as may be authorised by the standing orders may—
  - a. require any person giving evidence in Assembly proceedings to take an oath (or make an affirmation), and
  - b. administer the oath (or affirmation) to the person.
2. A person commits an offence if the person—
  - a. is required to attend Assembly proceedings for the purpose of giving evidence by a notice under section 38(1), and
  - b. refuses to take an oath (or make an affirmation) when required to do so for the purposes of the Assembly proceedings.

3. A person guilty of an offence under subsection (2) is liable on summary conviction—
  - a. to a fine not exceeding level 5 on the standard scale,
  - b. to imprisonment for a term not exceeding 51 weeks, or
  - c. to both.
4. The standing orders may provide for the payment of allowances and expenses to persons—
  - a. attending Assembly proceedings for the purpose of giving evidence, or
  - b. producing for the purposes of the Assembly (or a committee of the Assembly or a sub-committee of such a committee) documents which they have been required or requested to produce, whether or not in pursuance of a notice under section 38(1).
5. The provision made by virtue of subsection (4) may confer functions on the Assembly Commission.
6. For the purposes of sections 37 to 39 and this section—
  - a. a person is to be taken to comply with a requirement to produce a document if the person produces a copy of the document or an extract of the relevant part of the document,
  - b. “document” means anything in which information is recorded in any form, and
  - c. references to producing a document are to producing the information recorded in it in a visible and legible form.

## Subheading 12: Legal issues

### 41. Proceedings by or against Assembly etc

1. Proceedings by or against the Assembly are to be instituted by or against the Assembly Commission on behalf of the Assembly.
2. Proceedings by or against—
  - a. the Presiding Officer or Deputy Presiding Officer, or
  - b. a member of the staff of the Assembly,  
are (unless instituted against or by the Assembly Commission) to be instituted by or against the Assembly Commission on behalf of the Presiding Officer, Deputy Presiding Officer or member of staff.
3. In any proceedings against the Assembly the court must not grant a mandatory, prohibiting or quashing order or an injunction, make an order for specific performance or stay the proceedings but may instead make a declaration.

4. In any proceedings against—
  - a. any Assembly member,
  - b. the Presiding Officer or Deputy Presiding Officer,
  - c. any member of the staff of the Assembly, or
  - d. the Assembly Commission,the court must not grant a mandatory, prohibiting or quashing order or an injunction, make an order for specific performance or stay the proceedings if the effect of doing so would be to give any relief against the Assembly which could not have been given in proceedings against the Assembly.
5. References in this section to an order include an order which is not final.

## 42. Defamation

1. For the purposes of the law of defamation—
  - a. any statement made in Assembly proceedings, and
  - b. the publication under the authority of the Assembly of any statement, is absolutely privileged.
2. The Welsh Ministers may by regulations make provision for and in connection with establishing in any legal proceedings that any statement or publication is absolutely privileged by virtue of subsection (1).
3. No regulations are to be made under subsection (2) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.
4. In this section “statement” has the same meaning as in the Defamation Act 1996 (c. 31).

## 43. Contempt of court

1. The strict liability rule does not apply in relation to any publication—
  - a. made in, for the purposes of, or for purposes incidental to, Assembly proceedings, or
  - b. to the extent that it consists of a report of Assembly proceedings which either is made by or under the authority of the Assembly or is fair and accurate and made in good faith.
2. In subsection (1)—
  - “the strict liability rule”, and
  - “publication”,have the same meaning as in the Contempt of Court Act 1981 (c. 49).



## 44. Corrupt practices

The Assembly and the Assembly Commission are public bodies for the purposes of the Prevention of Corruption Acts 1889 to 1916.

## Part 2: Welsh Assembly Government

### Subheading 1: Government

## 45. Welsh Assembly Government

1. There is to be a Welsh Assembly Government, or Llywodraeth Cynulliad Cymru, whose members are—
  - a. the First Minister or Prif Weinidog (see sections 46 and 47),
  - b. the Welsh Ministers, or Gweinidogion Cymru, appointed under section 48,
  - c. the Counsel General to the Welsh Assembly Government or Cwnsler Cyffredinol i Lywodraeth Cynulliad Cymru (see section 49) (referred to in this Act as “the Counsel General”), and
  - d. the Deputy Welsh Ministers or Dirprwy Weinidogion Cymru (see section 50).
2. In this Act and in any other enactment or instrument the First Minister and the Welsh Ministers appointed under section 48 are referred to collectively as the Welsh Ministers.

### Subheading 2: Ministers, staff etc

## 46. The First Minister

1. The First Minister is to be appointed by Her Majesty after nomination in accordance with section 47.
2. The First Minister holds office at Her Majesty's pleasure.
3. The First Minister may at any time tender resignation to Her Majesty and ceases to hold office as First Minister when it is accepted.
4. A person ceases to hold office as the First Minister if another person is appointed to that office.
5. The functions of the First Minister are exercisable by a person designated by the Presiding Officer if—
  - a. the office of the First Minister is vacant,
  - b. the First Minister is for any reason unable to act, or
  - c. the First Minister has ceased to be an Assembly member.

6. A person may not be designated to exercise the functions of the First Minister unless the person is—
  - a. an Assembly member, or
  - b. if the Assembly has been dissolved, a person who ceased to be an Assembly member by reason of the dissolution.
7. A person may be designated to exercise the functions of the First Minister only on the recommendation of the Welsh Ministers (unless there is no-one holding office as a Welsh Minister appointed under section 48).
8. If a person is designated to exercise the functions of the First Minister, the designation continues to have effect even if the Assembly is dissolved.

## 47. Choice of First Minister

1. If one of the following events occurs, the Assembly must, before the end of the relevant period, nominate an Assembly member for appointment as First Minister.
2. The events are—
  - a. the holding of a poll at a general election,
  - b. the Assembly resolving that the Welsh Ministers no longer enjoy the confidence of the Assembly,
  - c. the First Minister tendering resignation to Her Majesty,
  - d. the First Minister dying or becoming permanently unable to act and to tender resignation, and
  - e. the First Minister ceasing to be an Assembly member otherwise than by reason of a dissolution.
3. The relevant period is the period of 28 days beginning with the day on which the event occurs; but—
  - a. if another of those events occurs within that period, the relevant period is (subject to paragraph (b)) extended to end with the period of 28 days beginning with the day on which that other event occurs, and
  - b. the relevant period ends if the Assembly passes a resolution under section 5(2)(a) or when Her Majesty appoints a person as the First Minister.
4. The Presiding Officer must recommend to Her Majesty the appointment of the person nominated by the Assembly under subsection (1).

## 48. Welsh Ministers

1. The First Minister may, with the approval of Her Majesty, appoint Welsh Ministers from among the Assembly members.
2. A Welsh Minister appointed under this section holds office at Her Majesty's pleasure.

3. A Welsh Minister appointed under this section may be removed from office by the First Minister.
4. A Welsh Minister appointed under this section may at any time resign.
5. A Welsh Minister appointed under this section must resign if the Assembly resolves that the Welsh Ministers no longer enjoy the confidence of the Assembly.
6. A Welsh Minister appointed under this section who resigns ceases to hold office immediately.
7. A Welsh Minister appointed under this section ceases to hold office on ceasing to be an Assembly member otherwise than by reason of a dissolution.

## 49. Counsel General

1. The Counsel General is to be appointed by Her Majesty on the recommendation of the First Minister.
2. The Counsel General may be removed from office by Her Majesty on the recommendation of the First Minister.
3. No recommendation for the appointment or removal of a person as the Counsel General may be made by the First Minister without the agreement of the Assembly.
4. The Counsel General may at any time tender resignation to Her Majesty and ceases to hold office as Counsel General when it is accepted.
5. The Counsel General ceases to hold office if an Assembly member is nominated under section 47(1) for appointment as First Minister.
6. The functions of the Counsel General are exercisable by a person designated by the First Minister if—
  - a. the office of the Counsel General is vacant, or
  - b. the Counsel General is for any reason unable to act.
7. But subsection (6) ceases to have effect at the end of the period of six months beginning with the day on which a person is designated under it and does not have effect again until after the office of the Counsel General has been filled, or the Counsel General has again become able to act.
8. The designation of a person under subsection (6) ceases to have effect if an Assembly member is nominated under section 47(1) for appointment as First Minister.
9. A person holding office as the First Minister, a Welsh Minister appointed under section 48 or a Deputy Welsh Minister may not be appointed as the Counsel General or designated under subsection (6); and the Counsel General or a person so designated may not be appointed to any of those offices.

## 50. Deputy Welsh Ministers

1. The First Minister may, with the approval of Her Majesty, appoint Deputy Welsh Ministers from among the Assembly members to assist the First Minister, a Welsh Minister appointed under section 48 or the Counsel General in the exercise of functions.
2. A Deputy Welsh Minister holds office at Her Majesty's pleasure.
3. A Deputy Welsh Minister may be removed from office by the First Minister.
4. A Deputy Welsh Minister may at any time resign.
5. A Deputy Welsh Minister must resign if the Assembly resolves that the Welsh Ministers no longer enjoy the confidence of the Assembly.

6. A Deputy Welsh Minister who resigns ceases to hold office immediately.
7. A Deputy Welsh Minister ceases to hold office on ceasing to be an Assembly member otherwise than by reason of a dissolution.

## 51. Limit on number of Ministers

1. No more than twelve persons are to hold a relevant Welsh Ministerial office at any time.
2. A relevant Welsh Ministerial office means the office of Welsh Minister appointed under section 48 or the office of Deputy Welsh Minister.

## 52. Staff

1. The Welsh Ministers may appoint persons to be members of the staff of the Welsh Assembly Government.
2. Service as a member of the staff of the Welsh Assembly Government is service in the civil service of the State.
3. See Part 1 of the Constitutional Reform and Governance Act 2010 (in particular, sections 3 and 4) for provision affecting—
  - a. subsection (1), and
  - b. any other enactment about the appointment of persons as members of the staff of the Welsh Assembly Government.
4. See also section 1 of the Civil Service (Management Functions) Act 1992 under which functions conferred on the Minister for the Civil Service by section 3 of the Constitutional Reform and Governance Act 2010 may be delegated to the Welsh Ministers etc.
5. The Welsh Ministers are to pay the salaries and expenses of the members of the staff of the Welsh Assembly Government.
6. Section 1(2) and (3) of the Superannuation Act 1972 (c. 11) (delegation of functions relating to civil service superannuation schemes by Minister for the Civil Service to another Minister etc. and consultation by that Minister or another Minister) have effect as if the references to a Minister of the Crown other than the Minister for the Civil Service included the Welsh Ministers.
7. The Welsh Ministers must make payments to the Minister for the Civil Service, at such times as the Minister for the Civil Service may determine, of such amounts as may be so determined in respect of—
  - a. the provision of pensions, allowances or gratuities by virtue of section 1 of the Superannuation Act 1972 to or in respect of persons who are or have been members of the staff of the Welsh Assembly Government, and
  - b. the expenses incurred in administering those pensions, allowances and gratuities.
8. The Welsh Ministers may make payments towards the provision of pensions, allowances or gratuities to or in respect of any person who is or has been a member of the staff of the Welsh Assembly Government.
9. Without prejudice to any rule of law with respect to the carrying out of functions by members of the civil service of the State under authority, the Welsh Ministers, the First Minister or the Counsel General may authorise the staff of the Welsh Assembly Government to carry out any function on their behalf.
10. [Omitted]

## Subheading 3: Remuneration, oaths etc

### 53. Remuneration

1. Provision must be made for the payment of salaries to persons to whom this section applies.
2. Provision may be made for the payment of allowances to persons to whom this section applies.
3. Provision may be made for the payment of pensions, gratuities or allowances to, or in respect of, any person who has ceased to be a person to whom this section applies.
4. Such provision may, in particular, include provision for—
  - a. contributions or payments towards provision for such pensions, gratuities or allowances, and
  - b. the establishment and administration (whether by the Assembly Commission or otherwise) of one or more pension schemes.
5. This section applies to—
  - a. the First Minister,
  - b. every Welsh Minister appointed under section 48,
  - c. the Counsel General, and
  - d. every Deputy Welsh Minister.
6. Sums required for the making of payments by virtue of provision under this section are payable out of the Welsh Consolidated Fund.
7. Provision under this section is to be made by determination made by the Board.
8. The Assembly Commission must give effect to any determination made by the Board under this section.

### 54. Remuneration: supplementary

1. Different provision may be made under section 53 for different cases.
2. The Assembly Commission must ensure that information concerning—
  - a. the amounts paid to each person to whom section 53 applies as salary and allowances, and
  - b. the total amount paid to such persons as salaries and allowances, is published for each financial year F24...
3. The Assembly Commission must lay before the Assembly every determination made by the Board under section 53(7) as soon as is reasonably practicable after it is made.
4. Provision made under section 53(3) does not affect pensions or allowances in payment before the provision was made.

## 55. Oath or affirmation

1. On appointment as the First Minister, a Welsh Minister appointed under section 48 or the Counsel General a person must take the official oath in the form set out in section 3 of the Promissory Oaths Act 1868 (c. 72) (or make the corresponding affirmation).
2. On appointment as the First Minister, a Welsh Minister appointed under section 48, the Counsel General or a Deputy Welsh Minister a person must take the oath of allegiance in the form set out in section 2 of the Promissory Oaths Act 1868 (or make the corresponding affirmation).
3. But subsection (2) does not require a person who is an Assembly member to take the oath of allegiance (or make the corresponding affirmation) again if it has been taken (or made) in compliance with the person's duty on the person's return (or, if returned more than once, most recent return) as an Assembly member.
4. An oath required by this section is to be taken (or the corresponding affirmation made)—
  - a. before one of the Presiding Judges for the Wales and Chester Circuit (or for any appropriate area which is specified in a direction under section 72(4) of the Courts and Legal Services Act 1990 (c. 41)), or
  - b. (if no such Presiding Judge is available) before another judge nominated by the Senior Presiding Judge for England and Wales.
5. Until a person who is required to take an oath (or make an affirmation) by this section in respect of any office has done so, no salary, allowance, gratuity or payment towards the provision of a pension, allowance or gratuity is to be paid under this Act to or in respect of the person as a holder of that office.
6. But subsection (5) does not affect any entitlement to payments in respect of the period before the person took the oath (or made the affirmation) once the person has done so.

## Subheading 4: Functions

### 56. Introduction

1. The persons to whom this section applies have the functions conferred or imposed on them by or by virtue of this Act or any other enactment or prerogative instrument.
2. This section applies to the Welsh Ministers, the First Minister and the Counsel General.

### 57. Exercise of functions

1. Functions may be conferred or imposed on the Welsh Ministers by that name.
2. Functions of the Welsh Ministers, the First Minister and the Counsel General are exercisable on behalf of Her Majesty.
3. Functions of the Welsh Ministers are exercisable by the First Minister or any of the Welsh Ministers appointed under section 48.
4. Any act or omission of, or in relation to, the First Minister or any of the Welsh Ministers appointed under section 48 is to be treated as an act or omission of, or in relation to, each of them.

5. But subsection (4) does not apply in relation to the exercise of functions conferred or imposed on the First Minister alone.
6. Where a function conferred or imposed on the Counsel General is (either generally or in particular circumstances) exercisable concurrently by the Welsh Ministers or the First Minister, subsection (4) applies in relation to the exercise of the function (or to its exercise in those circumstances) as if the Counsel General were included among the Welsh Ministers.

## 58. Transfer of Ministerial functions

1. Her Majesty may by Order in Council—
  - a. provide for the transfer to the Welsh Ministers, the First Minister or the Counsel General of any function so far as exercisable by a Minister of the Crown in relation to Wales or the Welsh zone,
  - b. direct that any function so far as so exercisable is to be exercisable by the Welsh Ministers, the First Minister or the Counsel General concurrently with the Minister of the Crown, or
  - c. direct that any function so far as exercisable by a Minister of the Crown in relation to Wales or the Welsh zone is to be exercisable by the Minister of the Crown only with the agreement of, or after consultation with, the Welsh Ministers, the First Minister or the Counsel General.
- 1A. An Order in Council under this section may not make provision about a function of a Minister of the Crown exercisable in relation to the area of the Welsh zone beyond the seaward limit of the territorial sea unless the function is connected with fishing, fisheries or fish health.
- 1B. Subsection (1A) does not have effect in relation to an Order in Council to the extent that it contains provision made by virtue of paragraph 4 of Schedule 3 (functions exercisable beyond the territorial sea).
2. An Order in Council under this section may, in particular, provide for any function exercisable by the Welsh Ministers, the First Minister or the Counsel General by virtue of an Order in Council under subsection (1)(a) or (b) to be exercisable either generally or in such circumstances as may be specified in the Order in Council, concurrently with any other of the Welsh Ministers, the First Minister or the Counsel General.
3. An Order in Council under this section may make such modifications of—
  - a. any enactment (including any enactment comprised in or made under this Act) or prerogative instrument, or
  - b. any other instrument or document,
 as Her Majesty considers appropriate in connection with the provision made by the Order in Council.
4. No recommendation is to be made to Her Majesty in Council to make an Order in Council under this section unless a draft of the statutory instrument containing the Order in Council—
  - a. has been laid before, and approved by a resolution of, each House of Parliament, and
  - b. has been approved by the Welsh Ministers.

- Head of state powers
- Advisory bodies to the head of state

5. For further provision in connection with the transfer etc. of functions by Orders in Council under this section see Schedule 3.

## 59. Implementation of EU law

1. The power to designate a Minister of the Crown or government department under section 2(2) of the European Communities Act 1972 (c. 68) may be exercised to designate the Welsh Ministers.
2. Accordingly, the Welsh Ministers may exercise the power conferred by section 2(2) of the European Communities Act 1972 in relation to any matter, or for any purpose, if they have been designated in relation to that matter or for that purpose, but subject to such restrictions or conditions (if any) as may be specified by the Order in Council designating them.
3. A statutory instrument containing provision made by the Welsh Ministers in the exercise of that power, if made without a draft having been approved by resolution of the Assembly, is subject to annulment in pursuance of a resolution of the Assembly.
4. Paragraph 2(2) of Schedule 2 to the European Communities Act 1972 (Parliamentary procedure) does not apply to the statutory instrument unless it contains provision—
  - a. made by a Minister of the Crown or government department (whether or not jointly with the Welsh Ministers),
  - b. relating to an English border area, or
  - c. relating to a cross-border body (and not relating only to the exercise of functions, or the carrying on of activities, by the body in or with respect to Wales, the Welsh zone or a part of Wales or the Welsh zone).
5. The power conferred by section 56 of the Finance Act 1973 (c. 51) (services provided in pursuance of a EU obligation etc.) on the Minister in charge of a government department to make (with the consent of the Treasury) regulations prescribing, or providing for the determination of, fees and charges in respect of things done by the department may be exercised by the Welsh Ministers (with the consent of the Treasury) for prescribing, or providing for the determination of, fees and charges in respect of corresponding things done by the Welsh Ministers.
6. A statutory instrument containing regulations made by the Welsh Ministers in the exercise of that power is subject to annulment in pursuance of a resolution of the Assembly.
7. Section 56(4) of the Finance Act 1973 does not cause the statutory instrument to be subject to annulment in pursuance of a resolution of either House of Parliament unless it contains regulations—
  - a. made by a Minister of the Crown or government department (whether or not jointly with the Welsh Ministers),
  - b. relating to an English border area, or
  - c. relating to a cross-border body (and not relating only to the exercise of functions, or the carrying on of activities, by the body in or with respect to Wales, the Welsh zone or a part of Wales or the Welsh zone).



## 60. Promotion etc. of well-being

1. The Welsh Ministers may do anything which they consider appropriate to achieve any one or more of the following objects—
  - a. the promotion or improvement of the economic well-being of Wales,
  - b. the promotion or improvement of the social well-being of Wales, and
  - c. the promotion or improvement of the environmental well-being of Wales.
2. The power under subsection (1) may be exercised in relation to or for the benefit of—
  - a. the whole or any part of Wales, or
  - b. all or any persons resident or present in Wales.
3. The power under subsection (1) includes power to do anything in relation to or for the benefit of any area outside Wales, or all or any persons resident or present anywhere outside Wales, if the Welsh Ministers consider that it is likely to achieve one or more of the objects in that subsection.
4. The power under subsection (1) includes power—
  - a. to enter into arrangements or agreements with any person,
  - b. to co-operate with, or facilitate or co-ordinate the activities of, any person,
  - c. to exercise on behalf of any person any functions of that person, and
  - d. to provide staff, goods, services or accommodation to any person.

## 61. Support of culture etc

The Welsh Ministers may do anything which they consider appropriate to support—

- a. archaeological remains in Wales,
- b. ancient monuments in Wales,
- c. buildings and places of historical or architectural interest in Wales,
- d. historic wrecks in Wales,
- e. arts and crafts relating to Wales,
- f. museums and galleries in Wales,
- g. libraries in Wales,

- h. archives and historical records relating to Wales,
- i. cultural activities and projects relating to Wales,
- j. sport and recreational activities relating to Wales, and
- k. the Welsh language.

## **62. Representations about matters affecting Wales**

The Welsh Ministers, the First Minister and the Counsel General may make appropriate representations about any matter affecting Wales.

## **63. Consultation about cross-border bodies**

1. A Minister of the Crown must consult the Welsh Ministers—
  - a. before exercising any function which relates to the appointment or removal of a relevant cross-border body,
  - b. before exercising any function which relates to the appointment or removal of any member or office-holder of a relevant cross-border body, other than one who is not concerned in the functions or activities which the body exercises or carries on in or with respect to Wales, and
  - c. before exercising, in relation to a relevant cross-border body, any function the exercise of which might affect Wales in relation to any matter as respects which functions are exercisable by the Welsh Ministers.
2. A body is a relevant cross-border body if it is a cross-border body which exercises functions of a public nature and which is not a government department.
3. Subsection (1) does not apply in relation to the exercise of a function if it is not reasonably practicable to comply with it in relation to the exercise of the function (for reasons of urgency or for any other reasons).
4. If subsection (1) does not apply in relation to the exercise of a function by a Minister of the Crown by reason of subsection (3), the Minister of the Crown must as soon as is reasonably practicable inform the Welsh Ministers of the exercise of the function and of the reasons for its exercise.
5. A failure to comply with subsection (1) in relation to the exercise of a function does not affect the validity of its exercise.

## **64. Polls for ascertaining views of the public**

1. The Welsh Ministers may hold a poll in an area consisting of Wales or any part (or parts) of Wales for the purpose of ascertaining the views of those polled about whether or how any of the functions of the Welsh Ministers (other than that under section 62) should be exercised.

2. The persons entitled to vote in a poll under this section are those who—
  - a. would be entitled to vote as electors at a local government election in an electoral area wholly or partly included in the area in which the poll is held, and
  - b. are registered in the register of local government electors at an address within the area in which the poll is held.
3. The Welsh Ministers may by order make provision—
  - a. as to the conduct of polls (or any poll) under this section, or
  - b. for the combination of polls (or any poll) under this section with polls at any elections.
4. An order under subsection (3) may apply or incorporate, with or without modifications or exceptions, any provision of or made under any enactment relating to elections or referendums; and the provision which may be made under paragraph (a) of that subsection includes, in particular, provision for disregarding alterations in a register of electors.
5. A statutory instrument containing an order under subsection (3) is subject to annulment in pursuance of a resolution of the Assembly.

## 65. Private bills

1. The Welsh Ministers may promote private bills in Parliament and may oppose any private bill in Parliament.
2. Subsection (1) does not cause the Welsh Ministers to have power to apply for orders under section 1 or 3 of the Transport and Works Act 1992 (c. 42) by virtue of section 20 of that Act (which gives a body with power to promote and oppose private bills power to apply for and object to such orders).

## 66. Provision of information to Treasury

Where it appears to the Treasury that any information in the possession, or under the control, of the Welsh Ministers is required for the exercise of any function by the Treasury, the Treasury may require the Welsh Ministers to provide the information to the Treasury in such form as the Treasury may reasonably specify.

## 67. Legal proceedings

1. Where the Counsel General considers it appropriate for the promotion or protection of the public interest, the Counsel General may institute in the Counsel General's name, defend or appear in any legal proceedings to which this section applies.
2. This section applies to legal proceedings relating to matters with respect to which any functions of the Welsh Ministers, the First Minister or the Counsel General are exercisable.

## 68. Contracts

1. The Secretary of State may by order provide that the Local Government (Contracts) Act 1997 (c. 65) applies in relation to contracts entered into by the Welsh Ministers, the First Minister or the Counsel General but subject to any appropriate modifications.

2. A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

## 69. Charges for documents

1. The Welsh Ministers may make a charge for supplying copies of (or of any part of) any document which they publish or make available for public inspection.
2. Subsection (1) has effect subject to any provision contained in, or made under, any enactment which makes provision for—
  - a. the making of charges for the inspection of documents,
  - b. the making of charges for supplying copies of documents (or parts of documents), or
  - c. the supply of copies of documents (or parts of documents) free of charge.
3. This section applies to the First Minister and the Counsel General as to the Welsh Ministers.

## 70. Financial assistance

1. The Welsh Ministers may give financial assistance (whether by way of grant, loan or guarantee) 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 attain in the exercise of any of their functions.
2. The Welsh Ministers may attach conditions to the giving of financial assistance by them; and the conditions which may be attached include, in particular, conditions requiring the repayment of the whole or any part of a grant, or the making of any other payments, in any circumstances.
3. This section applies in relation to the First Minister and the Counsel General as in relation to the Welsh Ministers.

## 71. Supplementary

1. The persons to whom this section applies may do anything (including the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the exercise of any of their other functions.
2. This section applies to the Welsh Ministers, the First Minister and the Counsel General.

## Subheading 5: Inclusive” approach to exercise of functions

## 72. Partnership Council

1. The Welsh Ministers must establish and maintain a body to be known as the Partnership Council for Wales or Cyngor Partneriaeth Cymru (“the Partnership Council”).
2. The Partnership Council is to consist of members appointed by the Welsh Ministers from among—
  - a. the Welsh Ministers,

- b. the Deputy Welsh Ministers, and
- c. the members of local authorities in Wales.
- 3. Before appointing members of the Partnership Council under subsection (2)(c), the Welsh Ministers must consult such associations of local authorities in Wales as they consider appropriate.
- 4. The Partnership Council may—
  - a. give advice to the Welsh Ministers about matters affecting the exercise of any of their functions,
  - b. make representations to the Welsh Ministers about any matters affecting, or of concern to, those involved in local government in Wales, and
  - c. give advice to those involved in local government in Wales.
- 5. For the purposes of this section the following are local authorities in Wales—
  - a. county councils, county borough councils and community councils in Wales,
  - b. National Park authorities for National Parks in Wales,
  - c. police and crime commissioners for police areas in Wales,
  - d. fire and rescue authorities for areas in Wales, and
  - e. authorities of any description specified for the purposes of this paragraph by order made by the Welsh Ministers.
- 6. No order may be made under subsection (5)(e) unless the Welsh Ministers have consulted the Partnership Council.
- 7. A statutory instrument containing an order under subsection (5)(e) is subject to annulment in pursuance of a resolution of the Assembly.

### 73. Local government scheme

- 1. The Welsh Ministers must make a scheme (“the local government scheme”) setting out how they propose, in the exercise of their functions, to sustain and promote local government in Wales.
- 2. The Welsh Ministers—
  - a. must keep the local government scheme under review, and
  - b. may from time to time remake or revise it.
- 3. In determining the provision to be included in the local government scheme, the Welsh Ministers must have regard to any advice which has been given, and to any representations which have been made, to them by the Partnership Council.
- 4. The Welsh Ministers must publish the local government scheme when they make it and whenever they remake it; and, if they revise the scheme without remaking it, they must publish either the revisions or the scheme as revised (as they consider appropriate).

5. If the Welsh Ministers publish a scheme or revisions under subsection (4) they must lay a copy of the scheme or revisions before the Assembly.
6. After each financial year the Welsh Ministers must—
  - a. publish a report of how the proposals set out in the local government scheme were implemented in that financial year, and
  - b. lay a copy of the report before the Assembly.

## 74. Voluntary sector scheme

1. The Welsh Ministers must make a scheme (“the voluntary sector scheme”) setting out how they propose, in the exercise of their functions, to promote the interests of relevant voluntary organisations.
2. In this section “relevant voluntary organisations” means bodies (other than local authorities or other public bodies) whose activities—
  - a. are carried on otherwise than for profit, and
  - b. directly or indirectly benefit the whole or any part of Wales (whether or not they also benefit any other area).
3. In determining the provision to be included in the voluntary sector scheme, the Welsh Ministers must consider how they intend to exercise such of their functions as relate to matters affecting, or of concern to, relevant voluntary organisations.
4. The voluntary sector scheme must specify—
  - a. how the Welsh Ministers propose to provide assistance to relevant voluntary organisations (whether by grants, loans, guarantees or any other means),
  - b. how the Welsh Ministers propose to monitor the use made of any assistance provided by them to relevant voluntary organisations, and
  - c. how the Welsh Ministers propose to consult relevant voluntary organisations about the exercise of such of their functions as relate to matters affecting, or of concern to, such organisations.
5. The Welsh Ministers—
  - a. must keep the voluntary sector scheme under review, and
  - b. may from time to time remake or revise it.
6. Before making, remaking or revising the voluntary sector scheme, the Welsh Ministers must consult such relevant voluntary organisations as they consider appropriate.
7. The Welsh Ministers must publish the voluntary sector scheme when they make it and whenever they remake it; and, if they revise the scheme without remaking it, they must publish either the revisions or the scheme as revised (as they consider appropriate).
8. If the Welsh Ministers publish a scheme or revisions under subsection (7) they must lay a copy of the scheme or revisions before the Assembly.

9. After each financial year the Welsh Ministers must—
  - a. publish a report of how the proposals set out in the voluntary sector scheme were implemented in that financial year, and
  - b. lay a copy of the report before the Assembly.

## 75. Business scheme

1. The Welsh Ministers must make a scheme (“the business scheme”) setting out how they propose, in the exercise of their functions, to take account of the interests of business.
2. The business scheme must specify how the Welsh Ministers propose—
  - a. to carry out consultation about the exercise of such of their functions as relate to matters affecting the interests of business, and
  - b. to consider the impact of the exercise of their functions on the interests of business.
3. The Welsh Ministers—
  - a. must keep the business scheme under review, and
  - b. may from time to time remake or revise it.
4. Before making, remaking or revising the business scheme, the Welsh Ministers must consult such organisations representative of business (including trade unions) and such other organisations as they consider appropriate.
5. The Welsh Ministers must publish the business scheme when they make it and whenever they remake it; and, if they revise the scheme without remaking it, they must publish either the revisions or the scheme as revised (as they consider appropriate).
6. If the Welsh Ministers publish a scheme or revisions under subsection (5) they must lay a copy of the scheme or revisions before the Assembly.
7. The Welsh Ministers must—
  - a. within the period of two years beginning with the day on which the business scheme is first made, and
  - b. subsequently at intervals of no more than two years, publish a report of how the proposals set out in the business scheme have been implemented.
8. The Welsh Ministers must lay before the Assembly a copy of each report published under subsection (7).

## 76. Regulatory impact assessments

1. The Welsh Ministers must make a code of practice setting out their policy on—
  - a. the carrying out of regulatory impact assessments in connection with relevant Welsh subordinate legislation, and

- b. the carrying out of consultation in connection with regulatory impact assessments,  
("the regulatory impact assessment code").
- 2. For the purposes of this section—
  - a. a regulatory impact assessment is an assessment as to the likely costs and benefits of complying with relevant Welsh subordinate legislation, and
  - b. subordinate legislation is relevant Welsh subordinate legislation if it is made by the Welsh Ministers, the First Minister or the Counsel General and the statutory instrument (or a draft of the statutory instrument) containing it is required to be laid before the Assembly.
- 3. The Welsh Ministers—
  - a. must keep the regulatory impact assessment code under review, and
  - b. may from time to time remake or revise it.
- 4. Before making, remaking or revising the regulatory impact assessment code, the Welsh Ministers must consult such persons as they consider appropriate.
- 5. The Welsh Ministers must publish the regulatory impact assessment code when they make it and whenever they remake it; and, if they revise the code without remaking it, they must publish either the revisions or the code as revised (as they consider appropriate).
- 6. If the Welsh Ministers publish a code or revisions under subsection (5) they must lay a copy of the code or revisions before the Assembly.

## 77. Equality of opportunity

- 1. The Welsh Ministers must make appropriate arrangements with a view to securing that their functions are exercised with due regard to the principle that there should be equality of opportunity for all people.
- 2. After each financial year the Welsh Ministers must publish a report containing—
  - a. a statement of the arrangements made in pursuance of subsection (1) which had effect during that financial year, and
  - b. an assessment of how effective those arrangements were in promoting equality of opportunity,  
and must lay a copy of the report before the Assembly.

## 78. The Welsh language

- 1. The Welsh Ministers must adopt a strategy ("the Welsh language strategy") setting out how they propose to promote and facilitate the use of the Welsh language.
- 2. The Welsh Ministers must adopt a scheme ("the Welsh language scheme") specifying measures which they propose to take, for the purpose mentioned in subsection (3), as to the use of the Welsh language in connection with the provision of services to the public in Wales by them, or by others who—
  - a. are acting as servants or agents of the Crown, or

\* Official or national languages



• Official or national languages

- b. are public bodies (within the meaning of Part 2 of the Welsh Language Act 1993 (c. 38)).
- 3. The purpose referred to in subsection (2) is that of giving effect, so far as is both appropriate in the circumstances and reasonably practicable, to the principle that in the conduct of public business in Wales the English and Welsh languages should be treated on a basis of equality.
- 4. The Welsh Ministers—
  - a. must keep under review both the Welsh language strategy and the Welsh language scheme, and
  - b. may from time to time adopt a new strategy or scheme or revise them.
- 5. Before adopting or revising a strategy or scheme, the Welsh Ministers must consult such persons as they consider appropriate.
- 6. The Welsh Ministers must publish the Welsh language strategy and the Welsh language scheme when they first adopt it and—
  - a. if they adopt a new strategy or scheme they must publish it, and
  - b. if they revise the Welsh language strategy or the Welsh language scheme (rather than adopting a new strategy or scheme) they must publish either the revisions or the strategy or scheme as revised (as they consider appropriate).
- 7. If the Welsh Ministers publish a strategy or scheme, or revisions, under subsection (6) they must lay a copy of the strategy or scheme, or revisions, before the Assembly.
- 8. After each financial year the Welsh Ministers must publish a report of—
  - a. how the proposals set out in the Welsh language strategy were implemented in that financial year and how effective their implementation has been in promoting and facilitating the use of the Welsh language, and
  - b. how the proposals set out in the Welsh language scheme were implemented in that financial year, and must lay a copy of the report before the Assembly.
- 9. For each financial year, the Welsh Ministers must publish a plan setting out how they will implement the proposals set out in the Welsh language strategy during that year.
- 10. The plan must be published as soon as reasonably practicable before the commencement of the financial year to which it relates.

## 79. Sustainable development

- 1. The Welsh Ministers must make a scheme (“the sustainable development scheme”) setting out how they propose, in the exercise of their functions, to promote sustainable development.
- 2. The Welsh Ministers—
  - a. must keep the sustainable development scheme under review, and

- b. may from time to time remake or revise it.
- 3. Before making, remaking or revising the sustainable development scheme, the Welsh Ministers must consult such persons as they consider appropriate.
- 4. The Welsh Ministers must publish the sustainable development scheme when they make it and whenever they remake it; and, if they revise the scheme without remaking it, they must publish either the revisions or the scheme as revised (as they consider appropriate).
- 5. If the Welsh Ministers publish a scheme or revisions under subsection (4) they must lay a copy of the scheme or revisions before the Assembly.
- 6. After each financial year the Welsh Ministers must—
  - a. publish a report of how the proposals set out in the sustainable development scheme were implemented in that financial year, and
  - b. lay a copy of the report before the Assembly.
- 7. In the year following that in which an ordinary general election is (or, apart from section 5(5), would be) held, the Welsh Ministers must—
  - a. publish a report containing an assessment of how effective their proposals (as set out in the scheme and implemented) have been in promoting sustainable development, and
  - b. lay a copy of the report before the Assembly.

## Subheading 6: EU law, human rights and international obligations etc

### 80. EU law

- 1. An EU obligation of the United Kingdom is also an obligation of the Welsh Ministers if and to the extent that the obligation could be implemented (or enabled to be implemented) or complied with by the exercise by the Welsh Ministers of any of their functions.
- 2. Subsection (1) does not apply in the case of an EU obligation of the United Kingdom if—
  - a. it is an obligation to achieve a result defined by reference to a quantity (whether expressed as an amount, proportion or ratio or otherwise), and
  - b. the quantity relates to the United Kingdom (or to an area including the United Kingdom or to an area consisting of a part of the United Kingdom which includes the whole or part of Wales or of the Welsh zone).
- 3. But if such an EU obligation could (to any extent) be implemented (or enabled to be implemented) or complied with by the exercise by the Welsh Ministers of any of their functions, a Minister of the Crown may by order provide for the achievement by the Welsh Ministers (in the exercise of their functions) of so much of the result to be achieved under the EU obligation as is specified in the order.
- 4. The order may specify the time by which any part of the result to be achieved by the Welsh Ministers is to be achieved.

5. No order is to be made by a Minister of the Crown under subsection (3) unless the Minister of the Crown has consulted the Welsh Ministers.
6. A statutory instrument containing an order under subsection (3) is subject to annulment in pursuance of a resolution of either House of Parliament.
7. Where an order under subsection (3) is in force in relation to an EU obligation, to the extent that the EU obligation involves achieving what is specified in the order it is also an obligation of the Welsh Ministers (enforceable as if it were an obligation of the Welsh Ministers under subsection (1)).
8. The Welsh Ministers have no power—
  - a. to make, confirm or approve any subordinate legislation, or
  - b. to do any other act,  
so far as the subordinate legislation or act is incompatible with EU law or an obligation under subsection (7).
9. Subsections (1) and (8) apply to the First Minister and the Counsel General as to the Welsh Ministers.

## 81. Human rights

1. The Welsh Ministers have no power—
  - a. to make, confirm or approve any subordinate legislation, or
  - b. to do any other act,  
so far as the subordinate legislation or act is incompatible with any of the Convention rights.
2. Subsection (1) does not enable a person—
  - a. to bring any proceedings in a court or tribunal, or
  - b. to rely on any of the Convention rights in any such proceedings,  
in respect of an act unless that person would be a victim for the purposes of Article 34 of the Convention if proceedings were brought in the European Court of Human Rights in respect of that act.
3. Subsection (2) does not apply to the Attorney General, the Counsel General, the Advocate General for Scotland, the Advocate General for Northern Ireland or the Attorney General for Northern Ireland.
4. Subsection (1)—
  - a. does not apply to an act which, by virtue of subsection (2) of section 6 of the Human Rights Act 1998 (c. 42), is not unlawful under subsection (1) of that section, and
  - b. does not enable a court or tribunal to award in respect of any act any damages which it could not award on finding the act unlawful under that subsection.
5. Subsection (1) applies to the First Minister and the Counsel General as to the Welsh Ministers.
6. In subsection (2) “the Convention” has the same meaning as in the Human Rights Act 1998.

## 82. International obligations etc

1. If the Secretary of State considers that any action proposed to be taken by the Welsh Ministers would be incompatible with any international obligation, the Secretary of State may by order direct that the proposed action is not to be taken.
2. If the Secretary of State considers that an action capable of being taken by the Welsh Ministers is required for the purposes of giving effect to any international obligation, the Secretary of State may by order direct the Welsh Ministers to take the action.
3. If the Secretary of State considers that any subordinate legislation made, or which could be revoked, by the Welsh Ministers is incompatible with any international obligation or the interests of defence or national security, the Secretary of State may by order revoke the legislation.
4. An order under subsection (3) may include provision for the order to have effect from a date earlier than that on which it is made; but—
  - a. such a provision does not affect any rights or liabilities acquired or incurred before the date on which the order is made, and
  - b. no person is to be guilty of an offence merely because of such a provision.
5. The Secretary of State may make an order containing provision such as is specified in subsection (6) where—
  - a. an international obligation is an obligation to achieve a result defined by reference to a quantity (whether expressed as an amount, proportion or ratio or otherwise), and
  - b. the quantity relates to the United Kingdom (or to an area including the United Kingdom or to an area consisting of a part of the United Kingdom which includes the whole or part of Wales or of the Welsh zone).
6. The provision referred to in subsection (5) is provision for the achievement by the Welsh Ministers (in the exercise of their functions) of so much of the result to be achieved under the international obligation as is specified in the order.
7. The order may specify the time by which any part of the result to be achieved by the Welsh Ministers is to be achieved.
8. Where an order under subsection (5) is in force in relation to an international obligation, references to the international obligation in subsections (1) to (3) are to an obligation to achieve so much of the result to be achieved under the international obligation as is specified in the order by the time or times so specified.
9. No order is to be made by the Secretary of State under subsection (2), (3) or (5) unless the Secretary of State has consulted the Welsh Ministers.
10. An order under this section must state the reasons for making it.
11. A statutory instrument containing—
  - a. subject to subsection (12), an order under subsection (1), or
  - b. an order under subsection (5),  
is (unless a draft of the statutory instrument has been approved by a resolution of each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament.

12. A statutory instrument containing only an order under subsection (1) revoking a previous order under that subsection—
  - a. is not subject to annulment in pursuance of a resolution of either House of Parliament, but
  - b. is to be laid before Parliament.
13. No order is to be made under subsection (2) or (3) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.
14. Subsections (1), (2) and (3) apply to the First Minister and the Counsel General as to the Welsh Ministers; and where subsection (9) operates in relation to an order under subsection (2) or (3) relating to the First Minister or the Counsel General the reference in subsection (9) to the Welsh Ministers is to the First Minister or the Counsel General.
15. In this section “action” includes making, confirming or approving subordinate legislation and in subsection (2) also includes introducing into the Assembly a proposed Assembly Measure or a Bill.

## **Subheading 7: Functions: supplementary**

### **83. Agency arrangements and provision of services**

1. Arrangements may be made between the Welsh Ministers and any relevant authority for—
  - a. any functions of one of them to be exercised by the other,
  - b. any functions of the Welsh Ministers to be exercised by members of staff of the relevant authority,
  - c. any functions of the relevant authority to be exercised by members of the staff of the Welsh Assembly Government, or
  - d. the provision of administrative, professional or technical services by one of them for the other.
2. Any arrangements under paragraph (a), (b) or (c) of subsection (1) for the exercise of functions of the Welsh Ministers do not affect the responsibility of the Welsh Ministers; and such arrangements for the exercise of any functions of a relevant authority do not affect the responsibility of the relevant authority.
3. The references in subsections (1) and (2) to functions do not include functions of making, confirming or approving subordinate legislation contained in a statutory instrument.
4. In this section “relevant authority” means any Minister of the Crown or government department, any public authority (including any local authority) in England and Wales or the holder of any public office in England and Wales.
5. This section applies to the First Minister and the Counsel General as to the Welsh Ministers.

## 84. Different exercise of functions by Welsh Ministers etc

1. This section applies where—
  - a. an enactment confers or imposes a function exercisable in relation to England and Wales, and
  - b. the function is to any extent conferred or imposed on the Welsh Ministers by the enactment or transferred to, or made exercisable by, the Welsh Ministers by or by virtue of this Act.
2. The enactment is to be taken to permit—
  - a. the exercise of the function by the Welsh Ministers whether or not it is exercised otherwise than by the Welsh Ministers, and
  - b. the exercise of the function differently by the Welsh Ministers (on the one hand) and otherwise than by the Welsh Ministers (on the other).
3. The reference in subsection (1)(a) to a function exercisable in relation to England and Wales includes a function exercisable in relation both to England and Wales and to another country or territory or other countries or territories.
4. Subsection (2) is subject to—
  - a. the enactment by which the function is conferred or imposed on the Welsh Ministers, or
  - b. any provision by or by virtue of which the function is transferred to, or made exercisable by, the Welsh Ministers.
5. Subsection (2) does not limit any power to exercise a function in relation to Wales whether or not it is exercised in relation to England, or to exercise a function differently in relation to Wales and England, where this section does not apply.
6. In this section “enactment” includes a future enactment.
7. This section applies in relation to the First Minister and the Counsel General as to the Welsh Ministers.

## 85. Construction of references to Ministers and departments

1. So far as may be necessary for the purpose or in consequence of the exercise of any functions of the Welsh Ministers, the First Minister or the Counsel General, any reference in any enactment or other document to—
  - a. a Minister of the Crown, or
  - b. a government department,  
(whether by name or in general terms) is to be construed as being or including a reference to the Welsh Ministers, the First Minister or the Counsel General (according to by whom the function in question is exercisable).

2. References in any enactment to property vested in or held for the purposes of a government department is to be construed as including references to property vested in or held for the purposes of the Welsh Ministers, the First Minister or the Counsel General (and in relation to property so vested or held the Welsh Ministers, the First Minister or the Counsel General are each deemed to be a government department for the purposes of any enactment).
3. In this section “enactment” includes a future enactment.

## **86. Laying of reports and statements**

1. This section applies where—
  - a. any enactment makes provision (“provision for Parliamentary laying”) for any report or statement to be laid before Parliament or either House of Parliament,
  - b. the report or statement is not one which, by or by virtue of this Act, is to be made by or given to the Welsh Ministers, the First Minister, the Counsel General or the Assembly Commission, and
  - c. the report or statement relates to matters with respect to which functions are exercisable by the Welsh Ministers, the First Minister, the Counsel General or the Assembly Commission.
2. If no functions relating to the matters are exercisable by a Minister of the Crown, the provision for Parliamentary laying is to be construed as provision for the report or statement to be laid before the Assembly instead of before Parliament or either House of Parliament.
3. If any are, the provision for Parliamentary laying is to be construed as provision for the report or statement to be laid before the Assembly as well as before Parliament or either House of Parliament.
4. In this section—
  - a. references to a report or statement include any other document (except one containing subordinate legislation), and
  - b. “enactment” includes a future enactment.

## **Subheading 8: Property, rights and liabilities**

### **87. Property, rights and liabilities of Welsh Ministers etc**

1. Property, rights and liabilities may belong to—
  - a. the Welsh Ministers by that name,
  - b. the First Minister by that name, or
  - c. the Counsel General by that name.
2. Property and rights acquired by or transferred to the Welsh Ministers belong to, and liabilities incurred by the Welsh Ministers are liabilities of, the Welsh Ministers for the time being.

3. Property and rights acquired by or transferred to any of the Welsh Ministers appointed under section 48 belong to, and liabilities incurred by any of those Welsh Ministers are liabilities of, the Welsh Ministers for the time being.
4. Property and rights acquired by or transferred to the First Minister belong to, and liabilities incurred by the First Minister are liabilities of, the First Minister for the time being.
5. Property and rights acquired by or transferred to the Counsel General belong to, and liabilities incurred by the Counsel General are liabilities of, the Counsel General for the time being.
6. In relation to property and rights acquired by or transferred to (or belonging to), or to liabilities incurred by—
  - a. the Welsh Ministers or any of the Welsh Ministers appointed under section 48,
  - b. the First Minister, or
  - c. the Counsel General,
 references to the Welsh Ministers, the First Minister or the Counsel General in any register or other document are to be read in accordance with this section.

## **88. Transfer of Ministerial property, rights and liabilities**

For provision about the transfer of property, rights and liabilities of Ministers of the Crown to the Welsh Ministers etc. see Schedule 4.

### **Subheading 9: Supplementary**

## **89. Rights and liabilities of the Crown in different capacities**

1. Rights and liabilities may arise between the Crown in right of Her Majesty's Government in the United Kingdom and the Crown in right of the Welsh Assembly Government by virtue of a contract, by operation of law or by virtue of an enactment as they may arise between subjects.
2. Property, rights and liabilities may be transferred between the Crown in one of those capacities and the Crown in the other capacity as they may be transferred between subjects; and they may together create, vary or extinguish any property, rights or liabilities as subjects may.
3. Proceedings in respect of—
  - a. any property, rights or liabilities to which the Crown in one of those capacities is entitled or subject under subsection (1) or (2), or
  - b. the exercise of, or failure to exercise, any function exercisable by an office-holder of the Crown in one of those capacities,
 may be instituted by the Crown in either capacity; and the Crown in the other capacity may be a separate party in the proceedings.
4. This section applies to the Crown in right of a devolved administration (other than the Welsh Assembly Government) as it applies to the Crown in right of Her Majesty's Government in the United Kingdom.



5. In this section “office-holder” means—
  - a. in relation to the Crown in right of Her Majesty's Government in the United Kingdom, any Minister of the Crown or other office-holder under the Crown in that capacity,
  - b. in relation to the Crown in right of the Welsh Assembly Government, the First Minister, a Welsh Minister appointed under section 48 or the Counsel General, and
  - c. in relation to the Crown in right of a devolved administration other than the Welsh Assembly Government, an office-holder in that administration;and “subject” means a person not acting on behalf of the Crown.

## 90. Documents

1. A document is validly executed by the Welsh Ministers if it is executed by the First Minister or any Welsh Minister appointed under section 48.
2. The application of the seal of the Welsh Ministers is to be authenticated by the First Minister, any Welsh Minister appointed under section 48 or any person authorised by the Welsh Ministers (whether generally or specifically) for that purpose.
3. A document purporting to be—
  - a. duly executed under the seal of the Welsh Ministers, or
  - b. signed on behalf of the Welsh Ministers,is to be received in evidence and, unless the contrary is proved, is to be taken to be so executed or signed.
4. A certificate signed by the First Minister or a Welsh Minister appointed under section 48 that any document purporting to be executed by the Welsh Ministers or signed by them or on their behalf was so executed or signed is conclusive evidence of that fact.
5. A document purporting to be signed by or on behalf of—
  - a. the First Minister, or
  - b. the Counsel General,is to be received in evidence and, unless the contrary is proved, is to be taken to be so signed.
6. A certificate signed by the First Minister or the Counsel General that any document purporting to be signed by or on behalf of the First Minister or the Counsel General was so signed is conclusive evidence of that fact.
7. The Documentary Evidence Act 1868 (c. 37) (proof of documents) has effect as if—
  - a. in the first column of Schedule 1 there were included a reference to the Welsh Ministers, the First Minister, a Welsh Minister appointed under section 48 and the Counsel General,

- b. in the second column of that Schedule there were included in connection with that reference a reference to a member of the staff of the Welsh Assembly Government, and
- c. in section 2 of that Act the reference to regulations issued by or under the authority of an officer mentioned in the first column of the Schedule included a reference to any document issued by or under the authority of a person or persons within paragraph (a).

## 91. Validity of acts

1. The validity of any act of a person as First Minister is not affected by any defect in the person's nomination by the Assembly.
2. The validity of any act of a person as the Counsel General is not affected by any defect in the Assembly's agreement to the person's appointment.

## 92. Official secrets

The following are Crown servants for the purposes of the Official Secrets Act 1989 (c. 6)—

- a. the First Minister and any person designated to exercise the functions of the First Minister,
- b. each Welsh Minister appointed under section 48,
- c. the Counsel General and any person designated to exercise the functions of the Counsel General, and
- d. each Deputy Welsh Minister.

## Part 3: Assembly Measures

### Subheading 1: Power

## 93. Assembly Measures

1. The Assembly may make laws, to be known as Measures of the National Assembly for Wales or Mesurau Cynulliad Cenedlaethol Cymru (referred to in this Act as “Assembly Measures”).
2. A proposed Assembly Measure is enacted by being passed by the Assembly and approved by Her Majesty in Council.
3. The validity of an Assembly Measure is not affected by any invalidity in the Assembly proceedings leading to its enactment.
4. Every Assembly Measure is to be judicially noticed.
5. This Part does not affect the power of the Parliament of the United Kingdom to make laws for Wales.

• Federal review of subnational legislation

• Federal review of subnational legislation

## 94. Legislative competence

1. Subject to the provisions of this Part, an Assembly Measure may make any provision that could be made by an Act of Parliament.
2. An Assembly Measure is not law so far as any provision of the Assembly Measure is outside the Assembly's legislative competence.
3. A provision of an Assembly Measure is within the Assembly's legislative competence only if it falls within subsection (4) or (5).
4. A provision of an Assembly Measure falls within this subsection if—
  - a. it relates to one or more of the matters specified in Part 1 of Schedule 5 and does not fall within any of the exceptions specified in paragraph A1 of Part 2 of that Schedule (whether or not the exception is under a heading corresponding to the field which includes the matter), and
  - b. it neither applies otherwise than in relation to Wales nor confers, imposes, modifies or removes (or gives power to confer, impose, modify or remove) functions exercisable otherwise than in relation to Wales.
5. A provision of an Assembly Measure falls within this subsection if—
  - a. it provides for the enforcement of a provision (of that or any other Assembly Measure) which falls within subsection (4) or it is otherwise appropriate for making such a provision effective, or
  - b. it is otherwise incidental to, or consequential on, such a provision.
6. But a provision which falls within subsection (4) or (5) is outside the Assembly's legislative competence if—
  - a. it breaches any of the restrictions in paragraphs 1 to 6 of Part 2 of Schedule 5, having regard to any exception in Part 3 of that Schedule from those restrictions,
  - b. it extends otherwise than only to England and Wales, or
  - c. it is incompatible with the Convention rights or with EU law.
7. For the purposes of this section the question whether a provision of an Assembly Measure relates to one or more of the matters specified in Part 1 of Schedule 5 (or falls within any of the exceptions specified in paragraph A1 of Part 2 of that Schedule) is to be determined by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances.

## 95. Legislative competence: supplementary

1. Her Majesty may by Order in Council—
  - a. amend Part 1 of Schedule 5 to add a matter which relates to one or more of the fields listed in that Part, or to vary or remove any matter,
  - b. amend that Part to add a new field or to vary or remove any field, or

- International organizations
- International human rights treaties

- Constitution amendment procedure
- Head of state powers
- Advisory bodies to the head of state

- c. amend Part 2 or 3 of that Schedule.
2. An Order in Council under this section does not have effect to amend Part 1 of Schedule 5 by adding a field if, at the time when the amendment comes into force, no functions in the field are exercisable by the Welsh Ministers, the First Minister or the Counsel General.
3. An Order in Council under this section may make such modifications of—
  - a. any enactment (including any enactment comprised in or made under this Act) or prerogative instrument, or
  - b. any other instrument or document,  
as Her Majesty considers appropriate in connection with the provision made by the Order in Council.
4. An Order in Council under this section may make provision having retrospective effect.
5. No recommendation is to be made to Her Majesty in Council to make an Order in Council under this section unless a draft of the statutory instrument containing the Order in Council—
  - a. has been laid before, and approved by a resolution of, the Assembly, and
  - b. having been so approved, has been laid before, and approved by a resolution of, each House of Parliament.
6. As soon as is reasonably practicable after the draft of an Order in Council under this section has been approved by a resolution of the Assembly, the First Minister must ensure that—
  - a. notice in writing of the resolution, and
  - b. a copy of the draft,  
is sent to the Secretary of State.
7. The Secretary of State must, before the end of the period of 60 days beginning immediately after the day on which notice of the Assembly's resolution is received, either—
  - a. lay the draft before each House of Parliament, or
  - b. give notice in writing to the First Minister of the Secretary of State's refusal to do so and the reasons for that refusal.
8. As soon as is reasonably practicable after the First Minister receives notice of the Secretary of State's refusal to lay the draft before each House of Parliament and the reasons for that refusal—
  - a. the First Minister must lay a copy of the notice before the Assembly, and
  - b. the Assembly must ensure that it is published.
9. In reckoning the period of 60 days mentioned in subsection (7) no account is to be taken of any period during which Parliament is dissolved or prorogued or both Houses are adjourned for more than four days.

10. The amendment of Schedule 5 by an Order in Council under this section does not affect—
  - a. the validity of an Assembly Measure passed before the amendment comes into force, or
  - b. the previous or continuing operation of such an Assembly Measure.

## 96. Scrutiny of proposed Orders in Council

The Counsel General or the Attorney General may refer to the Supreme Court for decision the question whether a matter which a proposed Order in Council under section 95 proposes to add to Part 1 of Schedule 5 relates to a field listed in that Part.

## Subheading 2: Procedure

### 97. Introduction of proposed Assembly Measures

1. A proposed Assembly Measure may, subject to the standing orders, be introduced in the Assembly—
  - a. by the First Minister, any Welsh Minister appointed under section 48, any Deputy Welsh Minister or the Counsel General, or
  - b. by any other Assembly member.
2. The person in charge of a proposed Assembly Measure must, on or before the introduction of the proposed Assembly Measure, state that, in that person's view, its provisions would be within the Assembly's legislative competence.
3. The Presiding Officer must, on or before the introduction of a proposed Assembly Measure in the Assembly—
  - a. decide whether or not, in the view of the Presiding Officer, the provisions of the proposed Assembly Measure would be within the Assembly's legislative competence, and
  - b. state that decision.
4. A statement under this section must be made in both English and Welsh; but, subject to that, the form of the statement and the manner in which it is to be made are to be determined under the standing orders.
5. The standing orders—
  - a. may provide for a statement under this section to be published, and
  - b. if they do so, must provide for it to be published in both English and Welsh.

## 98. Proceedings on proposed Assembly Measures

1. The standing orders must include provision—
  - a. for general debate on a proposed Assembly Measure with an opportunity for Assembly members to vote on its general principles,
  - b. for the consideration of, and an opportunity for Assembly members to vote on, the details of a proposed Assembly Measure, and
  - c. for a final stage at which a proposed Assembly Measure can be passed or rejected.
2. Subsection (1) does not prevent the standing orders making provision to enable the Assembly to expedite proceedings in relation to a particular proposed Assembly Measure.
3. The standing orders may make provision different from that required by subsection (1) for the procedure applicable to proposed Assembly Measures of any of the following kinds—
  - a. proposed Assembly Measures which restate the law,
  - b. proposed Assembly Measures which repeal or revoke spent enactments, and
  - c. private proposed Assembly Measures.
4. The standing orders must include provision for securing that the Assembly may only pass a proposed Assembly Measure containing provisions which would, if contained in a Bill for an Act of Parliament, require the consent of Her Majesty or the Duke of Cornwall if such consent has been signified in accordance with the standing orders.
5. The standing orders must include provision for securing that the Assembly may only pass a proposed Assembly Measure if the text of the proposed Assembly Measure is in both English and Welsh, unless the circumstances are such as are specified by the standing orders as any in which the text need not be in both languages.
6. The standing orders must provide for an opportunity for the reconsideration of a proposed Assembly Measure after its passing if (and only if)—
  - a. the Supreme Court decides on a reference made in relation to the proposed Assembly Measure under section 99 that the proposed Assembly Measure or any provision of it would not be within the Assembly's legislative competence,
  - b. a reference made in relation to the proposed Assembly Measure under section 99 is withdrawn following a request for withdrawal of the reference under section 100(2)(b), or
  - c. an order is made in relation to the proposed Assembly Measure under section 101.
7. The standing orders must, in particular, ensure that any proposed Assembly Measure amended on reconsideration is subject to a final stage at which it can be approved or rejected.

8. References in subsections (4), (5) and (6) of this section and sections 93(2) and 95(10) to the passing of a proposed Assembly Measure are, in the case of a proposed Assembly Measure which has been amended on reconsideration, to be read as references to its approval.

## 99. Scrutiny of proposed Assembly Measures by Supreme Court

1. The Counsel General or the Attorney General may refer the question whether a proposed Assembly Measure, or any provision of a proposed Assembly Measure, would be within the Assembly's legislative competence to the Supreme Court for decision.
2. Subject to subsection (3), the Counsel General or the Attorney General may make a reference in relation to a proposed Assembly Measure at any time during—
  - a. the period of four weeks beginning with the passing of the proposed Assembly Measure, and
  - b. any period of four weeks beginning with any subsequent approval of the proposed Assembly Measure in accordance with provision included in the standing orders in compliance with section 98(7).
3. No reference may be made in relation to a proposed Assembly Measure—
  - a. by the Counsel General if the Counsel General has notified the Clerk that no reference is to be made in relation to it by the Counsel General, or
  - b. by the Attorney General if the Attorney General has notified the Clerk that no reference is to be made in relation to it by the Attorney General.
4. But subsection (3) does not apply if the proposed Assembly Measure has been approved as mentioned in subsection (2)(b) since the notification.

## 100. ECJ references

1. This section applies where—
  - a. a reference has been made in relation to a proposed Assembly Measure under section 99,
  - b. a reference for a preliminary European Court ruling has been made by the Supreme Court in connection with that reference, and
  - c. neither of those references has been decided or otherwise disposed of.
2. If the Assembly resolves that it wishes to reconsider the proposed Assembly Measure—
  - a. the Clerk must notify the Counsel General and the Attorney General of that fact, and
  - b. the person who made the reference in relation to the proposed Assembly Measure under section 99 must request the withdrawal of the reference.

3. In this section “a reference for a preliminary European Court ruling” means a reference of a question to the European Court under Article 234 of the Treaty establishing the European Community, Article 41 of the Treaty establishing the European Coal and Steel Community or Article 150 of the Treaty establishing the European Atomic Energy Community.

## 101. Power to intervene in certain cases

1. This section applies if a proposed Assembly Measure contains provisions which the Secretary of State has reasonable grounds to believe—
  - a. would have an adverse effect on any matter which is not specified in Part 1 of Schedule 5 (or falls within any of the exceptions specified in paragraph A1 of Part 2 of that Schedule),
  - b. might have a serious adverse impact on water resources in England, water supply in England or the quality of water in England,
  - c. would have an adverse effect on the operation of the law as it applies in England, or
  - d. would be incompatible with any international obligation or the interests of defence or national security.
2. The Secretary of State may make an order prohibiting the Clerk from submitting the proposed Assembly Measure for approval by Her Majesty in Council.
3. The order must identify the proposed Assembly Measure and the provisions in question and state the reasons for making the order.
4. The order may be made at any time during—
  - a. the period of four weeks beginning with the passing of the proposed Assembly Measure,
  - b. any period of four weeks beginning with any subsequent approval of the proposed Assembly Measure in accordance with provision included in the standing orders in compliance with section 98(7), or
  - c. if a reference is made in relation to the proposed Assembly Measure under section 99, the period of four weeks beginning with the reference being decided or otherwise disposed of by the Supreme Court.
5. The Secretary of State must not make an order in relation to a proposed Assembly Measure if the Secretary of State has notified the Clerk that no order is to be made in relation to the proposed Assembly Measure.
6. Subsection (5) does not apply if the proposed Assembly Measure has been approved as mentioned in subsection (4)(b) since the notification.
7. An order in force under this section at a time when such approval is given ceases to have effect.
8. A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

## 102. Approval of proposed Assembly Measures



1. It is for the Clerk to submit proposed Assembly Measures for approval by Her Majesty in Council.
2. The Clerk may not submit a proposed Assembly Measure for approval by Her Majesty in Council at any time when—
  - a. the Attorney General or the Counsel General is entitled to make a reference in relation to the proposed Assembly Measure under section 99,
  - b. such a reference has been made but has not been decided or otherwise disposed of by the Supreme Court, or
  - c. an order may be made in relation to the proposed Assembly Measure under section 101.
3. The Clerk may not submit a proposed Assembly Measure in its unamended form for approval by Her Majesty in Council if—
  - a. the Supreme Court has decided on a reference made in relation to the proposed Assembly Measure under section 99 that the proposed Assembly Measure or any provision of it would not be within the Assembly's legislative competence, or
  - b. a reference made in relation to the proposed Assembly Measure under section 99 has been withdrawn following a request for withdrawal of the reference under section 100(2)(b).
4. Once an Assembly Measure has been approved by Her Majesty in Council, the Clerk of the Privy Council must send the Order in Council approving the Assembly Measure to the Clerk.
5. The date of the approval by Her Majesty in Council of an Assembly Measure is to be written on the Assembly Measure by the Clerk, and forms part of the Assembly Measure.
6. The Clerk must publish the Order in Council by which an Assembly Measure is approved.
7. The standing orders must include provision for the notification by the Clerk to the Assembly of the date of the approval of an Assembly Measure by Her Majesty in Council.
8. The validity of an Assembly Measure is not affected by any failure to comply with provision made by or by virtue of subsection (4), (5) or (7).

## Part 4: Acts of the Assembly

### Subheading 1: Referendum

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

1. Her Majesty may by Order in Council cause a referendum to be held throughout Wales about whether the Assembly Act provisions should come into force.
2. If the majority of the voters in a referendum held by virtue of subsection (1) vote in favour of the Assembly Act provisions coming into force, the Assembly Act provisions are to come into force in accordance with section 105.

3. But if they do not, that does not prevent the making of a subsequent Order in Council under subsection (1).
4. No recommendation is to be made to Her Majesty in Council to make an Order in Council under subsection (1) unless a draft of the statutory instrument containing the Order in Council has been laid before, and approved by a resolution of, each House of Parliament and the Assembly.
5. But subsection (4) is not satisfied unless the resolution of the Assembly is passed on a vote in which the number of Assembly members voting in favour of it is not less than two-thirds of the total number of Assembly seats.
6. A draft of a statutory instrument containing an Order in Council under subsection (1) may not be laid before either House of Parliament, or the Assembly, until the Secretary of State has undertaken such consultation as the Secretary of State considers appropriate.
7. For further provision about referendums held by virtue of subsection (1) see Schedule 6.
8. In this Act “the Assembly Act provisions” means—
  - a. sections 107 and 108, and
  - b. sections 110 to 115.

## 104. Proposal for referendum by Assembly

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

## 105. Commencement of Assembly Act provisions

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

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

1. Part 3 ceases to have effect on the day on which the Assembly Act provisions come into force.
2. But that does not affect—
  - a. the continuing operation, on and after that day, of any Assembly Measure enacted before that day, or
  - b. the continuing operation, after the enactment of the Measure, of any Assembly Measure enacted in accordance with section 106A.
3. Subsection (1) is subject to section 106A.

### 106A. Enactment of proposed Assembly Measures

1. This section applies if, immediately before the coming into force of the Assembly Act provisions, one or more proposed Assembly Measures have been passed by the Assembly but have not been approved by Her Majesty in Council (“the proposed Measures”).
2. Part 3 continues to have effect, for the purposes of enabling the proposed Measures to be enacted, until an Order in Council in respect of every such Measure has been published by the Clerk in accordance with section 102(6).

## 107. Acts of the Assembly

1. The Assembly may make laws, to be known as Acts of the National Assembly for Wales or Deddfau Cynulliad Cenedlaethol Cymru (referred to in this Act as “Acts of the Assembly”).
2. Proposed Acts of the Assembly are to be known as Bills; and a Bill becomes an Act of the Assembly when it has been passed by the Assembly and has received Royal Assent.

3. The validity of an Act of the Assembly is not affected by any invalidity in the Assembly proceedings leading to its enactment.
4. Every Act of the Assembly is to be judicially noticed.
5. This Part does not affect the power of the Parliament of the United Kingdom to make laws for Wales.

## 108. Legislative competence

1. Subject to the provisions of this Part, an Act of the Assembly may make any provision that could be made by an Act of Parliament.
2. An Act of the Assembly is not law so far as any provision of the Act is outside the Assembly's legislative competence.
3. A provision of an Act of the Assembly is within the Assembly's legislative competence only if it falls within subsection (4) or (5).
4. A provision of an Act of the Assembly falls within this subsection if—
  - a. it relates to one or more of the subjects listed under any of the headings in Part 1 of Schedule 7 and does not fall within any of the exceptions specified in that Part of that Schedule (whether or not under that heading or any of those headings), and
  - b. it neither applies otherwise than in relation to Wales nor confers, imposes, modifies or removes (or gives power to confer, impose, modify or remove) functions exercisable otherwise than in relation to Wales.
5. A provision of an Act of the Assembly falls within this subsection if—
  - a. it provides for the enforcement of a provision (of that or any other Act of the Assembly) which falls within subsection (4) or a provision of an Assembly Measure or it is otherwise appropriate for making such a provision effective, or
  - b. it is otherwise incidental to, or consequential on, such a provision.
6. But a provision which falls within subsection (4) or (5) is outside the Assembly's legislative competence if—
  - a. it breaches any of the restrictions in Part 2 of Schedule 7, having regard to any exception in Part 3 of that Schedule from those restrictions,
  - b. it extends otherwise than only to England and Wales, or
  - c. it is incompatible with the Convention rights or with EU law.
7. For the purposes of this section the question whether a provision of an Act of the Assembly relates to one or more of the subjects listed in Part 1 of Schedule 7 (or falls within any of the exceptions specified in that Part of that Schedule) is to be determined by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances.

## 109. Legislative competence: supplementary

1. Her Majesty may by Order in Council amend Schedule 7.

• International organizations  
• International human rights treaties

• Constitution amendment procedure  
• Head of state powers  
• Advisory bodies to the head of state

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

## Subheading 2: Procedure

### 110. Introduction of Bills

1. A Bill may, subject to the standing orders, be introduced in the Assembly—
  - a. by the First Minister, any Welsh Minister appointed under section 48 any Deputy Welsh Minister or the Counsel General, or
  - b. by any other Assembly member.
2. The person in charge of a Bill must, on or before the introduction of the Bill, state that, in that person's view, its provisions would be within the Assembly's legislative competence.
3. The Presiding Officer must, on or before the introduction of a Bill in the Assembly—
  - a. decide whether or not, in the view of the Presiding Officer, the provisions of the Bill would be within the Assembly's legislative competence, and
  - b. state that decision.

4. A statement under this section must be made in both English and Welsh; but, subject to that, the form of the statement and the manner in which it is to be made are to be determined under the standing orders.
5. The standing orders—
  - a. may provide for a statement under this section to be published, and
  - b. if they do so, must provide for it to be published in both English and Welsh.

## 111. Proceedings on Bills

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

7. The standing orders must, in particular, ensure that any Bill amended on reconsideration is subject to a final stage at which it can be approved or rejected.
8. References in subsections (4), (5) and (6) of this section and sections 107(2), 109(5) and 116(3) to the passing of a Bill are, in the case of a Bill which has been amended on reconsideration, to be read as references to its approval.

## 112. Scrutiny of Bills by Supreme Court

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

## 113. ECJ references

1. This section applies where—
  - a. a reference has been made in relation to a Bill under section 112,
  - b. a reference for a preliminary European Court ruling has been made by the Supreme Court in connection with that reference, and
  - c. neither of those references has been decided or otherwise disposed of.
2. If the Assembly resolves that it wishes to reconsider the Bill—
  - a. the Clerk must notify the Counsel General and the Attorney General of that fact, and
  - b. the person who made the reference in relation to the Bill under section 112 must request the withdrawal of the reference.
3. In this section “a reference for a preliminary European Court ruling” means a reference of a question to the European Court under Article 267 of the Treaty on the Functioning of the European Union or Article 150 of the Treaty establishing the European Atomic Energy Community.

## 114. Power to intervene in certain cases

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

## 115. Royal Assent

1. It is for the Clerk to submit Bills for Royal Assent.
2. The Clerk may not submit a Bill for Royal Assent at any time when—
  - a. the Attorney General or the Counsel General is entitled to make a reference in relation to the Bill under section 112,



- b. such a reference has been made but has not been decided or otherwise disposed of by the Supreme Court, or
  - c. an order may be made in relation to the Bill under section 114.
3. The Clerk may not submit a Bill in its unamended form for Royal Assent if—
- a. the Supreme Court has decided on a reference made in relation to the Bill under section 112 that the Bill or any provision of it would not be within the Assembly's legislative competence, or
  - b. a reference made in relation to the Bill under section 112 has been withdrawn following a request for withdrawal of the reference under section 113(2)(b).
4. A Bill receives Royal Assent when Letters Patent under the Welsh Seal signed with Her Majesty's own hand signifying Her Assent are notified to the Clerk.
- 4A. The Keeper of the Welsh Seal (see section 116(2)) must make arrangements to send the Letters Patent to the National Library of Wales.
5. The date of Royal Assent is to be written on the Act of the Assembly by the Clerk, and forms part of the Act.
6. The standing orders must include provision for notification by the Clerk to the Assembly of the date of Royal Assent to an Act of the Assembly.
7. The validity of an Act of the Assembly is not affected by any failure to comply with provision made by or by virtue of subsection (4), (5) or (6).

## 116. Welsh Seal and Letters Patent

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

## Part 5: Finance

### Subheading 1: Welsh Consolidated Fund

#### 117. Welsh Consolidated Fund

- 1. There is to be a Welsh Consolidated Fund.
- 2. The Welsh Consolidated Fund is to be held with the Paymaster General.

## Subheading 2: Payments into Welsh Consolidated Fund

### 118. Grants

1. The Secretary of State must from time to time make payments into the Welsh Consolidated Fund out of money provided by Parliament of such amounts as the Secretary of State may determine.
2. Any Minister of the Crown, and any government department, may make payments to the Welsh Ministers, the First Minister or the Counsel General of such amounts as may be determined by the Minister of the Crown or those responsible in the department.

### 119. Statement of estimated payments

1. The Secretary of State must, for each financial year, make a written statement showing—
  - a. the total amount of the payments which the Secretary of State estimates will be made for the financial year under section 118(1),
  - b. the total amount of the payments which the Secretary of State estimates will be made to the Welsh Ministers, the First Minister or the Counsel General for the financial year by Ministers of the Crown and government departments, and
  - c. the total amount of the payments which the Secretary of State estimates will be made to the Welsh Ministers, the First Minister or the Counsel General for the financial year otherwise than by a Minister of the Crown or government department.
2. A statement under this section must also include such other information as the Secretary of State considers appropriate.
3. A statement under this section for any financial year must also show the total amount which the Secretary of State for Wales proposes to expend for the financial year out of money provided by Parliament otherwise than on making payments into the Welsh Consolidated Fund.
4. A statement under this section for a financial year must include details of how the total amounts mentioned in subsections (1)(a), (b) and (c) and (3) have been arrived at.
5. A statement under this section for a financial year is to be made no later than four months before the beginning of the financial year.
6. The Secretary of State must lay before the Assembly each statement under this section.

### 120. Destination of receipts

1. Any sum received by or on behalf of—
  - a. the Welsh Ministers, the First Minister or the Counsel General,
  - b. the Assembly Commission,
  - c. the Wales Audit Office, or

- d. the Public Services Ombudsman for Wales,  
is to be paid into the Welsh Consolidated Fund (unless it is paid out of that Fund, and subject as follows); and this subsection applies in spite of provision contained in any other enactment unless the enactment provides expressly that any such sum is not to be paid into the Welsh Consolidated Fund.
2. If and to the extent that sums received as mentioned in subsection (1) are received in connection with resources—
    - a. which are within a category specified by resolution of the Assembly for the purposes of this subsection,
    - b. which accrued to a person within subsection (1), and
    - c. the retention of which by that person is authorised by a Budget resolution of the Assembly for the financial year in which the resources accrued,  
the sums may be retained for use for the services and purposes specified in a Budget resolution of the Assembly for the financial year in which they are received as services and purposes for which retained resources may be used.
  3. The Treasury may, after consulting the Welsh Ministers, by order designate any description of sums received as mentioned in subsection (1).
  4. The Welsh Ministers must make payments to the Secretary of State of sums equal to the total amount of sums of that description.
  5. Payments by the Welsh Ministers under subsection (4) are to be made at such times, and by such methods, as the Treasury may from time to time determine.
  6. Sums required for the making of the payments are to be charged on the Welsh Consolidated Fund.
  7. A statutory instrument containing an order under subsection (3) is subject to annulment in pursuance of a resolution of the House of Commons.
  8. In this Act “Budget resolution of the Assembly” means a resolution on an annual Budget motion (see section 125) or a supplementary Budget motion (see section 126).

### **Subheading 3: Borrowing**

#### **121. Borrowing by Welsh Ministers**

1. The Welsh Ministers may borrow from the Secretary of State any amounts it appears to them are required by them for the purpose of—
  - a. meeting a temporary excess of sums paid out of the Welsh Consolidated Fund over sums paid into that Fund, or
  - b. providing a working balance in that Fund.
2. Amounts borrowed under this section must be repaid to the Secretary of State at such times and by such methods, and interest on such sums must be paid to the Secretary of State at such rates and at such times, as the Treasury may from time to time determine.
3. Sums required for the repayment of, or the payment of interest on, amounts borrowed under this section are to be charged on the Welsh Consolidated Fund.

## 122. Lending by Secretary of State

1. The Treasury may issue to the Secretary of State out of the National Loans Fund such sums as the Secretary of State needs for making loans under section 121.
2. The aggregate outstanding in respect of the principal of sums borrowed under that section must not exceed £500 million.
3. The Secretary of State may by order made with the consent of the Treasury substitute for the amount for the time being specified in subsection (2) such greater amount as is specified in the order.
4. No order is to be made under subsection (3) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the House of Commons.
5. Sums received by the Secretary of State under section 121(2) must be paid into the National Loans Fund.

## 123. Accounts relating to loans

1. The Secretary of State must for each financial year prepare accounts in such form and manner as the Treasury may direct—
  - a. loans made by the Secretary of State under section 121 or treated as made by paragraph 11(6) of Schedule 3 or paragraph 44(6) of Schedule 11, and
  - b. repayments and payments of interest made to the Secretary of State in respect of those loans.
2. The Secretary of State must send accounts under subsection (1) relating to a financial year to the Comptroller and Auditor General no later than five months after the end of the financial year.
3. The Comptroller and Auditor General must—
  - a. examine, certify and report on accounts sent under subsection (2), and
  - b. lay copies of the accounts, together with the report prepared under paragraph (a), before each House of Parliament.

## Subheading 4: Expenditure

### 124. Payments out of Welsh Consolidated Fund

1. A sum may only be paid out of the Welsh Consolidated Fund if—
  - a. it has been charged on that Fund by any enactment, or
  - b. its payment out is authorised or deemed to be authorised by a Budget resolution of the Assembly (see sections 125 to 128) for or in connection with either of the purposes mentioned in subsection (2),  
and an approval to draw the payment of the sum out of the Welsh Consolidated Fund is granted by the Auditor General (see section 129).
2. Those purposes are—
  - a. meeting expenditure of a relevant person, and

- b. meeting expenditure payable pursuant to a relevant enactment.
- 3. For the purposes of this section and sections 125 to 128 the relevant persons are—
  - a. the Welsh Ministers, the First Minister and the Counsel General,
  - b. the Assembly Commission,
  - c. the Wales Audit Office, and
  - d. the Public Services Ombudsman for Wales.
- 4. For the purposes of this section and sections 125 to 128 a relevant enactment is an enactment which provides for payment out of the Welsh Consolidated Fund.
- 5. This section does not apply to sums paid out of the Welsh Consolidated Fund by virtue of section 130.
- 6. Any enactment which—
  - a. charges the payment of sums on the Consolidated Fund or requires or authorises the payment of any sum from the Consolidated Fund, or
  - b. requires or authorises the payment of sums out of money provided by Parliament,does not have effect if the sums are payable by any of the relevant persons.

## 125. Annual Budget motions

- 1. For each financial year there is to be moved in the Assembly a motion (referred to in this Act as an “annual Budget motion”) for the purpose of authorising—
  - a. the amount of resources which may be used in the financial year by the relevant persons, or pursuant to a relevant enactment, for the services and purposes specified in the motion,
  - b. the amount of resources accruing to the relevant persons in the financial year which may be retained by them to be used for the services and purposes so specified (rather than being paid into the Welsh Consolidated Fund), and
  - c. the amount which may be paid out of the Welsh Consolidated Fund in the financial year to the relevant persons, or for use pursuant to a relevant enactment, for the services and purposes so specified.
- 2. An annual Budget motion may only be moved by the First Minister or a Welsh Minister appointed under section 48.
- 3. An annual Budget motion must be accompanied by a written statement made by the Welsh Ministers showing—
  - a. the total amount of the payments which they estimate will be made for the financial year under section 118(1),

- b. the total amount of the payments which they estimate will be made to the Welsh Ministers, the First Minister or the Counsel General for the financial year by Ministers of the Crown and government departments, and
  - c. the total amount of the payments which they estimate will be made to the Welsh Ministers, the First Minister or the Counsel General for the financial year otherwise than by a Minister of the Crown or government department.
4. In this Act a reference to the use of resources is a reference to their expenditure, consumption or reduction in value.

## 126. Supplementary Budget motions

1. For any financial year there may be moved in the Assembly one or more motions (referred to in this Act as a “supplementary Budget motion”) for either or both of the purposes specified in subsections (2) and (3).
2. A supplementary Budget motion may approve a variation in any one or more of the following—
  - a. the amount of resources authorised to be used in the financial year by a relevant person, or pursuant to a relevant enactment, for any service or purpose,
  - b. the amount of resources accruing to a relevant person in the financial year and authorised to be retained by that person to be used for any service or purpose, and
  - c. the amount authorised to be paid out of the Welsh Consolidated Fund in the financial year to a relevant person, or for use pursuant to a relevant enactment, for any service or purpose.
3. A supplementary Budget motion may authorise any one or more of the following—
  - a. the amount of resources which may be used in the financial year by a relevant person, or pursuant to a relevant enactment, for a service or purpose specified in the motion,
  - b. the amount of resources accruing to a relevant person in the financial year which may be retained by that person to be used for a service or purpose so specified, and
  - c. the amount which may be paid out of the Welsh Consolidated Fund in the financial year to a relevant person, or for use pursuant to a relevant enactment, for a service or purpose so specified.
4. A supplementary Budget motion for any financial year may be expressed to have effect from a time before it is made; but that time may not be earlier than—
  - a. the date on which the last supplementary Budget motion for the financial year was passed, or

- b. (if none has) the date on which the annual Budget motion for the financial year was passed.
5. A supplementary Budget motion may only be moved by the First Minister or a Welsh Minister appointed under section 48.

## **126A. Inclusion in Budget motions of resources used by designated bodies**

1. A Budget motion for a financial year may include information relating to resources expected to be used by any body that is a designated body in relation to a relevant person.
2. For the purposes of this section a body is a “designated” body in relation to a relevant person if—
  - a. it is designated in relation to the relevant person by an order made by the Welsh Ministers, or
  - b. it falls within a description of body designated in relation to the relevant person by such an order.
3. A body, or a description of body, may be designated in relation to a relevant person for a particular financial year or generally.
4. If the Welsh Ministers expect the use of resources by a body in a financial year to involve payments out of a relevant Consolidated Fund to or for the benefit of the body, they may not make an order under which the body would be a designated body for the year unless the Treasury have consented to the making of the order.
5. “A relevant Consolidated Fund” means—
  - a. the Consolidated Fund of the United Kingdom,
  - b. the Scottish Consolidated Fund, or
  - c. the Consolidated Fund of Northern Ireland.
6. The Welsh Ministers must, where they think it appropriate, consult the Treasury before designating a body or a description of body.
7. In determining for any purpose whether a body has a particular relationship with a relevant person (for example, whether it is controlled by, or otherwise dependent on, the person), the following must be disregarded—
  - a. the fact that the provisions of a Budget motion relating to the relevant person in respect of a financial year include information relating to the body, and
  - b. the fact that the relevant person's accounts for a financial year prepared under this or any other Act include information relating to the body.
8. An order under subsection (2) is to be made by statutory instrument.
9. A statutory instrument containing an order under that subsection is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

10. But subsection (9) does not apply if a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the National Assembly for Wales.

## 127. Appropriation without Budget resolution

1. If a Budget resolution for a financial year is not passed before the beginning of the financial year, the following are deemed to have been authorised by a Budget resolution of the Assembly for that year—
  - a. the use in the year for any service or purpose of the relevant percentage of the amount of the resources authorised to be used in the preceding financial year for the service or purpose,
  - b. the retention in the year for use for any service or purpose of the relevant percentage of the amount of the resources authorised to be retained in the previous financial year for use for the service or purpose, and
  - c. the payment out of the Welsh Consolidated Fund in the year for any service or purpose of the relevant percentage of the amount authorised to be paid out of the Fund in the previous financial year for the service or purpose.
2. “The relevant percentage” is—
  - a. where a Budget resolution for the financial year is not passed before the end of July in the financial year, 95%, and
  - b. otherwise, 75%.

## 128. Contingencies

1. This section applies where it is proposed—
  - a. that resources be used in any financial year by any of the relevant persons, or pursuant to a relevant enactment, otherwise than as authorised by virtue of sections 125 to 127, or
  - b. that amounts be paid out of the Welsh Consolidated Fund in the year to the relevant persons, or for use pursuant to a relevant enactment, otherwise than as authorised by virtue of those sections.
2. The resources may be so used, or the amounts may be so issued, only with the authority of the Welsh Ministers.
3. The Welsh Ministers may authorise the use of resources, or the payment of amounts, only if they consider that—
  - a. the use of the resources, or the payment of the amounts, is necessary in the public interest, and
  - b. it is not reasonably practicable, for reasons of urgency, for a motion to be moved under section 125 or 126 to authorise the use of the resources or the payment of the amounts.



4. The aggregate amount of resources which the Welsh Ministers may at any time authorise to be used under this section by any person, or pursuant to any enactment, in any financial year must not exceed 0.5% of—
  - a. the aggregate amount of the resources which, at the time, have been authorised by virtue of sections 125 and 126 to be used by that person, or pursuant to that enactment, in that financial year, or
  - b. (if none have) the aggregate amount of the resources which were so authorised to be used by that person, or pursuant to that enactment, in the immediately preceding financial year.
5. The aggregate amount which the Welsh Ministers may at any time authorise to be paid out of the Welsh Consolidated Fund under this section to any person, or for use pursuant to any enactment, in any financial year must not exceed 0.5% of—
  - a. the aggregate of the amounts which, at the time, have been authorised by virtue of sections 125 and 126 to be paid to that person, or for use pursuant to that enactment, in that financial year, or
  - b. (if none have) the aggregate of the amounts which were so authorised to be paid to that person, or for use pursuant to that enactment, in the immediately preceding financial year.
6. The use of resources, or the payment of amounts, authorised by the Welsh Ministers in accordance with this section is deemed to have been authorised by a Budget resolution of the Assembly.
7. Where the Welsh Ministers authorise the use of resources or the payment of amounts under this section, they must, as soon as possible, lay before the Assembly a report setting out—
  - a. the resources authorised to be used or the amounts authorised to be paid,
  - b. the services or purposes for which the resources were authorised to be used, or the amounts were authorised to be paid, and
  - c. why they considered it to be necessary to authorise the use of the resources, or the payment of the amounts, under this section.

## 129. Approvals to draw

1. The Auditor General must grant approvals to draw payments out of the Welsh Consolidated Fund from time to time at the request of the Welsh Ministers.
2. An approval to draw may only be granted if, in the Auditor General's opinion, the proposed payment out of the Welsh Consolidated Fund would comply with section 124.
3. A request for the grant of an approval to draw is to be made in any manner which the Welsh Ministers, with the approval of the Auditor General, decide to adopt.
4. Where an approval to draw is granted the Paymaster General must make the funds available to the Welsh Ministers, the First Minister, the Counsel General, the Assembly Commission, the Wales Audit Office or the Public Services Ombudsman for Wales (as appropriate).

5. The Paymaster General must make available to—
  - a. the Auditor General, and
  - b. the principal accounting officer for the Welsh Ministers,
 

a daily statement regarding all the issues made out of the Welsh Consolidated Fund in respect of sums charged on that Fund and other payments out of it.
6. For the purposes of this Act the principal accounting officer for the Welsh Ministers is the Permanent Secretary to the Welsh Assembly Government.
7. But the Treasury may designate another member of the staff of the Welsh Assembly Government to be the principal accounting officer for the Welsh Ministers if and for so long as—
  - a. the Permanent Secretary to the Welsh Assembly Government is incapable of discharging the responsibilities of principal accounting officer for the Welsh Ministers, or
  - b. the office of Permanent Secretary to the Welsh Assembly Government is vacant.
8. In this section “Permanent Secretary to the Welsh Assembly Government” means the person appointed in accordance with section 52 to be the head of the staff of the Welsh Assembly Government (whether or not that person is known by the title of Permanent Secretary to the Welsh Assembly Government).

### **130. Payments in by mistake**

Where a sum is paid into the Welsh Consolidated Fund which should not or need not have been paid into the Fund, the Auditor General may grant an approval to draw a payment equal to the amount of that sum out of the Fund.

## **Subheading 5: Financial accountability of Welsh Ministers**

### **131. Welsh Ministers' accounts**

1. The Welsh Ministers must, for each financial year, prepare accounts in accordance with directions given to them by the Treasury.
2. The accounts must include details of the financial affairs and transactions of the Counsel General.
3. The directions which the Treasury may give under subsection (1) include directions to prepare accounts relating to financial affairs and transactions of persons other than the Welsh Ministers.
4. The directions which the Treasury may give under subsection (1) include, in particular, directions as to—
  - a. the financial affairs and transactions to which the accounts are to relate,
  - b. the information to be contained in the accounts and the manner in which it is to be presented,
  - c. the methods and principles in accordance with which the accounts are to be prepared, and

- d. the additional information (if any) that is to accompany the accounts.
- 5. Any accounts which the Welsh Ministers are directed under this section to prepare for any financial year must be submitted by the Welsh Ministers to the Auditor General no later than 30th November in the following financial year.
- 6. The Auditor General must—
  - a. examine and certify any accounts submitted under this section, and
  - b. no later than four months after the accounts are submitted, lay before the Assembly a copy of them as certified by the Auditor General together with the Auditor General's report on them.
- 7. In examining accounts submitted under this section, the Auditor General must, in particular, be satisfied—
  - a. that the expenditure to which the accounts relate has been incurred lawfully and in accordance with the authority which governs it, and
  - b. that money received for a particular purpose or particular purposes has not been expended otherwise than for that purpose or those purposes.
- 8. Where—
  - a. by virtue of any enactment other than this section the Welsh Ministers are under an obligation to prepare accounts dealing with any matters, and
  - b. it appears to the Treasury that those matters fall to be dealt with in accounts directed to be prepared under this section,the Treasury may relieve the Welsh Ministers of that obligation for or in respect of such periods as the Treasury may direct.

### **132. Account relating to Welsh Consolidated Fund**

- 1. The Welsh Ministers must, for each financial year, prepare an account of the payments into and out of the Welsh Consolidated Fund.
- 2. The account must be prepared in accordance with directions given to the Welsh Ministers by the Treasury.
- 3. The directions which the Treasury may give under subsection (2) include, in particular, directions as to—
  - a. the information to be contained in the account and the manner in which it is to be presented,
  - b. the methods and principles in accordance with which the account is to be prepared, and
  - c. the additional information (if any) that is to accompany the account.
- 4. Any account which the Welsh Ministers are directed under this section to prepare for any financial year must be submitted by the Welsh Ministers to the Auditor General no later than 30th November in the following financial year.

5. The Auditor General must—
  - a. examine and certify any account submitted under this section, and
  - b. no later than four months after the account is submitted, lay before the Assembly a copy of it as certified by the Auditor General together with the Auditor General's report on it.
6. In examining an account submitted under this section the Auditor General must, in particular, be satisfied—
  - a. that any payment out of the Welsh Consolidated Fund to which the account relates was paid out in compliance with section 124 or 130, and
  - b. that money which is required to be paid into the Welsh Consolidated Fund has been paid into that Fund.

### **133. Accounting officers for Welsh Ministers**

1. The principal accounting officer for the Welsh Ministers has—
  - a. in relation to the accounts of the Welsh Ministers and the finances of the Welsh Ministers and the Counsel General, and
  - b. in relation to the performance by persons designated as accounting officers in pursuance of any provision of this Act of their responsibilities as accounting officers,  
the responsibilities which are from time to time specified by the Treasury.
2. The principal accounting officer for the Welsh Ministers may designate other members of the staff of the Welsh Assembly Government as additional accounting officers.
3. An additional accounting officer has, in relation to such of the accounts of the Welsh Ministers and the finances of the Welsh Ministers and the Counsel General as may be specified by the principal accounting officer for the Welsh Ministers, the responsibilities which are from time to time specified by the principal accounting officer for the Welsh Ministers.

### **134. Accounts of subsidiaries of Welsh Ministers**

1. For the purposes of the examination by the Auditor General of any accounts of the Welsh Ministers the Auditor General—
  - a. has a right of access at all reasonable times to every document relating to the accounts of any subsidiary of the Welsh Ministers (whether or not the accounts of the Welsh Ministers being examined relate to the financial affairs and transactions of the subsidiary),
  - b. is entitled to require from any person holding or accountable for any of those documents any assistance, information or explanation which the Auditor General reasonably thinks necessary for those purposes, and

- c. may require any subsidiary of the Welsh Ministers to provide the Auditor General at times specified by the Auditor General with accounts of such of the subsidiary's transactions as the Auditor General may specify.
2. The Treasury may, by directions given to a subsidiary of the Welsh Ministers, require the subsidiary to include in any accounts which the subsidiary prepares (under, for example, the law relating to companies or charities) such additional information as may be specified in the directions.
3. The inclusion of information in any accounts in compliance with such directions does not constitute a breach of any provision which prohibits, or does not authorise, the inclusion in the accounts of that information.
4. In this section "subsidiary of the Welsh Ministers" means—
  - a. any body corporate or other undertaking in relation to which, if the Welsh Ministers were an undertaking, the Welsh Ministers would be a parent undertaking,
  - b. any trust of which the Welsh Ministers are settlors, or
  - c. any charitable institution of which the Welsh Ministers are founders but which is neither a body corporate nor a trust.
5. For the purposes of subsection (4)(a)—
  - "undertaking" has the meaning given by section 1161(1) of the Companies Act 2006, and
  - "parent undertaking" is to be construed in accordance with section 1162 of that Act.

### **135. Examinations into Welsh Ministers' use of resources**

1. The Auditor General may carry out examinations into the economy, efficiency and effectiveness with which the Welsh Ministers and the Counsel General have used their resources in discharging their functions.
2. Subsection (1) does not entitle the Auditor General to question the merits of the policy objectives of the Welsh Ministers or the Counsel General.
3. In determining how to exercise functions under this section the Auditor General must take into account the views of the Audit Committee as to the examinations to be carried out under this section.
4. The Auditor General may lay before the Assembly a report of the results of any examination carried out under this section.

### **136. Examinations by Comptroller and Auditor General**

1. The Comptroller and Auditor General may carry out examinations into the payments into and out of the Welsh Consolidated Fund.
2. The Comptroller and Auditor General may report the results of any examination carried out under subsection (1) to the House of Commons.
3. If a report is made under subsection (2), the Comptroller and Auditor General must at the same time lay a report of the results of the examination before the Assembly.

4. For the purpose of enabling examinations under subsection (1) to be carried out the Comptroller and Auditor General—
  - a. has a right of access at all reasonable times to all such documents in the custody or under the control of any of the persons mentioned in subsection (5) as the Comptroller and Auditor General may reasonably require for that purpose, and
  - b. is entitled to require from any person holding or accountable for any of those documents any assistance, information or explanation which the Comptroller and Auditor General reasonably thinks necessary for that purpose.
5. The persons referred to in subsection (4) are—
  - a. the Welsh Ministers and the Counsel General,
  - b. the Assembly Commission,
  - c. any other person audited by the Auditor General other than a Welsh NHS body (within the meaning given in section 60 of the Public Audit (Wales) Act 2004 (c. 23)), and
  - d. the Auditor General.
6. Before carrying out an examination under subsection (1) or acting in reliance on subsection (4) the Comptroller and Auditor General must—
  - a. consult the Auditor General, and
  - b. take into account any relevant work done or being done by the Auditor General.

## **Subheading 6: Financial accountability of Assembly Commission**

### **137. Assembly Commission's accounts**

1. The Assembly Commission must, for each financial year, prepare accounts in accordance with directions given to it by the Treasury.
2. The directions which the Treasury may give under subsection (1) include directions to prepare accounts relating to financial affairs and transactions of persons other than the Assembly Commission.
3. The directions which the Treasury may give under subsection (1) include, in particular, directions as to—
  - a. the financial affairs and transactions to which the accounts are to relate,
  - b. the information to be contained in the accounts and the manner in which it is to be presented,

- c. the methods and principles in accordance with which the accounts are to be prepared, and
      - d. the additional information (if any) that is to accompany the accounts.
4. Any accounts which the Assembly Commission is directed under this section to prepare for any financial year must be submitted by the Assembly Commission to the Auditor General no later than 30th November in the following financial year.
5. The Auditor General must—
  - a. examine and certify any accounts submitted under this section, and
  - b. no later than four months after the accounts are submitted, lay before the Assembly a copy of them as certified by the Auditor General together with the Auditor General's report on them.
6. In examining accounts submitted under this section the Auditor General must, in particular, be satisfied—
  - a. that the expenditure to which the accounts relate has been incurred lawfully and in accordance with the authority which governs it, and
  - b. that money received by the Assembly Commission for a particular purpose or particular purposes has not been expended otherwise than for that purpose or those purposes.

### **138. Accounting officers for Assembly Commission**

1. For the purposes of this Act the principal accounting officer for the Assembly Commission is the Clerk.
2. But the Treasury may designate another member of the staff of the Assembly to be the principal accounting officer for the Assembly Commission if and for so long as—
  - a. the Clerk is incapable of discharging the responsibilities of the principal accounting officer for the Assembly Commission, or
  - b. the office of Clerk is vacant.
3. The principal accounting officer for the Assembly Commission has—
  - a. in relation to the Assembly Commission's accounts and finances, and
  - b. in relation to the performance by persons designated as accounting officers in pursuance of any provision of this Act of their responsibilities as accounting officers,  
the responsibilities which are from time to time specified by the Treasury.
4. The principal accounting officer for the Assembly Commission may designate other members of the staff of the Assembly as additional accounting officers.

5. An additional accounting officer has, in relation to such of the Assembly Commission's accounts and finances as may be specified by the principal accounting officer for the Assembly Commission, the responsibilities which are from time to time specified by the principal accounting officer for the Assembly Commission.

### **139. Accounts of subsidiaries of Assembly Commission**

1. For the purposes of the examination by the Auditor General of any accounts of the Assembly Commission the Auditor General—
  - a. has a right of access at all reasonable times to every document relating to the accounts of any subsidiary of the Assembly Commission (whether or not the accounts of the Assembly Commission being examined relate to the financial affairs and transactions of the subsidiary),
  - b. is entitled to require from any person holding or accountable for any of those documents any assistance, information or explanation which the Auditor General reasonably thinks necessary for those purposes, and
  - c. may require any subsidiary of the Assembly Commission to provide the Auditor General at times specified by the Auditor General with accounts of such of the subsidiary's transactions as the Auditor General may specify.
2. The Treasury may, by directions given to a subsidiary of the Assembly Commission, require the subsidiary to include in any accounts which the subsidiary prepares (under, for example, the law relating to companies or charities) such additional information as may be specified in the directions.
3. The inclusion of information in any accounts in compliance with such directions does not constitute a breach of any provision which prohibits, or does not authorise, the inclusion in the accounts of that information.
4. In this section “subsidiary of the Assembly Commission” means—
  - a. any body corporate or other undertaking in relation to which the Assembly Commission is a parent undertaking,
  - b. any trust of which the Assembly Commission is settlor, or
  - c. any charitable institution of which the Assembly Commission is founder but which is neither a body corporate nor a trust.
5. For the purposes of subsection (4)(a)—
  - “undertaking” has the meaning given by section 1161(1) of the Companies Act 2006, and
  - “parent undertaking” is to be construed in accordance with section 1162 of that Act.



## 140. Examinations into Assembly Commission's use of resources

1. The Auditor General may carry out examinations into the economy, efficiency and effectiveness with which the Assembly Commission has used its resources in discharging its functions.
2. Subsection (1) does not entitle the Auditor General to question the merits of the policy objectives of the Assembly Commission.
3. In determining how to exercise functions under this section the Auditor General must take into account the views of the Audit Committee as to the examinations to be carried out under this section.
4. The Auditor General may lay before the Assembly a report of the results of any examination carried out under this section.

## Subheading 7: Whole of Government of Wales accounts

### 141. Whole of government accounts: Welsh Ministers

1. This section applies in respect of a financial year for which the Treasury make arrangements with the Welsh Ministers under section 10(8) of the Government Resources and Accounts Act 2000 (c. 20) (whole of government accounts: consolidation of Welsh accounts).
2. The Welsh Ministers must prepare a set of accounts for the group of bodies which provide information to the Welsh Ministers in accordance with the arrangements under section 10(8).
3. Accounts prepared under this section may include information referring wholly or partly to activities which—
  - a. are not activities of bodies falling within subsection (2), but
  - b. appear to the Welsh Ministers to be activities of a public nature.
4. The accounts must contain such information in such form as the Treasury may direct.
5. The Treasury must exercise the power under subsection (4) with a view to ensuring that the accounts—
  - a. present a true and fair view, and
  - b. conform to generally accepted accounting practice subject to such adaptations as are necessary in the context.
6. For the purposes of subsection (5)(a) and (b) the Treasury must in particular—
  - a. have regard to any relevant guidance issued by the Accounting Standards Board Limited or any other body prescribed for the purposes of section 464 of the Companies Act 2006 (accounting standards) or to international accounting standards (as defined in section 474 of that Act), and
  - b. require the accounts to include, subject to paragraph (a), a statement of financial performance, a statement of financial position and a cash flow statement.

7. Any accounts which the Welsh Ministers are required to prepare under this section for any financial year must be submitted by the Welsh Ministers to the Auditor General no later than 30th November in the following financial year.
8. But the Welsh Ministers may by order substitute another date for the date for the time being specified in subsection (7).
9. No order may be made under subsection (7) unless the Welsh Ministers have consulted—
  - a. the Treasury, and
  - b. the Auditor General.
10. A statutory instrument containing an order under subsection (7) is subject to annulment in pursuance of a resolution of the Assembly.

## 142. Functions of Auditor General

1. The Auditor General must examine accounts submitted under section 141 with a view to being satisfied that they present a true and fair view.
2. Where the Auditor General has conducted an examination of accounts under subsection (1), the Auditor General must—
  - a. certify them and issue a report, and
  - b. no later than four months after the accounts are submitted, lay before the Assembly a copy of them as certified by the Auditor General together with the Auditor General's report on them.
3. A person who acts as auditor for the purposes of section 10(2)(c) or (8)(c) of the Government Resources and Accounts Act 2000 (c. 20) must give the Auditor General such information and explanations as the Auditor General may reasonably require for the purposes of this section.

## Subheading 8: Treatment of accounts and audit reports etc

### 143. Audit Committee reports

1. The Audit Committee may consider, and lay before the Assembly a report on, any accounts, statement of accounts or report laid before the Assembly by—
  - a. the Auditor General, or
  - b. [Omitted]
2. If requested to do so by the House of Commons Committee of Public Accounts, the Audit Committee may—
  - a. on behalf of the Committee of Public Accounts take evidence from any of the persons mentioned in subsection (3), and
  - b. report to the Committee of Public Accounts and transmit to that Committee any evidence so taken.

3. The persons referred to in subsection (2)(a) are—
  - a. the principal accounting officer for the Welsh Ministers,
  - b. the principal accounting officer for the Assembly Commission, and
  - c. additional accounting officers designated under section 133 or 138.

## **144. Publication of accounts and audit reports etc**

1. The Assembly must publish a document to which this subsection applies as soon after the document is laid before the Assembly as is reasonably practicable.
2. The documents to which subsection (1) applies are—
  - a. any accounts, statement of accounts or report laid before the Assembly by the Auditor General,
  - b. any accounts or report laid before the Assembly by the auditor appointed under paragraph 34 of Schedule 1 to the Public Audit (Wales) Act 2013, and
  - c. any report laid before the Assembly by the Audit Committee under section 143(1).

## **Subheading 9: Auditor General for Wales**

### **145. Auditor General**

1. [Omitted]
2. For provision about the Auditor General for Wales or Archwilydd Cyffredinol Cymru (referred to in this Act as “the Auditor General”) see Schedule 8 and the Public Audit (Wales) Act 2013.
3. The Welsh Ministers must co-operate with the Auditor General where it seems to them appropriate to do so for the efficient and effective discharge of their functions in relation to Welsh NHS bodies.
4. “Welsh NHS bodies” has the meaning given by section 60 of the Public Audit (Wales) Act 2004 (c. 23).

## **Part 6: Miscellaneous and supplementary**

### **Subheading 1: Welsh public records**

#### **146. Status of Welsh public records**

1. Welsh public records are not public records for the purposes of the Public Records Act 1958 (c. 51).
2. But that Act has effect in relation to Welsh public records (as if they were public records for the purpose of that Act) until an order under section 147 imposes a duty to preserve them on the Welsh Ministers (or a member of the staff of the Welsh Assembly Government).

3. Subsection (2) applies to Welsh public records whether or not, apart from subsection (1), they would be public records for the purposes of the Public Records Act 1958.

## 147. Transfer of responsibility

1. The Lord Chancellor may by order make provision—
  - a. imposing or conferring on the Welsh Ministers (or a member of the staff of the Welsh Assembly Government) functions relating to Welsh public records (including, in particular, functions of preserving them and of making them available for inspection by the public), and
  - b. imposing on persons responsible for Welsh public records duties relating to the selection of such records for permanent preservation, the safe-keeping of such records and their transfer to a place specified in, or appointed under, the order.
2. An order under this section may (in particular) make in relation to Welsh public records provision analogous to that made by the Public Records Act 1958 (c. 51) in relation to records which are public records for the purposes of that Act.
3. An order under this section may make such modifications of—
  - a. any enactment (including any enactment comprised in or made under this Act) or prerogative instrument, or
  - b. any other instrument or document,  
as the Lord Chancellor considers appropriate in connection with the provision made by the order.
4. An order under this section which imposes on the Welsh Ministers (or a member of the staff of the Welsh Assembly Government) a duty to preserve Welsh public records, or Welsh public records of a particular description, must include provision for the Lord Chancellor to make such arrangements as appear appropriate for the transfer of Welsh public records, or Welsh public records of that description, which are in—
  - a. the Public Record Office, or
  - b. a place of deposit appointed under the Public Records Act 1958,  
to a place specified in, or appointed under, the order.
5. No order is to be made under this section unless the Lord Chancellor has consulted the Welsh Ministers.
6. No order under this section which contains provisions in the form of amendments or repeals of enactments contained in an Act is to be made unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.
7. A statutory instrument containing an order under this section is (unless a draft of the statutory instrument has been approved by a resolution of each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament.

## 148. Meaning of “Welsh public records

1. The following are Welsh public records—
  - a. administrative and departmental records belonging to Her Majesty which are records of the Welsh Assembly Government,
  - b. administrative and departmental records of the Auditor General,
  - c. administrative and departmental records belonging to Her Majesty which are records of or held in any government department which is wholly or mainly concerned with Welsh affairs,
  - d. administrative and departmental records belonging to Her Majesty which are records of any office, commission or other body or establishment under Her Majesty's Government which is wholly or mainly concerned with Welsh affairs in a field or fields in which the Welsh Ministers have functions, or the First Minister or the Counsel General has functions,
  - e. administrative and departmental records of the bodies and establishments specified in subsection (2) (but not records of health service hospitals in Wales which are of the descriptions excepted from being public records for the purposes of the Public Records Act 1958 (c. 51) in the case of health service hospitals in England), and
  - f. any other description of records (other than records of the Assembly or the Assembly Commission or records of any court or tribunal or held in any department of the Senior Courts) which is specified by order made by the Lord Chancellor.
2. The bodies and establishments referred to in subsection (1)(e) are—
  - a. the Care Council for Wales,
  - b. [Omitted]
  - c. the Curriculum and Assessment Authority for Wales,
  - d. Family Practitioner Committees for localities in Wales,
  - e. the Further Education Funding Council for Wales,
  - f. the General Teaching Council for Wales,
  - g. health service hospitals, within the meaning of the National Health Service (Wales) Act 2006, in Wales,
  - h. the Higher Education Funding Council for Wales,
  - i. the Local Government Boundary Commission for Wales,

- j. the National Council for Education and Training for Wales,
  - k. National Health Service Authorities for districts or localities in Wales, or for areas in or consisting of Wales, including National Health Service trusts all of whose hospitals, establishments and facilities are situated in Wales,
  - ka. the Natural Resources Body for Wales,
  - l. the Qualifications, Curriculum and Assessment Authority for Wales,
  - m. the Wales Centre for Health, and
  - n. the Welsh Board of Health.
3. An order under subsection (1)(f) may be made in relation to a description of records—
- a. which (immediately before the order is made) are public records for the purposes of the Public Records Act 1958, or
  - b. which (at that time) are not public records for those purposes.
4. No order under subsection (1)(f) may be made—
- a. in relation to records within paragraph (a) of subsection (3), unless the Lord Chancellor has consulted the Welsh Ministers, and
  - b. in relation to records within paragraph (b) of that subsection, without the agreement of the Welsh Ministers.
5. A statutory instrument containing an order under subsection (1)(f) is subject to annulment in pursuance of a resolution of either House of Parliament.
6. In this section “records” includes—
- a. written records, and
  - b. records conveying information by any other means.

## Subheading 2: Miscellaneous

### 149. Resolution of devolution issues

For provision about the resolution of devolution issues see Schedule 9.

### 150. Power to make consequential provision

1. The Secretary of State may by order make such provision as the Secretary of State considers appropriate in consequence of—
  - a. any provision made by an Assembly Measure or Act of the Assembly,

- b. any provision of subordinate legislation made, or purporting to be made, under an Assembly Measure or Act of the Assembly,
  - c. any provision of subordinate legislation made, or purporting to be made, by the Welsh Ministers, the First Minister or the Counsel General, or
  - d. any provision of subordinate legislation made, or purporting to be made, by any other person (not being a Minister of the Crown) in the exercise of a function conferred or imposed by Act of Parliament where the statutory instrument (or a draft of the statutory instrument) containing the subordinate legislation is required to be laid before the Assembly.
2. An order under this section may make such modifications of—
    - a. any enactment (including any enactment comprised in or made under this Act) or prerogative instrument, or
    - b. any other instrument or document, as the Secretary of State considers appropriate.
  3. An order under this section may not make provision with respect to matters within the legislative competence of the Scottish Parliament.
  4. An order under this section may make provision having retrospective effect.
  5. No order under this section which contains provisions in the form of amendments or repeals of enactments contained in an Act is to be made unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.
  6. A statutory instrument containing an order under this section is (unless a draft of the statutory instrument has been approved by a resolution of each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament.
  7. In subsection (1) “made” includes confirmed or approved.

## 151. Power to remedy ultra vires acts

1. Her Majesty may by Order in Council make such provision as Her Majesty considers appropriate in consequence of—
  - a. an Assembly Measure or Act of the Assembly, or any provision of an Assembly Measure or Act of the Assembly, which is not, or may not be, within the Assembly's legislative competence, or
  - b. any purported exercise by any person of a function conferred or imposed by or under an Assembly Measure or Act of the Assembly which is not, or may not be, an exercise or proper exercise of that function.
2. An Order in Council under this section may make such modifications of—
  - a. any enactment (including any enactment comprised in or made under this Act) or prerogative instrument, or
  - b. any other instrument or document, as Her Majesty considers appropriate.

3. An Order in Council under this section may make provision having retrospective effect.
4. No recommendation is to be made to Her Majesty in Council to make an Order in Council under this section which contains provisions in the form of amendments or repeals of enactments contained in an Act unless a draft of the statutory instrument containing the Order in Council has been laid before, and approved by a resolution of, each House of Parliament.
5. A statutory instrument containing an Order in Council under this section is (unless a draft of the statutory instrument has been approved by a resolution of each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament.

## 152. Intervention in case of functions relating to water etc

1. This section applies where it appears to the Secretary of State that the exercise of a relevant function (or the failure to exercise a relevant function) in any particular case might have a serious adverse impact on—
  - a. water resources in England,
  - b. water supply in England, or
  - c. the quality of water in England.
2. The Secretary of State may intervene under this paragraph in that case, so that—
  - a. the Secretary of State may in that case exercise the function, and
  - b. the person or persons on whom the function is conferred or imposed may not in that case exercise the function.
3. “Relevant function” means—
  - a. a function conferred or imposed on any person by or under an Assembly Measure or Act of the Assembly, or
  - b. a function which is not so conferred or imposed but is exercisable by the Welsh Ministers, the First Minister or the Counsel General.
4. An intervention by the Secretary of State under this section in relation to a function is to be made by giving notice to the person or persons on whom it is conferred or imposed.
5. The notice—
  - a. must state the reason for the Secretary of State's intervention,
  - b. may make provision about the effect of any steps previously taken by the person or persons on whom the function is conferred or imposed, and
  - c. may extend the time for the taking of any steps by the Secretary of State or any other person (even if the time for taking them would otherwise have expired before the notice is given).



6. Where an intervention has been made under this section in a case, the Secretary of State must, in addition to the notice under subsection (4), give notice to—
  - a. any person who has previously been given notice of any steps taken, or proposed to be taken, in the case,
  - aa. the Natural Resources Body for Wales, if concerned in the case,
  - b. the Environment Agency, if concerned in the case, and
  - c. any water undertaker or sewerage undertaker concerned in the case.

### **153. Power to vary retrospective decisions**

1. This section applies where any court or tribunal decides—
  - a. that an Assembly Measure or Act of the Assembly, or any provision of an Assembly Measure or Act of the Assembly, is outside the Assembly's legislative competence,
  - b. that any provision of subordinate legislation made, or purporting to be made, under an Assembly Measure or Act of the Assembly is outside the powers under which it was, or purported to be, made, or
  - c. that any provision of subordinate legislation made, or purporting to be made, by the Welsh Ministers, the First Minister or the Counsel General is outside the powers under which it was, or purported to be, made.
2. The court or tribunal may make an order—
  - a. removing or limiting any retrospective effect of the decision, or
  - b. suspending the effect of the decision for any period and on any conditions to allow the defect to be corrected.
3. In determining whether to make an order under this section, the court or tribunal must (among other things) have regard to the extent to which persons who are not parties to the proceedings would otherwise be adversely affected by the decision.
4. Where a court or tribunal is considering whether to make an order under this section, it must order notice (or intimation) of that fact to be given to the persons specified in subsection (5) (unless a party to the proceedings).
5. The persons mentioned in subsection (4) are—
  - a. in relation to proceedings in England and Wales, the Attorney General and the Counsel General,
  - b. in relation to proceedings in Scotland, the Advocate General for Scotland, and
  - c. in relation to proceedings in Northern Ireland, the Advocate General for Northern Ireland.

6. A person to whom notice (or intimation) is given in pursuance of subsection (4) may take part as a party in the proceedings, so far as they relate to the making of the order.
7. In deciding any question as to costs or expenses, the court or tribunal may—
  - a. take account of any additional expense which it considers that any party to the proceedings has incurred as a result of the participation of any person in pursuance of subsection (6), and
  - b. award the whole or part of the additional expense as costs or expenses to the party who incurred it (whether or not it makes an order under this section and whatever the terms of any such order it does make).
8. Any power to make provision for regulating the procedure before any court or tribunal includes power to make provision for the purposes of this section including, in particular, provision for determining the manner in which and the time within which any notice (or intimation) is to be given.
9. In subsection (1) “made” includes confirmed or approved.

## 154. Interpretation of legislation

1. This section applies to—
  - a. any provision of an Assembly Measure, or proposed Assembly Measure, which could be read in such a way as to be outside the Assembly's legislative competence,
  - b. any provision of an Act of the Assembly, or a Bill for such an Act, which could be read in such a way as to be outside the Assembly's legislative competence, and
  - c. any provision of subordinate legislation made, or purporting to be made, under an Assembly Measure or Act of the Assembly which could be read in such a way as to be outside the powers under which it was, or purported to be, made.
2. The provision is to be read as narrowly as is required for it to be within competence or within the powers, if such a reading is possible, and is to have effect accordingly.
3. In subsection (1)(c) “made” includes confirmed or approved.

## 155. Functions exercisable in relation to Wales

1. Her Majesty may by Order in Council specify functions which are to be treated for such purposes of this Act as may be specified in the Order in Council—
  - a. as being, or as not being, functions which are exercisable by the Welsh Ministers, the First Minister or the Counsel General, or
  - b. as being, or as not being, functions which are exercisable in relation to Wales or the Welsh zone.
2. A statutory instrument containing an Order in Council under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

• Head of state powers  
• Advisory bodies to the head of state

## 156. English and Welsh texts of legislation

1. The English and Welsh texts of—
  - a. any Assembly Measure or Act of the Assembly which is in both English and Welsh when it is enacted, or
  - b. any subordinate legislation which is in both English and Welsh when it is made,  
are to be treated for all purposes as being of equal standing.
2. The Welsh Ministers may by order provide in respect of any Welsh word or phrase that, when it appears in the Welsh text of any Assembly Measure or Act of the Assembly, or any subordinate legislation made under an Assembly Measure or Act of the Assembly or by the Welsh Ministers, it is to be taken as having the same meaning as the English word or phrase specified in relation to it in the order.
3. No order is to be made under subsection (2) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Assembly.
4. An Assembly Measure or Act of the Assembly, or any subordinate legislation made under an Assembly Measure or Act of the Assembly or by the Welsh Ministers, is to be construed in accordance with any order under subsection (2); but this is subject to anything to the contrary contained in the Assembly Measure, Act of the Assembly or subordinate legislation.
5. This section applies in relation to subordinate legislation made by the First Minister or the Counsel General as in relation to subordinate legislation made by the Welsh Ministers.

### Subheading 3: Supplementary

## 157. Orders and directions

1. Any power of a Minister of the Crown or the Welsh Ministers under this Act to make an order is exercisable by statutory instrument.
2. Any such power and any power under this Act to make an Order in Council—
  - a. may be exercised so as to make different provision for different cases or classes of case or different purposes,
  - b. may be exercised so as to make provision which applies generally or subject to specified exemptions or exceptions or only in relation to specific cases or classes of case, and
  - c. includes power to make supplementary, incidental, consequential, transitory, transitional or saving provision.
3. Any power conferred by this Act to give a direction includes power to vary or revoke the direction.

## 158. Interpretation

### 1. In this Act (except where the context otherwise requires)—

- “EU law” means—
  - a. all the rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the EU Treaties, and
  - b. all the remedies and procedures from time to time provided for by or under the EU Treaties,
- “the Convention rights” has the same meaning as in the Human Rights Act 1998 (c. 42),
- “cross-border body” means any body (including a government department) or undertaker exercising functions, or carrying on activities, in or with respect to Wales (or any part of Wales) and anywhere else,
- “enactment” includes an Assembly Measure, an Act of the Assembly and subordinate legislation (but see also subsection (2)),
- “English border area” means a part of England adjoining Wales (but not the whole of England),
- “financial year” means the twelve months ending with 31st March,
- “function” means power or duty,
- “government department” means any department of the Government of the United Kingdom,
- “international obligations” means any international obligations of the United Kingdom other than obligations to observe and implement EU law or the Convention rights,
- “Minister of the Crown” includes the Treasury,
- “modifications” includes amendments, repeals and revocations,
- “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30) (including an instrument made under an Assembly Measure or Act of the Assembly),
- “tribunal” means any tribunal in which legal proceedings may be brought,
- “Wales” includes the sea adjacent to Wales out as far as the seaward boundary of the territorial sea, and

• International organizations

• International human rights treaties

• International law

- "Welsh zone" means the sea adjacent to Wales which is—
  - a. within British fishery limits (that is, the limits set by or under section 1 of the Fishery Limits Act 1976), and
  - b. specified in an Order in Council under section 58 or an order under subsection (3).
- 2. In sections 95(3), 109(2) and 151(2) "enactment" includes an Act of the Scottish Parliament and an instrument made under such an Act.
- 3. The Secretary of State may by order determine, or make provision for determining, for the purposes of the definitions of "Wales" and the "Welsh zone", any boundary between waters which are to be treated as parts of the sea adjacent to Wales, or sea within British fishery limits adjacent to Wales, and those which are not.
- 4. An Order in Council under section 58 may include any provision that may be included in an order under subsection (3).
- 5. No order is to be made under subsection (3) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.
- 6. Section 13 of the National Audit Act 1983 (c. 44) (interpretation of references to the Committee of Public Accounts) applies for the purposes of this Act as for those of that Act.

## 159. Index of defined expressions

In this Act the following expressions are defined or otherwise explained by the provisions indicated—

- the 2007 election: section 161(1)
- Acts of the Assembly: section 107(1)
- annual Budget motion: section 125(1)
- the Assembly: section 1(1)
- the Assembly Act provisions: section 103(8)
- the Assembly Commission: section 27(1)
- Assembly constituency: section 2(1)
- Assembly constituency member: section 1(2)(a)
- Assembly electoral region: section 2(2) and (3)
- Assembly Measures: section 93(1)
- Assembly member: section 1(3)
- Assembly proceedings: section 1(5)
- Assembly regional member: section 1(2)(b)
- Assembly's legislative competence (in relation to Acts of the Assembly): section 108
- Assembly's legislative competence (in relation to Assembly Measures): section 94
- the Audit Committee: section 30(1)
- the Auditor General: section 145(1)
- Budget resolution of the Assembly: section 120(8)
- the Clerk: section 26(1)
- the Committee of Public Accounts: section 158(6)

- EU law: section 158(1)
- constituency vote: section 6(2)
- the Convention rights: section 158(1)
- the Counsel General: section 45(1)(c)
- cross-border body: section 158(1)
- the Deputy Presiding Officer: section 25(1)(b)
- Deputy Welsh Minister: section 50
- electoral region figure: section 8(5)
- electoral region vote: section 6(3)
- enactment: section 158(1) and (2)
- English border area: section 158(1)
- financial year: section 158(1)
- the First Minister: sections 46 and 47
- function: section 158(1)
- government department: section 158(1)
- the initial period: section 161(5)
- international obligations: section 158(1)
- member of the staff of the Assembly: paragraph 3(2) of Schedule 2
- member of the staff of the Welsh Assembly Government: section 52
- Minister of the Crown: section 158(1)
- modifications: section 158(1)
- political group: section 24(5)
- political group with an executive role: section 25(8)
- the Presiding Officer: section 25(1)(a)
- the principal accounting officer for the Assembly Commission: section 138(1) and (2)
- the principal accounting officer for the Welsh Ministers: section 129(6) and (7)
- regional returning officer: section 7(7)
- registered political party: section 6(6)
- relevant enactment (in sections 124 to 128): section 124(4)
- the relevant persons (in sections 124 to 128): section 124(3)
- the standing orders: section 31(1)
- subordinate legislation: section 158(1)
- supplementary Budget motion: section 126(1)
- tribunal: section 158(1)
- use of resources: section 125(4)
- Wales: section 158(1), (3) and (4)
- Welsh Assembly Government: section 45(1)
- Welsh Consolidated Fund: section 117
- the Welsh Ministers: section 45(2)
- “Welsh zone”: section 158(1), (3) and (4)

## 160. Minor and consequential amendments

1. For minor and consequential amendments see Schedule 10.

2. The Secretary of State may by order make such modifications of—
  - a. any enactment contained in an Act passed before or in the same session as this Act, or
  - b. any enactment contained in an instrument made before the passing of this Act or in the session in which this Act is passed,as the Secretary of State considers appropriate in consequence of this Act.
3. No order containing provision under subsection (2)(a) is to be made unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.
4. A statutory instrument containing an order under subsection (2) is (unless a draft of the statutory instrument has been approved by a resolution of each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament.

## 161. Commencement

1. Subject as follows, this Act comes into force immediately after the ordinary election under section 3 of the Government of Wales Act 1998 (c. 38) held in 2007 (referred to in this Act as “the 2007 election”).
2. The following provisions come into force on the day on which this Act is passed—
  - paragraphs 5, 6 and 12 of Schedule 2,
  - sections 95 and 96 and Schedule 5,
  - section 109 and Schedule 7,
  - section 119 and the repeal by Schedule 12 of section 81 of the Government of Wales Act 1998,
  - section 120(3) and (7),
  - section 125 and the repeal by Schedule 12 of section 86 of the Government of Wales Act 1998,
  - sections 157 to 159,
  - section 160(2) to (4),
  - the amendment made by paragraph 61 of Schedule 10 in section 13 of the Political Parties, Elections and Referendums Act 2000 (c. 41),
  - this section,
  - section 162 and Schedule 11,

- the repeal by Schedule 12 of section 12(1)(d) of the Government of Wales Act 1998, and
  - sections 164 to 166.
3. The following provisions come into force on 1st April 2007—
- sections 117 and 118 and the repeal by Schedule 12 of section 80 of the Government of Wales Act 1998,
  - section 120(1) and (2), (4) to (6) and (8) and the repeal by Schedule 12 of section 84 of that Act,
  - sections 121 and 122 and the repeal by Schedule 12 of section 82 of that Act,
  - section 124 and the repeal by Schedule 12 of sections 85(1) and 89 of that Act,
  - section 126,
  - sections 128 and 129, and
  - the amendments in the Local Government, Planning and Land Act 1980 (c. 65), the Local Government Finance Act 1988 (c. 41) and the Housing Act 1988 (c. 50) made by Schedule 10.
4. Subject to subsections (2), (3) and (6), the following provisions come into force immediately after the end of the initial period—
- a. any provision of this Act so far as relating to functions of the Welsh Ministers, the First Minister, the Counsel General or the Assembly Commission,
  - b. any provision of this Act so far as relating to the Auditor General or the Comptroller and Auditor General,
  - c. any other provision consisting of an amendment made in the Government of Wales Act 1998 (c. 38) by Schedule 10, and
  - d. the repeal by Schedule 12 of provisions falling to be repealed in consequence of any provision within paragraph (a), (b) or (c).
5. In this Act “the initial period” means the period—
- a. beginning with the day of the poll at the 2007 election, and
  - b. ending with the day on which the first appointment is made under section 46.



6. The repeals by Schedule 12 of each of sections 83, 88, 93(8), 97 and 101A of the Government of Wales Act 1998 (and of the other provisions of that Act so far as relating to them) come into force when the section has been complied with for the financial year ending with 31st March 2007 (and earlier financial years); and sections 123, 131, 132 and 141 do not apply for that financial year.
7. The Assembly Act provisions come into force in accordance with section 105.

## 162. Transitional etc. provision

1. For transitional and transitory provisions and savings see Schedule 11.
2. The Secretary of State may by order make any other transitional, transitory or saving provision which may appear appropriate in consequence of, or otherwise in connection with, this Act.
3. An order under subsection (2) may, in particular, include any savings from the effect of any amendment or repeal or revocation made by this Act.
4. Nothing in Schedule 11 limits the power conferred by subsection (2); and such an order may, in particular, make modifications of that Schedule.
5. Nothing in that Schedule, or in any provision made by virtue of subsection (2), prejudices the operation of sections 16 and 17 of the Interpretation Act 1978 (c. 30).
6. No order under subsection (2) which contains provisions in the form of amendments or repeals of any provision contained in any of paragraphs 30 to 35, 50 and 51 of Schedule 11 is to be made unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.
7. A statutory instrument containing an order under subsection (2) is (unless a draft of the statutory instrument has been approved by a resolution of each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament.

## 163. Repeals and revocations

For repeals and revocations of enactments (including some spent enactments) see Schedule 12.

## 164. Financial provision

1. There is to be paid out of money provided by Parliament—
  - a. any expenditure incurred by a Minister of the Crown or government department by virtue of this Act, and
  - b. any increase attributable to this Act in the sums payable under any other Act out of money provided by Parliament.
2. There are to be paid into the Consolidated Fund any sums received by a Minister of the Crown by virtue of this Act (other than any required to be paid into the National Loans Fund).

## 165. Extent

1. The following provisions—
  - section 36(7) to (9),

- section 39, and
  - section 40(2) and (3),  
extend only to England and Wales.
2. The amendments, and repeals and revocations, made by this Act have the same extent as the enactments amended or repealed or revoked.

## **166. Short title**

This Act may be cited as the Government of Wales Act 2006.

## **Schedules**

**Schedules 1-4: [Schedules 1-4 omitted due to length - full text of schedules can be found online at <http://www.legislation.gov.uk/ukpga/2006/32/schedules>]**

## **Schedule 5: Assembly Measures**

### **Part 1: Matters**

#### **Field 1: agriculture, fisheries, forestry and rural development**

##### **Matter 1.1**

The red meat industry, in relation to—

- a. increasing efficiency or productivity in the industry;
- b. improving marketing in the industry;
- c. improving or developing services that the industry provides or could provide to the community;
- d. improving the ways in which the industry contributes to sustainable development.

#### **Interpretation of this field**

In this field “the red meat industry” means all of the activities comprised in—

- a. breeding, keeping, processing, marketing and distributing cattle, sheep and pigs (alive or dead), and

- b. producing, processing, marketing, manufacturing and distributing products derived to any substantial extent from those animals (apart from milk and milk products, fleece wool and hides).

For the purposes of this definition—"cattle" means bovine animals, including bison and buffalo;"pigs" means porcine animals, including wild boar and other feral pigs.

## **Field 2: ancient monuments and historic buildings**

### **Matter 2.1**

The functions of local authorities in the support, improvement and promotion of the appreciation by the public of archaeological remains, ancient monuments, buildings and places of historical or architectural interest, and historic wrecks.

In this matter "local authorities" means the councils of counties and county boroughs in Wales.

## **Field 3: culture**

### **Matter 3.1**

The functions of local authorities in the support, improvement and promotion of arts and crafts, museums and galleries, libraries, archives and historical records, and cultural activities and projects.

This matter does not include licensing of sale and supply of alcohol, provision of entertainment and late night refreshment.

In this matter "local authorities" means the councils of counties and county boroughs in Wales.

## **Field 4: economic development**

## **Field 5: education and training**

### **Matter 5.1**

Provision about the categories of school that may be maintained by local authorities.

### **Matter 5.2**

Provision about the establishment and discontinuance of schools maintained by local authorities, their change from one category to another and their alteration in other respects.

### **Matter 5.2A**

Conduct and governance of schools maintained by local authorities, including the allocation of functions, property, rights and liabilities relating to such schools.

## Matter 5.2B

Securing collaboration between persons or bodies with functions relating to schools maintained by local authorities.

## Matter 5.2C

The following activities by persons or bodies with functions relating to schools maintained by local authorities—

- a. establishment of bodies to do all or any of the following—
  - i. carry out activities relating to education or training,
  - ii. exercise education functions on behalf of local authorities;
- b. involvement with bodies mentioned in paragraph (a).

## Matter 5.3

Provision about the admission of pupils to schools maintained by local authorities.

## Matter 5.4A

The regulation of—

- a. schools that are not maintained by local authorities;
- b. relevant independent educational institutions.

## Matter 5.5

Provision about school attendance, the behaviour of pupils at school, school discipline and the exclusion of pupils from school (including the duties of parents in connection with those matters).

## Matter 5.6

Provision about the making of arrangements for the provision of education for persons of compulsory school age who have been excluded from schools or who for any other reason would not otherwise receive suitable education.

## Matter 5.7

Provision about entitlement to primary, secondary and further education and to training.

## Matter 5.8

Provision about the provision of services that are intended to encourage, enable or assist people—

- a. to participate effectively in education or training,
- b. to take advantage of opportunities for employment, or
- c. to participate effectively in the life of their communities.

## Matter 5.9

Provision about food and drink provided on school premises or provided for children at a place where they receive education or childcare.

## Matter 5.10

Arrangements for persons to travel to and from the places where they receive education or training.

This matter applies to—

- a. persons receiving nursery, primary, secondary or further education or training;
- b. persons described in matter 5.17 receiving higher education.

[Omitted]

## Matter 5.11

Provision for and in connection with securing the provision of facilities for post-16 education or training.

## Matter 5.12

- Provision for and in connection with the establishment and dissolution of—
  - a. institutions concerned with the provision of further education, and
  - b. bodies that conduct such institutions,
- including the circumstances in which an educational institution becomes or ceases to be an institution concerned with the provision of further education.
- Provision about—
  - a. the conduct and functions of such institutions and bodies that conduct such institutions;
  - b. the property, rights and liabilities of such institutions and bodies that conduct such institutions;

- c. property held by any person for the purposes of such an institution;
- d. the governance and staff of such institutions.

### **Matter 5.13**

Provision for and in connection with securing collaboration—

- a. between bodies that conduct institutions concerned with the provision of further education, or
- b. between one or more such bodies and other persons or bodies that have functions relating to education or training in Wales,

including, in particular, provision for and in connection with the establishment of bodies for the purpose of discharging functions on behalf of one or more persons or bodies that are party to arrangements for collaboration.

### **Matter 5.14**

The provision of financial resources for and in connection with—

- a. education or training provided by institutions concerned with the provision of further education;
- b. post-16 education or training provided otherwise than by such institutions;
- c. the carrying out of research relating to education or training falling within paragraph (a) or (b).

### **Matter 5.15**

The inspection of—

- za. schools;
- zb. relevant independent educational institutions;
- a. education or training provided by institutions concerned with the provision of further education;
- b. pre-16 education or training, or post-16 education or training, provided otherwise than by institutions within paragraphs (za) to (a);
- c. the training of teachers and specialist teaching assistants for schools;
- d. services of the kinds mentioned in matter 5.8.

## Matter 5.16

The provision of advice and information in connection with, and the carrying out of studies in relation to

- a. pre-16 education or training;
- b. post-16 education or training;
- c. the training of teachers and specialist teaching assistants for schools;
- d. services of the kinds mentioned in matter 5.8.

## Matter 5.17

[Omitted]

## Matter 5.18

The provision of any of the following for children or young persons—

- a. facilities for social or physical training;
- b. educational activities.

In this matter “children” and “young persons” have the same meaning as in field 15.

## Interpretation of this field

Expressions used in this field and in the Education Act 1996 have the same meaning in this field as in that Act.

In this field—

- “nursery education” means education suitable for children who have not attained compulsory school age;
- “post-16 education” means—
  - a. education (other than higher education) suitable to the requirements of persons who are above compulsory school age, and
  - b. organised leisure-time occupation connected with such education;
- “post-16 training” means—
  - a. training suitable to the requirements of persons who are above compulsory school age, and
  - b. organised leisure-time occupation connected with such training.
- “pre-16 education or training” means education or training suitable to the requirements of persons who are of or below compulsory school age;

- “relevant independent educational institution” means an institution other than a school which—
  - a. provides part-time education for one or more persons of compulsory school age (“part-time students”) whether or not it also provides full-time education for any person, and
- would be an independent school but for the fact that the education provided for the part-time student or students is part-time rather than full-time.
- For the purposes of the above definition of “relevant independent educational institution”, an institution provides “part-time” education for a person if—
  - a. it provides education for the person, and
  - b. the education does not amount to full-time education.
- References in this field to an institution concerned with the provision of further education are references to an educational institution, other than a school or an institution within the higher education sector (within the meaning of the Further and Higher Education Act 1992), that is conducted (whether or not exclusively) for the purpose of providing further education.

## Field 6: environment

### Matter 6.1

Preventing, reducing, collecting, managing, treating or disposing of waste.

This matter does not include—

- a. regulation of any activity in the sea;
- b. regulation of the provision of postal services by a person who holds, or is required to hold, a licence from the Postal Services Commission authorising the person to convey letters from one place to another (whether or not the licence relates to the services).

See below for further provision about what this matter does not include.

### Matter 6.2

Disposal of waste in the sea where the waste has been collected, managed or treated on land.

This matter does not include regulation of the following activities—

- a. depositing any substance or object in the sea or on or under the seabed from any vehicle, vessel, aircraft, marine structure or floating container;
- b. depositing any explosive substance or article in the sea or on or under the seabed;



- c. incinerating any substance or object on any vehicle, vessel, marine structure or floating container.

See below for further provision about what this matter does not include.

## Matter 6.3

Protecting or improving the environment in relation to pollution.

This matter does not include—

- a. regulating the composition and content of fuel used in—
  - i. a means of transport,
  - ii. non-road mobile machinery, or
  - iii. an agricultural or forestry tractor;
- b. obligations upon persons who supply transport fuel at or for delivery to places in the United Kingdom to produce evidence showing the supply of renewable transport fuel;
- c. making provision regarding the proportion of renewable energy consumed in transport, including the imposition of requirements relating to sustainability that determine whether any particular renewable energy is to be counted towards any renewable energy obligation or target;
- d. provision of financial support in connection with—
  - i. the production of renewable energy for consumption in transport, or
  - ii. the use of that energy in transport,

including the imposition of requirements relating to sustainability that determine whether any particular renewable energy qualifies for financial support.
- e. regulation of oil and gas exploration and exploitation in those parts of the territorial sea that are not relevant territorial waters.

See below for further provision about what this matter does not include.

## Matter 6.4

Protecting or improving the environment in relation to nuisances.

This matter does not include—

- a. imposition of criminal or civil liability in respect of energy nuisances that consist of acts, omissions and states of affairs for which there is statutory authority, except criminal or civil liability which the Welsh Ministers have power to impose;
- b. removal of relevant defences to, or relevant exclusions from, rules of law which impose civil or criminal liability in respect of energy nuisances, except those defences and exceptions which the Welsh Ministers have power to remove;
- c. regulation of the emission of smoke, artificial light or noise from military premises;
- d. regulation of gas activities, oil activities, and infrastructure that is necessary for carrying out any such activities;
- e. regulation of oil and gas exploration and exploitation in the sea;
- f. regulation of electronic communications and electronic communications networks.

See below for further provision about what this matter does not include.

## **Exclusions 1: Not included in matters 6.1, 6.2, 6.3 and 6.4**

Matters 6.1, 6.2, 6.3 and 6.4 do not include any of the following—

- a. regulation concerning the control of major accident hazards involving dangerous substances (this exception is to be interpreted in accordance with Council Directive 96/82/EC F70 and it relates only to activity within the scope of that Directive);
- b. regulation of the decommissioning of offshore energy installations and related infrastructure.

## **Exclusions 2: Not included in matters 6.1 and 6.2**

Matters 6.1 and 6.2 do not include any of the following—

- a. regulation of decommissioned explosives that are outside the scope of the Waste Directive by virtue of Article 2(1)(e) of the Waste Directive and are or have been—
  - i. held on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence, or
  - ii. held by or for the purposes of visiting forces;
- b. regulation of radioactive material that is at military premises;

- c. regulation of the capture, conveyance or disposal of carbon dioxide as part of relevant carbon capture and storage.

### **Exclusions 3: Not included in matters 6.3 and 6.4**

Matters 6.3 and 6.4 do not include any of the following—

- a. regulation of the contained use of genetically modified organisms;
- b. regulation of the following activities in the sea—
  - i. depositing any substance or object in the sea or on or under the seabed from any vehicle, vessel, aircraft, marine structure or floating container, or any structure on land constructed or adapted wholly or mainly for the purpose of depositing solids in the sea;
  - ii. scuttling any vessel or floating container;
  - iii. constructing, altering or improving works in or over the sea or on or under the seabed;
  - iv. using any vehicle, vessel, aircraft, marine structure or floating container to remove any substance or object from the seabed;
  - v. dredging;
  - vi. depositing or using any explosive substance or article in the sea or on or under the seabed;
  - vii. incinerating any substance or object on any vehicle, vessel, marine structure or floating container;
- c. marine licensing under Part 4 of the Marine and Coastal Access Act 2009.

### **Definitions 1: Meaning of “pollution”**

In this field “pollution” means pollution of the air, water or land which may give rise to any environmental harm, including (but not limited to) pollution caused by light, noise, heat or vibrations or any other kind of release of energy.

For the purposes of this definition “air” includes (but is not limited to) air within buildings and air within other natural or man-made structures above or below ground. Meaning of “nuisance”

In this field “nuisance” means an act or omission affecting any place, or a state of affairs in any place, which may impair, or interfere with, the amenity of the environment or any legitimate use of the environment, apart from an act, omission or state of affairs that constitutes pollution. Meaning of “relevant defence” and “relevant exclusion”

In matter 6.4, in relation to a rule of law which imposes civil or criminal liability in respect of an energy nuisance (“the unlawful nuisance”)—“relevant defence” means

statutory removal (however expressed, and whether conditional or not) of the civil or criminal liability in respect of an act, omission or state of affairs that is within the scope of the unlawful nuisance; “relevant exclusion” means statutory exclusion (however expressed, and whether conditional or not) of an act, omission or state of affairs from the scope of the unlawful nuisance.

In those definitions, a reference to the scope of the unlawful nuisance is a reference to the class of acts, omissions and states of affairs that constitutes the unlawful nuisance.

## Definitions 2

Other interpretation of this field

In this field—

- “electricity activity” means any of the following—
  - a. generating electricity at a generating station whose construction, extension or operation requires—
    - i. the consent of the Secretary of State, or
    - ii. the authority of an order granting development consent under the Planning Act 2008;
  - b. transmitting, distributing or supplying electricity;
- and for this purpose, the reference to consent of the Secretary of State is a reference to consent under powers to regulate generation of electricity; “electronic communication” means a communication transmitted—
  - a. by means of an electronic communications network, or
  - b. by other means but while in an electronic form;
- “electronic communications network” means—
  - a. a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description, and
  - b. such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals—
    - i. apparatus comprised in the system,
    - ii. apparatus used for the switching or routing of the signals, and
    - iii. software and stored data;
- “energy nuisance” means a nuisance that relates to electricity activities, gas activities, oil activities, or infrastructure that is necessary for carrying out any such activities; “environmental harm” means any of the following—
  - a. harm to the health of humans and other living organisms;

- b. harm to the quality of the environment, including—
  - i. harm to the quality of the environment taken as a whole,
  - ii. harm to the quality of the air, water or land, and
  - iii. other impairment of, or interference with, the ecological systems of which any living organisms form part;
- c. offence to the senses of human beings;
- d. damage to property;
- e. impairment of, or interference with, the amenity of the environment or any legitimate use of the environment;
- “gas activity” means storing, conveying or supplying gas, except any such activity that is carried out by an individual for the domestic purposes of the individual; “marine structure” means a platform or other artificial structure at sea, other than a pipeline; “military premises” means premises which are—
  - a. occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence, or
  - b. occupied by or for the purposes of visiting forces;
- “offshore energy installation” means any of the following installations that are maintained in the sea or on the foreshore or other land intermittently covered with water, and that are not connected with dry land by a permanent structure providing access at all times and for all purposes—
  - a. installations used for oil activities, gas activities or for the exploration or exploitation of gas or oil;
  - b. carbon dioxide storage installations;
  - c. renewable energy installations;
- “oil activity” means storing, conveying or supplying oil, except any such activity that is carried out by an individual for the domestic purposes of the individual; “relevant carbon capture and storage” means the capture and underground disposal of carbon dioxide by a method in which the carbon dioxide is captured at the place of its production and conveyed for disposal by pipeline directly from the place of production to a place of underground disposal; “relevant territorial waters” means the waters which extend seaward for three miles from the baselines from which the breadth of the territorial sea adjacent to Wales is measured; but any order made under section 104(4)(a) of the Water Resources Act 1991 for the purposes of Part 3 of that Act in relation to an area of the territorial sea adjacent to Wales also applies for the purposes of determining what are relevant territorial waters for the purposes of this field; “sea” means (except where the context otherwise requires) the sea adjacent to Wales out as far as the seaward

boundary of the territorial sea; “statutory” means arising by virtue of an Act; “visiting force” means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952;

- “Waste Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste
- An order or an Order in Council made under or by virtue of section 158(3) or (4) for the purposes of that section also applies for the purpose of determining any boundary between the parts of the sea which are to be treated as adjacent to Wales for the purposes of this field and those which are not.

## **Field 7: fire and rescue services and promotion of fire safety**

## **Field 8: food**

## **Field 9: health and health services**

### **Matter 9.1**

Provision for and in connection with the provision of redress without recourse to civil proceedings in circumstances in which, under the law of England and Wales, qualifying liability in tort arises in connection with the provision of services (in Wales or elsewhere) as part of the health service in Wales.

### **Matter 9.2**

Assessment of mental health and treatment of mental disorder.

This matter does not include any of the following—

- a. subjecting patients to—
  - i. compulsory attendance at any place for the purposes of assessment or treatment,
  - ii. compulsory supervision, or
  - iii. guardianship;
- b. consent to assessment or treatment;
- c. restraint;
- d. detention.

For the purposes of this matter, “treatment of mental disorder” means treatment to alleviate, or prevent a worsening of, a mental disorder or one or more of its symptoms or manifestations; and it includes (but is not limited to) nursing, psychological intervention, habilitation, rehabilitation and care.

## Interpretation of this field

In this field—

- “the health service in Wales” means the health service continued under section 1(1) of the National Health Service (Wales) Act 2006;
- “illness” has the same meaning as in that Act;
- “mental disorder” means any disorder or disability of the mind, apart from dependence on alcohol or drugs;
- “patient” has the same meaning as in that Act;
- “personal injury” includes any disease and any impairment of a person's physical or mental health;
- “qualifying liability in tort” means liability in tort owed in respect of or consequent upon personal injury or loss arising out of or in connection with breach of a duty of care owed to any person in connection with the diagnosis of illness or the care or treatment of any patient.

## Field 10: highways and transport

### Matter 10.1

Provision for and in connection with—

- a. the making, operation and enforcement of schemes for imposing charges in respect of the use or keeping of motor vehicles on Welsh trunk roads;
- b. the application of the proceeds of charges imposed under such schemes towards purposes relating to transport.

### Matter 10.2

Concessionary travel on the following services—

- a. bus services;
- b. Welsh services provided under a franchise agreement to which the Welsh Ministers are a party.

Any expression which is used in paragraph (b) and the Railways Act 2005 has the meaning given in that Act.

## Interpretation of this field

In this field—

- “motor vehicle” has the meaning given in section 185(1) of the Road Traffic Act 1988, except that section 189 of that Act (exception for certain pedestrian controlled vehicles and electrically assisted pedal cycles) applies as it applies for the purposes of the Road Traffic Acts;
- “road” has the same meaning as in the Road Traffic Regulation Act 1984;
- “Welsh trunk road” means a road for which the Welsh Ministers are the traffic authority (within the meaning of section 121A of the Road Traffic Regulation Act 1984).

## Field 11: housing

### Matter 11.1

The provision of automatic fire suppression systems in new residential premises. In this matter “new residential premises” means—

- a. premises newly constructed for residential use;
- b. premises newly converted to residential use;
- c. premises converted to use as one or more new residences by subdivision of one or more existing residences; and
- d. premises converted to use as one or more new residences by amalgamation of one or more existing residences.

### Matter 11.2

Social housing providers.

### Matter 11.3

Relevant social housing bodies.

### Matter 11.4

Tenure of rented social housing and other arrangements under which social housing is provided.

### Matter 11.5

Disposals of—

- a. social housing,
- b. land held or used for the purposes of, or in connection with, social housing, and
- c. land to which a provision of any of the following enactments applies—
  - i. Part 2 of the Housing Act 1985;
  - ii. Part 5 of the Housing Act 1985;
  - iii. Chapter 2 of Part 1 of the Housing Act 1996;
  - iv. Chapter 4 of Part 1 of the Housing Act 1996;



v. Chapter 4 of Part 2 of the Housing and Regeneration Act 2008  
(insofar as the disposal does not fall within paragraph (a) or (b) of this matter).

## Matter 11.6

Provision of advice and non-financial assistance to individuals in respect of their obtaining, and living in, housing.

This matter includes, in particular, advice and non-financial assistance in respect of skills that are relevant to the ability to live independently, or more independently, in housing.

## Matter 11.7

Provision by local authorities of caravan sites for use by Gypsies and Travellers.

## Matter 11.8

Homelessness.

## Interpretation of this field

In this field—

- “caravan site” means—
  - a. land on which a caravan or other mobile accommodation (apart from a tent) is stationed for the purposes of human habitation, and
  - b. land which is used in conjunction with land falling within paragraph (a) of this definition;
- “local authority” means a county council or a county borough council in Wales;
- “relevant social housing body” means a person (if, or insofar as, it is not a social housing provider) which has functions relating to—
  - a. social housing providers, or
  - b. social housing;
- but such a person is a relevant social housing body only insofar as the person has functions relating to social housing providers or social housing;
- “social housing” means any housing provided by a social housing provider;
- “social housing provider” means—
  - a. a local authority, and
  - b. a person (other than a local authority) which—
    - i. provides housing to, or

ii. has functions relating to allocation of housing to,

people whose needs are not adequately served by the commercial housing market;

- but a local authority or such other person is a social housing provider only insofar as it provides, or has functions relating to allocation of, housing.

## Field 12: local government

### Matter 12.1

Provision for and in connection with—

- a. the constitution of new principal areas and the abolition or alteration of existing principal areas, and
- b. the establishment of councils for new principal areas and the abolition of existing principal councils.

### Matter 12.2

Provision for and in connection with—

- a. the procedure for the making and coming into force of byelaws, and
- b. the enforcement of byelaws.

“Byelaws” means those of a class which may be confirmed by the Welsh Ministers (but the provision which may be made includes provision to remove a requirement of confirmation).

### Matter 12.3

Any of the following—

- a. the principles which are to govern the conduct of members of relevant authorities,
- b. codes of conduct for such members,
- c. the conferral on any person of functions relating to the promotion or maintenance of high standards of conduct of such members (including the establishment of bodies to have such functions),
- d. the making or handling of allegations that members (or former members) of relevant authorities have breached standards of conduct, including in particular—
  - i. the investigation and adjudication of such allegations and reports on the outcome of investigations,

- ii. the action that may be taken where breaches are found to have occurred,
- e. codes of conduct for employees of relevant authorities.

For the purposes of this matter—

- “relevant authority” has the same meaning as in Part 3 of the Local Government Act 2000, except that other than in paragraph (d) it does not include a police authority,
- “member” includes a co-opted member within the meaning of that Part.

## Matter 12.4

Provision for and in connection with strategies of county councils and county borough councils for promoting or improving the economic, social or environmental well-being of their areas or contributing to the achievement of sustainable development in the United Kingdom, including provision imposing requirements in connection with such strategies on other persons with functions of a public nature.

## Matter 12.5

Provision for and in connection with—

- a. the making of arrangements by relevant Welsh authorities to secure improvement in the way in which their functions are exercised,
- b. the making of arrangements by relevant Welsh authorities for the involvement in the exercise of their functions of people who are likely to be affected by, or interested in, the exercise of the functions, and
- c. the assessment and inspection of the performance of relevant Welsh authorities in exercising their functions.

The following are “relevant Welsh authorities”—

- a. a county council, county borough council or community council in Wales,
- b. a National Park authority for a National Park in Wales,
- c. a fire and rescue authority in Wales constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies,
- d. a levying body within the meaning of section 74(1) of the Local Government Finance Act 1988 in respect of which the county council or charging authority referred to in section 74(1)(b) of that Act was a council or authority for an area in Wales,
- e. a body to which section 75 of that Act applies (special levies) and which as regards the financial year beginning in 1989 had power to levy a rate by reference to property in Wales.

## Matter 12.6

This matter does not include—

- a. direct elections to executives of principal councils, or
- b. the creation of a form of executive requiring direct elections.

For the purposes of this matter—

- a. “executive arrangements” has the same meaning as in Part 2 of the Local Government Act 2000;
- b. [Repealed]
- c. “direct elections” means elections by local government electors (within the meaning of section 270(1) of the Local Government Act 1972).

Arrangements by principal councils with respect to the discharge of their functions, including executive arrangements.

## Matter 12.7

Committees of principal councils with functions of—

- a. review or scrutiny, or
- b. making reports or recommendations.

This matter does not include committees under section 19 of the Police and Justice Act 2006 (crime and disorder committees).

## Matter 12.8

Areas of communities and constitution, structure, and procedures of local government institutions for communities.

## Matter 12.9

Electoral arrangements for elected local government institutions for communities. In this matter “electoral arrangements” does not include—

- a. the local government franchise;
- b. electoral registration and administration;
- c. the voting system for the return of members in an election.

## Matter 12.10

Conferral on local government institutions for communities of powers—

- a. to which this matter applies,
- b. that are exercisable in relation to their areas, and
- c. that are powers exercisable by principal councils in relation to principal areas.

This matter applies to powers to do anything which the holder of the power considers likely to promote or improve the economic, social or environmental well-being of an area.

## Matter 12.11

Grants from the Welsh Ministers to fund local government for communities.

## Matter 12.12

Relations between different communities (and their local government institutions), or between communities (and their local government institutions) and principal councils.

## Matter 12.13

Schemes for the accreditation of quality in local government for communities.

## Matter 12.14

Public participation in local government for communities (apart from elections).

## Matter 12.15

The provision of information relating to local government to the public. For the purposes of this matter “local government” means—

- a. local government for communities;
- b. local government for counties and county boroughs.

## Matter 12.16

Salaries, allowances, pensions and other payments for members of the following—

- a. local government institutions for communities;
- b. county councils and county borough councils;
- c. National Park authorities;

- d. fire and rescue authorities constituted by schemes under section 2 of the Fire and Rescue Services Act 2004 or schemes to which section 4 of that Act apply.

## **Matter 12.17**

Promoting and supporting membership of the following—

- a. local government institutions for communities;
- b. county councils and county borough councils.

## **Matter 12.18**

Council tax payable in respect of dwellings that are not the main residence of an individual.

## **Interpretation of this field**

In this field—“communities” means separate areas for the administration of local government, each of which is wholly within a principal area (but does not constitute the whole of a principal area);“principal area” means a county borough or a county;“principal council” means a council for a principal area.

## **Field 13: National Assembly for Wales**

### **Matter 13.1**

Creation of, and conferral of functions on, an office or body for and in connection with investigating complaints about the conduct of Assembly members and reporting on the outcome of such investigations to the Assembly.

### **Matter 13.2**

Conferral of functions on the Assembly Commission for and in connection with facilitating the exercise by the Assembly of its functions (including the provision to the Assembly of the property, staff and services required for the Assembly's purposes).

### **Matter 13.3**

Provision for and in connection with the payment of salaries, allowances, pensions and gratuities to or in respect of Assembly members, the First Minister, any Welsh Minister appointed under section 48, the Counsel General and any Deputy Welsh Minister.

### **Matter 13.4**

Provision for and in connection with the creation and maintenance of a register of interests of Assembly members and the Counsel General.

## Matter 13.5

Provision about the meaning of Welsh words and phrases in—

- a. Assembly Measures,
- b. subordinate legislation made under Assembly Measures, and
- c. subordinate legislation not so made but made by the Welsh Ministers, the First Minister or the Counsel General.

## Matter 13.6

Provision for and in connection with the procedures for dealing with proposed private Assembly Measures, including, in particular—

- a. procedures for hearing the promoters of, and objectors, to proposed private Assembly Measures,
- b. the persons who may represent such promoters and objectors, and the qualifications that such persons must possess,
- c. the imposition of fees for and in connection with the promotion of proposed private Assembly Measures, and
- d. the assessment of costs incurred in connection with proposed private Assembly Measures.

## Field 14: public administration

### Matter 14.1

The following provision relating to the Auditor General—

- a. the following aspects of the Auditor General's terms of appointment—
  - i. the period of the appointment;
  - ii. salary, allowances and superannuation benefits;
  - iii. pensions and gratuities payable after a person has ceased to be Auditor General;
- b. the number of times a person may be appointed as Auditor General;
- c. restrictions on the other offices and positions which may be held by the Auditor General;
- d. activities of a person who has been (but no longer is) Auditor General;

- e. provision requiring the Auditor General—
  - i. to aim to do things efficiently and cost-effectively;
  - ii. to have regard, as the Auditor General considers appropriate, to the standards and principles that an expert professional provider of accounting or auditing services would be expected to follow;
- f. the authorisation of persons to exercise functions of the Auditor General on the Auditor General's behalf (including during a vacancy in the office);
- g. the oversight or supervision of the Auditor General or of the exercise of the Auditor General's functions;
- h. the provision or use of resources for the purposes of the Auditor General's functions including (in particular)—
  - i. the employment and use of staff;
  - ii. the procurement and use of services;
  - iii. the holding of documents or information;
  - iv. the keeping of records;
- i. the charging of fees or other amounts in relation to functions of—
  - i. the Auditor General, or
  - ii. auditors appointed by the Auditor General under an enactment;
- j. the restatement of any law relating to the Auditor General.

## Field 15: social welfare

### Matter 15.1

Charges levied by local authorities for social care services provided or secured by them and payments in respect of individuals with needs relating to their well-being so that they, or persons looking after them, may secure social care services to meet those needs.

This matter does not include charges and payments for residential care.

### Matter 15.2

Functions of public authorities relating to—



- a. safeguarding children from harm and neglect;
- b. safeguarding and promoting the well-being of vulnerable children;
- c. reducing inequalities in well-being between children or young persons.

This matter applies to the functions of public authorities whose principal functions relate to any one or more of the fields in this Part.

### **Matter 15.3**

Adoption services and special guardianship support services.

### **Matter 15.4**

Fostering.

### **Matter 15.5**

Social care services for any of the following—

- a. children;
- b. persons who care for, or who are about to care for, children;
- c. young persons;
- d. persons formerly looked after—
  - i. who have attained the age of 25, and
  - ii. who, immediately before attaining that age, have been pursuing, or intending to pursue, education or training.

### **Matter 15.6**

Co-operation and arrangements to safeguard and promote the well-being of children or young persons.

This matter applies to co-operation by, and arrangements made by, —

- a. public authorities whose principal functions relate to any one or more of the fields in this part;
- b. police authorities and chief officers of police for police areas in Wales;
- c. the British Transport Police Authority;
- d. local probation boards for areas in Wales;

- e. the Secretary of State, in relation to the Secretary of State's functions under sections 2 and 3 of the Offender Management Act 2007, or any provider of probation services under arrangements made under section 3(2) of that Act;
- f. youth offending teams for areas in Wales;
- g. the governors of prisons, young offender institutions or secure training centres in Wales (or, in the case of contracted out prisons, young offender institutions or secure training centres or contracted out parts of such institutions, their directors);
- h. persons other than public authorities who are engaged in activities relating to the well-being of children or young persons.

### **Matter 15.7**

Planning by local authorities for the discharge of their functions relating to the well-being of children or young persons.

### **Matter 15.8**

Continuing, dissolving or creating an office or body concerned with safeguarding and promoting the well-being of children or young persons; the functions of such an office or body, including in particular—

- a. reviewing the effect on children or young persons of the exercise by any person of functions related to their well-being;
- b. reviewing and monitoring—
  - i. advocacy services;
  - ii. arrangements for dealing with complaints and representations made by, or on behalf of, children or young persons in respect of persons with functions related to their well-being or persons providing them with social care services;
- c. examining cases of particular children or young persons;
- d. considering, and making representations about, any matter affecting the well-being of children or young persons.

### **Matter 15.9**

Supporting the provision of care by carers and promoting the well-being of carers.

This matter includes (but is not limited to) social care services to help carers.

In this matter “carers” means individuals who provide or intend to provide a substantial amount of care on a regular basis for—

- a. a child with a physical or mental impairment, or
- b. an individual aged 18 or over,

but it does not include individuals who provide or intend to provide care—

- a. by virtue of a contract of employment or other contract with any person, or
- b. as a volunteer for a body (whether or not incorporated)

## Matter 15.10

Social care services connected to mental health.

This matter does not include the independent mental capacity advocacy services established by Part 1 of the Mental Capacity Act 2005.

## Interpretation of this field

In this field—

- “advocacy services” means services providing assistance (by way of representation or otherwise) in connection with the well-being of any person;
- “children” means persons who have not attained the age of 18;
- “development” means physical, intellectual, emotional, social or behavioural development;
- “health” means physical or mental health;
- “local authorities” means the councils of counties or county boroughs in Wales;
- “persons formerly looked after” means persons who, at any time before attaining the age of 18—
  - a. have been in the care of a public authority, or
  - b. have been provided with accommodation by a public authority in order to secure their well-being;
- “public authorities” means each public authority within the meaning of section 6 of the Human Rights Act 1998, apart from courts or tribunals;
- “social care services” means any of the following provided in connection with the well-being of any person: residential or non-residential care services; information, advice, counselling or advocacy services; financial or any other assistance;
- “vulnerable children” means children—
  - a. who are unlikely to achieve or maintain, or have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for them of social care services,

- b. whose health or development is likely to be significantly impaired, or further impaired, without the provision for them of social care services,
- c. who have a physical or mental impairment,
- d. who are in the care of a public authority, or
- e. who are provided with accommodation by a public authority in order to secure their well-being;
- “well-being”, in relation to individuals, means well-being so far as relating to any of the following—
  - a. health and emotional well-being;
  - b. protection from harm and neglect;
  - c. education, training and recreation;
  - d. the contribution made by them to society;
  - e. social and economic well-being;
  - f. securing their rights;
- “young persons” means persons who have attained the age of 18 but not the age of 25.

## Field 16: sport and recreation

### Matter 16.1

The provision of recreational facilities and activities for children or young persons. In this matter “children” and “young persons” have the same meaning as in field 15.

### Matter 16.2

The establishment and maintenance of a route (or a number of routes) for the coast to enable the public to make recreational journeys.

This matter does not include—

- a. enabling the public to make journeys by mechanically propelled vehicles (except permitted journeys by qualifying invalid carriages);
- b. the creation of new highways (whether under the Highways Act 1980 or otherwise).

## Matter 16.3

Securing public access to relevant land for the purposes of open-air recreation.

Land is relevant land if it—

- a. is at the coast,
- b. can be used for the purposes of open-air recreation in association with land within paragraph (a), or
- c. can be used for the purposes of open-air recreation in association with a route within matter 16.2.

In this matter the reference to land at the coast is not limited to coastal land within the meaning of section 3 of the Countryside and Rights of Way Act 2000.

## Matter 16.4

The functions of local authorities in the support, improvement and promotion of sport and recreational activities.

This matter does not include licensing of sale and supply of alcohol, provision of entertainment and late night refreshment.

## Interpretation of this field

In this field—

- “coast” means the coast of Wales adjacent to the sea, including the coast of any island (in the sea) comprised in Wales;
- “estuarial waters” means any waters within the limits of transitional waters within the meaning of the Water Framework Directive (that is to say, Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy);
- “highway” has the same meaning as in the Highways Act 1980;
- “local authorities” means the councils of counties and county boroughs in Wales;
- “public foot crossing”, in relation to a river, means a bridge over which, or tunnel through which, there is a public right of way, or a public right of access, by virtue of which the public are able to cross the river on foot;
- “qualifying invalid carriage” means an invalid carriage within the meaning of section 20 of the Chronically Sick and Disabled Persons Act 1970 (use of invalid carriages on highways) which complies with the prescribed requirements within the meaning of that section;
- “relevant upstream waters”, in relation to a river, means the waters from the seaward limit of the estuarial waters of the river upstream to the first public foot crossing;
- “sea” includes the relevant upstream waters of a river;

and a journey by a qualifying invalid carriage is a permitted journey if the carriage is being used in accordance with the prescribed conditions within the meaning of section 20 of the Chronically Sick and Disabled Persons Act 1970.

## Field 17: tourism

## Field 18: town and country planning

### Matter 18.1

Provision for and in connection with—

- a. plans of the Welsh Ministers in relation to the development and use of land in Wales, and
- b. removing requirements for any such plans.

This does not include provision about the status to be given to any such plans in connection with the decision on an application for an order granting development consent under the Planning Act 2008.

### Matter 18.2

Provision for and in connection with the review by local planning authorities of matters which may be expected to affect—

- a. the development of the authorities' areas, or
- b. the planning of the development of the authorities' areas.

### Matter 18.3

Provision for and in connection with—

- a. plans of local planning authorities in relation to the development and use of land in their areas, and
- b. removing requirements for any such plans.

This does not include provision about the status to be given to any such plans in connection with the decision on an application for an order granting development consent under the Planning Act 2008.

## Interpretation of this field

In this field—

- “local planning authority” in relation to an area means—
  - a. a National Park authority, in relation to a National Park in Wales;
  - b. a county council in Wales or a county borough council, in any other case;
- “Wales” has the meaning given by Schedule 1 to the Interpretation Act 1978.

## Field 19: water and flood defence

## Field 20: Welsh language

### Matter 20.1

Promoting or facilitating the use of the Welsh language; and the treatment of the Welsh and English languages on the basis of equality.

This matter does not include the use of the Welsh language in courts.

This matter does not include imposing duties on persons other than the following—

- a. public authorities;
- b. persons providing services to the public under an agreement, or in accordance with arrangements, made with a public authority;
- c. persons providing services to the public established by an enactment;
- d. persons established by prerogative instrument—
  - i. to advance learning and knowledge by teaching or research or by developing or awarding qualifications;
  - ii. to collect, preserve or provide access to recorded knowledge or to objects and things which further understanding;
  - iii. to support, improve, promote or provide access to heritage, culture, sport or recreational activities;
  - iv. engaged in promoting a wider knowledge and representing the interests of Wales to other countries;
  - v. engaged in central banking;
- e. persons upon whom functions of providing services to the public are conferred or imposed by an enactment;
- f. persons providing services to the public who receive public money amounting to £400,000 or more in a financial year;
- g. persons overseeing the regulation of a profession, industry or other similar sphere of activity;
- h. providers of social housing;
- i. persons providing the public with the following kinds of services or with other services which relate to any of those services—
  - i. gas, water or electricity services (including supply or distribution);

- ii. sewerage services (including disposal of sewage);
- iii. postal services and post offices;
- iv. telecommunications services;
- v. education, training (where the provider receives public money for its provision), or career guidance, and services to encourage, enable or assist participation in education, training or career guidance;
- vi. bus and railway services;
- vii. services to develop or award educational or vocational qualifications;
- j. persons opting or agreeing to be subject to the imposition of the duties.

With regard to imposing duties in relation to paragraph (b), this matter only includes duties in respect of services to the public provided under an agreement, or in accordance with arrangements, made with a public authority.

A person who receives public money amounting to £400,000 or more in a financial year does not fall within paragraph (f) unless—

- a. that person also received public money in a previous financial year, or
- b. a decision has been made that that person will receive public money in a subsequent financial year.

With regard to imposing duties in relation to paragraph (i)—

- a. this matter only includes duties in respect of the services and the other related services mentioned, and
- b. in respect of the related services, this matter does not include the provision of related services in a shop, other than post office counter services and the sale of tickets or provision of timetables for bus and railway services.

This matter does not include imposing duties about broadcasting.

This matter does not include imposing duties on a person (other than on a Welsh language authority) unless there is a means for that person to challenge those duties, as they apply to that person, on grounds of reasonableness and proportionality.

## Matter 20.2

Provision about or in connection with the freedom of persons wishing to use the Welsh language to do so with one another (including any limitations upon it).



## Interpretation of this field

In this field—

- “broadcasting” means the commissioning, production, scheduling, transmission or distribution of programmes (including advertisements, subtitles, continuity announcements and teletext), access services, interactivity, online content and other output of a similar nature for television, radio, the internet or other online or wireless platforms; “bus service” means a scheduled service, by public service vehicle (within the meaning of section 1 of the Public Passenger Vehicles Act 1981), for the carriage of passengers at separate fares, other than a service—
  - a. for which the whole capacity of the vehicle has been purchased by a charterer for the charterer's own use or for resale;
  - b. which is a journey or trip organised privately by any person acting independently of the vehicle operator; or
  - c. on which the passengers travel together on a journey, with or without breaks and whether or not on the same day, from one or more places to one or more places and back;
- “enactment” includes any future enactment; “shop” means any premises where the sale of goods is the principal trade or business carried on; “postal services” means the service of conveying letters, parcels, packets or other articles from one place to another by post and the incidental services of receiving, collecting, sorting and delivering such articles; “public authority” means each public authority within the meaning of section 6 of the Human Rights Act 1998; “public money” means—
  - a. moneys made available directly or indirectly by—
    - i. the National Assembly for Wales;
    - ii. the Welsh Ministers;
    - iii. Parliament;
    - iv. Ministers of the Crown; or
    - v. an institution of the European Union;
  - b. moneys provided by virtue of any enactment;

- “telecommunications service” means any service that consists of providing access to, or facilities for making use of, any system which exists (whether wholly or partly in the United Kingdom or elsewhere) for the purpose of facilitating the transmission of communications by any means involving the use of electrical, magnetic or electro-magnetic energy (including the apparatus comprised in the system), but does not include broadcasting, radio, or television; “Welsh language authority” means a person upon whom an enactment confers or imposes functions of—
  - a. imposing or enforcing on other persons duties relating to the Welsh language,
  - b. determining the duties relating to the Welsh language that are imposed on other persons, or
  - c. deciding challenges to the duties relating to the Welsh language that are imposed on other persons.

## Part 2: Exceptions to Matters and General Restrictions

### Title 1: Exceptions to matters

These are the exceptions mentioned in section 94(4)(a) and (7)—

#### Field 3 of Part 1: Culture

1. Public lending right.
2. Classification of films, and video recordings.

#### Field 4 of Part 1: Economic development

1. Generation of electricity at generating stations whose construction, extension or operation requires—
  - a. the consent of the Secretary of State, or
  - b. the authority of an order granting development consent under the Planning Act 2008,  
and for this purpose, the reference to consent of the Secretary of State is a reference to consent under powers to regulate generation of electricity.
2. Transmitting, distributing or supplying electricity.
3. Energy conservation, apart from the encouragement of energy efficiency otherwise than by prohibition or regulation.
4. Nuclear energy and nuclear installations, including—
  - a. nuclear safety, and
  - b. liability for nuclear occurrences,  
but this paragraph does not include disposal of very low level radioactive waste moved from a site whose use requires a nuclear site licence under the Nuclear Installations Act 1965

## Field 10 of Part 1: Highways and transport

1. Registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to those services.
- 1A. Road freight transport services, including goods vehicles operating licensing.
2. Regulation of the use of relevant vehicles on roads, the construction and use of relevant vehicles, and conditions under which relevant vehicles may be so used, apart from—
  - a. regulation of use of relevant vehicles carrying animals for the purposes of protecting human, animal, fish or plant health or the environment,
  - b. regulation relating to matter 10.1, and
  - c. regulation of the description of vehicle which may be used pursuant to learner transport arrangements (including description by reference to a vehicle's construction or equipment), but not including the setting of technical standards for construction or equipment which differ from the standards that would or might otherwise apply to that vehicle.

For the purpose of this paragraph, "relevant vehicles" means motor vehicles, mobile machinery and agricultural and forestry tractors.
3. Road traffic offences.
4. Driver licensing.
5. Driving instruction.
6. Insurance of motor vehicles.
7. Drivers' hours.
8. Traffic regulation on special roads (apart from regulation relating to matter 10.1).
9. Pedestrian crossings.
10. Traffic signs (apart from the placing and maintenance of traffic signs within the meaning of section 177 of the Transport Act 2000 for purposes relating to matter 10.1).
11. Speed limits.
12. Public service vehicle operator licensing.
13. Provision and regulation of railway services, apart from financial assistance which—
  - a. does not relate to the carriage of goods,
  - b. is not made in connection with a railway administration order, and
  - c. is not made in connection with Regulation (EC) No 1370/2007 of the European Parliament and of the Council on public passenger transport services by rail and by road.
14. Transport security (apart from regulation relating to the carriage of supervising adults on vehicles used pursuant to learner transport arrangements)
- 14A. Aviation, air transport, airports and aerodromes, apart from—
  - a. financial assistance to providers or proposed providers of air transport services or airport facilities or services,

- b. strategies by the Welsh Ministers or local or other public authorities about provision of air services, and
- c. regulation of the use of aircraft carrying animals for the purpose of protecting—
  - i. human health, apart from the health of persons in aircraft,
  - ii. animal, fish or plant health, or
  - iii. the environment
- 15. Shipping, apart from—
  - a. financial assistance for shipping services to, from or within Wales, and
  - b. regulation of the use of vessels carrying animals for the purposes of protecting—
    - i. human health, apart from the health of persons on vessels,
    - ii. animal, fish or plant health, or
    - iii. the environment.
- 16. Navigational rights and freedoms, apart from regulation of works which may obstruct or endanger navigation.
- 17. Technical and safety standards of vessels.
- 18. Harbours, docks, piers and boatslips, apart from—
  - a. those used or required wholly or mainly for the fishing industry, for recreation, or for communications between places in Wales (or for two or more of those purposes), and
  - b. regulation for the purposes of protecting human, animal, fish or plant health or the environment.
- 19. Carriage of dangerous goods, including transport of radioactive material.  
In paragraphs (2) and (14) “learner transport arrangements” means arrangements of the kind described in matter 5.10 which consist of the provision of motor vehicles and are made by—
  - a. public authorities (within the meaning of field 15) exercising functions relating to education or training, or
  - b. institutions or other bodies concerned with the provision of education or training.

## Field 15 of Part 1: Social Welfare

- 1. Child support.

2. Child trust funds, apart from subscriptions to such funds by—
  - a. a county council or county borough council in Wales, or
  - b. the Welsh Ministers.
3. Tax credits.
4. Child benefit and guardian's allowance.
5. Social security.
6. Independent living funds.
7. Motability.
8. Vaccine damage payments.
9. Intercountry adoption, apart from adoption agencies and their functions, and functions of the “Central Authority” under the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption.
10. The Children's Commissioner established under the Children Act 2004.
11. Family law and proceedings apart from—
  - a. welfare advice to courts, representation and provision of information, advice and other support to children ordinarily resident in Wales and their families, and
  - b. Welsh family proceedings officers.
12. Welfare foods.

## **Field 16 of Part 1: Sport and recreation**

1. Betting, gaming and lotteries.

## **Field 19 of Part 1: Water and flood defence**

1. Appointment and regulation of any water undertaker whose area is not wholly or mainly in Wales.
2. Licensing and regulation of any licensed water supplier within the meaning of the Water Industry Act 1991, apart from regulation in relation to licensed activities using the supply system of a water undertaker whose area is wholly or mainly in Wales.

## **Title 2: General Restrictions**

### **Subheading 1: Functions of Ministers of the Crown**

1.
  1. A provision of an Assembly Measure cannot remove or modify, or confer power by subordinate legislation to remove or modify, any function of a Minister of the Crown.
  2. A provision of an Assembly Measure cannot confer or impose, or confer power by subordinate legislation to confer or impose, any function on a Minister of the Crown.

## Subheading 2: Criminal offences

2.
  1. A provision of an Assembly Measure cannot create, or confer power by subordinate legislation to create, any criminal offence punishable—
    - a. on summary conviction, with imprisonment for a period exceeding the prescribed term or with a fine exceeding the amount specified as level 5 on the standard scale, or
    - b. on conviction on indictment, with a period of imprisonment exceeding two years.
  2. In sub-paragraph (1) “the prescribed term” means—
    - a. where the offence is a summary offence, 51 weeks, and
    - b. where the offence is triable either way, twelve months.

## Subheading 3: Police areas

- 2A. A provision of an Assembly Measure cannot make any alteration in police areas.

## Subheading 4: Enactments other than this Act

3.
  1. A provision of an Assembly Measure cannot make modifications of, or confer power by subordinate legislation to make modifications of, any of the provisions listed in the Table below—

Key: Column 1 = Enactment; Column 2 = Provisions protected from modification

### Row 1

#### Column 1

European Communities Act 1972 (c. 68)

#### Column 2

The whole Act

### Row 2

#### Column 1

Data Protection Act 1998 (c. 29)

#### Column 2

The whole Act

**Row 3****Column 1**

Government of Wales Act 1998 (c. 38)

**Column 2**

Sections 144(7), 145, 145A and 146A(1)

**Row 4****Column 1**

Human Rights Act 1998 (c. 42)

**Column 2**

The whole Act

**Row 5****Column 1**

Civil Contingencies Act 2004 (c. 36)

**Column 2**

The whole Act

**Row 6****Column 1**

Re-Use of Public Sector Information Regulations 2005 (S.I. 2005/1505)

**Column 2**

The whole set of Regulations

2. Sub-paragraph (1), so far as it applies in relation to sections 145, 145A and 146A(1) of the Government of Wales Act 1998, does not apply to a provision to which sub-paragraph (3) applies.
3. This sub-paragraph applies to a provision of an Assembly Measure which—
  - a. is a provision relating to matter 14.1,

- b. provides for the enforcement of a provision relating to matter 14.1 or is otherwise appropriate for making such a provision effective, or
  - c. is otherwise incidental to, or consequential on, such a provision.
4. A provision of an Assembly Measure cannot make modifications of, or confer power by subordinate legislation to make modifications of, any provision of an Act of Parliament other than this Act which requires sums required for the repayment of, or the payment of interest on, amounts borrowed by the Welsh Ministers to be charged on the Welsh Consolidated Fund.
  5. A provision of an Assembly Measure cannot make modifications of, or confer power by subordinate legislation to make modifications of, any functions of the Comptroller and Auditor General or the National Audit Office.

## Subheading 5: This Act

6.
  1. A provision of an Assembly Measure cannot make modifications of, or confer power by subordinate legislation to make modifications of, provisions contained in this Act.
  2. Sub-paragraph (1) does not apply to—
    - a. sections 20, 22, 24, 35(1), 36(1) to (5) and (7) to (11), 53, 54, 78 and 156(2) to (5); or
    - b. paragraph 8(3) of Schedule 2.
  3. Sub-paragraph (1) does not apply to any provision—
    - a. making modifications of so much of any enactment as is modified by this Act, or
    - b. repealing so much of any provision of this Act as amends any enactment, if the provision ceases to have effect in consequence of any provision of, or made under, an Assembly Measure.

## Part 3: Exceptions from General Restrictions in Part 2

### Subheading 1: Interpretation

6Z. In this Part “general restrictions in Part 2” means paragraphs 1 to 6 of Part 2.

### Subheading 2: Functions of Ministers of the Crown

7.
  1. The general restrictions in Part 2 do not prevent a provision of an Assembly Measure removing or modifying, or conferring power by subordinate legislation to remove or modify, any function of a Minister of the Crown if the Secretary of State consents to the provision.



2. Part 2 does not prevent a provision of an Assembly Measure relating to matter 20.1 or 20.2 of Part 1, conferring or imposing, or conferring power by subordinate legislation to confer or impose, any function on a Minister of the Crown if the Secretary of State consents to the provision, but functions so conferred or imposed may not be made enforceable against Ministers of the Crown by means of criminal offences.

### **Subheading 3: Police areas**

- 7A. Part 2 does not prevent a provision of an Assembly Measure making an alteration to the boundary of a police area in Wales if the Secretary of State consents to the provision.

### **Subheading 4: Comptroller and Auditor General and National Audit Office**

8. The general restrictions in Part 2 do not prevent a provision of an Assembly Measure modifying, or conferring power by subordinate legislation to modify, any enactment relating to the Comptroller and Auditor General or the National Audit Office if the Secretary of State consents to the provision.

### **Subheading 5: Restatement**

9. Part 2 does not prevent a provision of an Assembly Measure—
  - a. restating the law (or restating it with such modifications as are not prevented by that Part), or
  - b. repealing or revoking any spent enactment, or conferring power by subordinate legislation to do so.

### **Subheading 6: Subordinate Legislation**

10. The general restrictions in Part 2 do not prevent an Assembly Measure making modifications of, or conferring power by subordinate legislation to make modifications of, an enactment for or in connection with any of the following purposes—
  - a. making different provision about the document by which a power to make, confirm or approve subordinate legislation is to be exercised,
  - b. making provision (or no provision) for the procedure, in relation to the Assembly, to which legislation made in the exercise of such a power (or the instrument or other document in which it is contained) is to be subject, and
  - c. applying any enactment comprised in or made under an Assembly Measure relating to the documents by which such powers may be exercised.

## Subheading 7: Data Protection Act 1998

11. Part 2 does not prevent an Assembly Measure making modifications of, or conferring power by subordinate legislation to make modifications of, section 31(6) of the Data Protection Act 1998 so that it applies to complaints under any Assembly Measure relating to matter 9.1 in Part 1.

**Schedule 6: [Schedule 6 omitted due to length - full text of schedules can be found online at <http://www.legislation.gov.uk/ukpga/2006/32/schedules>]**

## Schedule 7: Acts of the Assembly

### Part 1: Subjects

#### Subheading 1: Agriculture, forestry, animals, plants and rural development

1. Agriculture. Horticulture. Forestry. Fisheries and fishing. Animal health and welfare. Plant health. Plant varieties and seeds. Rural development.

In this Part of this Schedule “animal” means—

- a. all mammals apart from humans, and
- b. all animals other than mammals;  
and related expressions are to be construed accordingly.

#### Exceptions

- Hunting with dogs.
- Regulation of scientific or other experimental procedures on animals.
- Import and export control, and regulation of movement, of animals, plants and other things, apart from (but subject to provision made by or by virtue of any Act of Parliament relating to the control of imports or exports)—
  - a. the movement into and out of, and within, Wales of animals, animal products, plants, plant products and other things related to them for the purposes of protecting human, animal or plant health, animal welfare or the environment or observing or implementing obligations under the Common Agricultural Policy, and
  - b. the movement into and out of, and within, Wales of animal feedstuff , fertilisers and pesticides (or things treated by virtue of any enactment as pesticides) for the purposes of protecting human, animal or plant health or the environment.
- Authorisations of veterinary medicines and medicinal products.

## Subheading 2: Ancient monuments and historic buildings

2. Archaeological remains. Ancient monuments. Buildings and places of historical or architectural interest. Historic wrecks.

## Subheading 3: Culture

3. Arts and crafts. Museums and galleries. Libraries. Archives and historical records. Cultural activities and projects.

### Exceptions

- Public lending right.
- Broadcasting.
- Classification of films, and video recordings.
- Government indemnities for objects on loan.
- Payments to Her Majesty's Revenue and Customs in respect of property accepted in satisfaction of tax, apart from property in which there is a Welsh national interest.

## Subheading 4: Economic development

4. Economic regeneration and development, including social development of communities, reclamation of derelict land and improvement of the environment. Promotion of business and competitiveness.

### Exceptions

- Fiscal, economic and monetary policy and regulation of international trade.
- Regulation of anti-competitive practices and agreements, abuse of dominant position and monopolies and mergers.
- Intellectual property, apart from plant varieties.
- Creation, operation, regulation and dissolution of types of business association.
- Insolvency.
- Product standards, safety and liability, apart from in relation to food (including packaging and other materials which come into contact with food), agricultural and horticultural products, animals and animal products, seeds, fertilisers and pesticides (and things treated by virtue of any enactment as pesticides).
- Consumer protection, including the sale and supply of goods to consumers, consumer guarantees, hire purchase, trade descriptions, advertising and price indications, apart from in relation to food (including packaging and other materials which come into contact with food), agricultural and horticultural products, animals and animal products, seeds, fertilisers and pesticides (and things treated by virtue of any enactment as pesticides).
- Financial services, including investment business, banking and deposit-taking, collective investment schemes and insurance.
- Occupational and personal pension schemes (including schemes which make provision for compensation for loss of office or employment, compensation for loss or diminution of emoluments, or benefits in respect of death or incapacity resulting from injury or disease), apart from schemes

• Provisions for intellectual property

for or in respect of Assembly members, the First Minister, Welsh Ministers appointed under section 48, the Counsel General or Deputy Welsh Ministers and schemes for or in respect of members of local authorities.

- Financial markets, including listing and public offers of securities and investments, transfers of securities, insider dealing and money laundering.
- Telecommunications, wireless telegraphy (including electromagnetic disturbance), internet services and electronic encryption.
- Postal services, post offices and the Post Office, apart from financial assistance for the provision of services (other than postal services and services relating to money or postal orders) to be provided from public post offices.
- Generation, transmission, distribution and supply of electricity
- Energy conservation, apart from the encouragement of energy efficiency otherwise than by prohibition or regulation.
- Coal, including mining and subsidence, apart from land restoration and other environmental matters.
- Oil and gas
- Nuclear energy and nuclear installations and the Office for Nuclear Regulation
  - a. including nuclear safety and liability for nuclear occurrences;
  - b. but not including disposal of very low level radioactive waste moved from a site requiring a nuclear site licence
- Units and standards of weights and measurement and the regulation of trade so far as involving weighing, measuring and quantities.
- Industrial Development Advisory Board.

## Subheading 5: Education and Training

5. Education, vocational, social and physical training and the careers service. Promotion of advancement and application of knowledge.

## Exception

Research Councils.

## Subheading 6: Environment

6. Environmental protection, including pollution, nuisances and hazardous substances. Prevention, reduction, collection, management, treatment and disposal of waste. Land drainage and land improvement. Countryside and open spaces (including the designation and regulation of national parks and areas of outstanding natural beauty). Nature conservation and sites of special scientific interest. Protection of natural habitats, coast and marine environment (including seabed). Biodiversity. Genetically modified organisms. Smallholdings and allotments. Common land. Town and village greens. Burial and cremation, except coroners' functions.

## Subheading 7: Fire and rescue services and fire safety

7. Fire and rescue services. Provision of automatic fire suppression systems in newly constructed and newly converted residential premises. Promotion of fire safety otherwise than by prohibition or regulation.

## Subheading 8: Food

8. Food and food products. Food safety (including packaging and other materials which come into contact with food). Protection of interests of consumers in relation to food.  
“Food” includes drink.

## Subheading 9: Health and health services

9. Promotion of health. Prevention, treatment and alleviation of disease, illness, injury, disability and mental disorder. Control of disease. Family planning. Provision of health services, including medical, dental, ophthalmic, pharmaceutical and ancillary services and facilities. Clinical governance and standards of health care. Organisation and funding of national health service.

### Exceptions

- Abortion.
- Human genetics, human fertilisation, human embryology, surrogacy arrangements.
- Xenotransplantation.
- Regulation of health professionals (including persons dispensing hearing aids).
- Poisons.
- Misuse of and dealing in drugs.
- Human medicines and medicinal products, including authorisations for use and regulation of prices.
- Standards for, and testing of, biological substances (that is, substances the purity or potency of which cannot be adequately tested by chemical means).
- Vaccine damage payments.
- Welfare foods.
- Health and Safety Executive and Employment Medical Advisory Service and provision made by health and safety regulations.

## Subheading 10: Highways and transport

10. Highways, including bridges and tunnels. Streetworks. Traffic management and regulation. Transport facilities and services.

### Exceptions

- Registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to those services.
- Road freight transport services, including goods vehicles operating licensing.

- Regulation of the construction and equipment of motor vehicles and trailers, and regulation of the use of motor vehicles and trailers on roads, apart from—
  - a. any such regulation which—
    - i. relates to schemes for imposing charges in respect of the use or keeping of vehicles on Welsh trunk roads (“trunk road charging schemes”), or
    - ii. relates to the descriptions of motor vehicles and trailers which may be used under arrangements for persons to travel to and from the places where they receive education or training, unless the regulation is the setting of technical standards for construction or equipment of motor vehicles or trailers which differ from the standards that would or might otherwise apply to them; and
  - b. regulation of the use of motor vehicles and trailers carrying animals for the purpose of protecting human, animal or plant health, animal welfare or the environment.
- Road traffic offences.
- Driver licensing.
- Driving instruction.
- Insurance of motor vehicles.
- Drivers' hours.
- Traffic regulation on special roads, apart from regulation relating to trunk road charging schemes.
- Pedestrian crossings.
- Traffic signs, apart from the placing and maintenance of traffic signs relating to trunk road charging schemes.
- Speed limits.
- International road transport services for passengers.
- Public service vehicle operator licensing.
- Documents relating to vehicles and drivers for purposes of travel abroad and vehicles brought temporarily into Wales by persons resident outside the United Kingdom.
- Vehicle excise duty and vehicle registration.
- Provision and regulation of railway services, apart from financial assistance which—
  - a. does not relate to the carriage of goods,
  - b. is not made in connection with a railway administration order, and
  - c. is not made in connection with Regulation (EC) No 1370/2007 of the European Parliament and of the Council on public passenger transport services by rail and by road.
- Transport security, apart from regulation relating to the carriage of adults who supervise persons travelling to and from the places where they receive education or training.

- Railway heritage.
- Aviation, air transport, airports and aerodromes, apart from—
  - a. financial assistance to providers or proposed providers of air transport services or airport facilities or services,
  - b. strategies by the Welsh Ministers or local or other public authorities about provision of air services, and
  - c. regulation of use of aircraft carrying animals for the purposes of protecting human, animal or plant health, animal welfare or the environment.
- Shipping, apart from—
  - a. financial assistance for shipping services to, from or within Wales, and
  - b. regulation of use of vessels carrying animals the purposes of protecting human, animal or plant health, animal welfare or the environment.
- Navigational rights and freedoms, apart from regulation of works which may obstruct or endanger navigation.
- Technical and safety standards of vessels.
- Harbours, docks, piers and boatslips, apart from—
  - a. those used or required wholly or mainly for the fishing industry, for recreation, or for communication between places in Wales (or for two or more of those purposes), and
  - b. regulation for the purposes of protecting human, animal or plant health, animal welfare or the environment.
- Carriage of dangerous goods (including transport of radioactive material).
- Technical specifications for fuel for use in internal combustion engines.

## Subheading 11: Housing

11. Housing. Housing finance except schemes supported from central or local funds which provide assistance for social security purposes to or in respect of individuals by way of benefits. Encouragement of home energy efficiency and conservation, otherwise than by prohibition or regulation. Regulation of rent. Homelessness. Residential caravans and mobile homes.

## Subheading 12: Local Government

12. Constitution, structure and areas of local authorities. Electoral arrangements for local authorities. Powers and duties of local authorities and their members and officers. Local government finance.  
 “Local authorities” does not include police and crime commissioners.

## Exceptions

- Local government franchise.
- Electoral registration and administration.

- Registration of births, marriages, civil partnerships and deaths.
- Licensing of sale and supply of alcohol, provision of entertainment and late night refreshment.
- Orders to protect people from behaviour that causes or is likely to cause harassment, alarm or distress.
- Local land charges, apart from fees.
- Sunday trading.
- Provision of advice and assistance overseas by local authorities in connection with carrying on there of local government activities.

### **Subheading 13: National Assembly for Wales**

13. Complaints about Assembly members (including provision for and about an office or body for investigating such complaints and reporting outcome of investigations). Assembly Commission. Salaries, allowances, pensions and gratuities for and in respect of Assembly members, the First Minister, Welsh Ministers appointed under section 48, the Counsel General and Deputy Welsh Ministers. Register of interests of Assembly members and the Counsel General. Meaning of Welsh words and phrases in Assembly Measures and Acts of the Assembly, in subordinate legislation made under Assembly Measures and Acts of the Assembly and in other subordinate legislation if made by the Welsh Ministers, the First Minister or the Counsel General. Private legislation in the Assembly. Financial assistance for political groups to which Assembly members belong. The Welsh Seal. Arrangements for the printing of Acts of the Assembly, of subordinate legislation made under Assembly Measures and Acts of the Assembly and of other subordinate legislation if made by the Welsh Ministers, the First Minister or the Counsel General.

### **Subheading 14: Public administration**

14. Public Services Ombudsman for Wales. Auditor General for Wales. Audit, examination, regulation and inspection of auditable public authorities. Inquiries in respect of matters in relation to which the Welsh Ministers, the First Minister or the Counsel General exercise functions. Equal opportunities in relation to equal opportunity public authorities. Access to information held by open access public authorities. The following are “auditable public authorities” and “equal opportunity public authorities”—
- a. the Assembly,
  - b. the Assembly Commission,
  - c. the Welsh Assembly Government,
  - d. persons who exercise functions of a public nature and in respect of whom the Welsh Ministers exercise functions,
  - e. persons who exercise functions of a public nature and at least half of the cost of whose functions in relation to Wales are funded (directly or indirectly) by the Welsh Ministers, and
  - f. persons established by enactment and having power to issue a precept or levy.



The following are “open access public authorities” –

- a. the Assembly,
- b. the Assembly Commission,
- c. the Welsh Assembly Government, and
- d. authorities which are Welsh public authorities, within the meaning of the Freedom of Information Act 2000 (c. 36).

## Exception

Regulation of the profession of auditor.

## Subheading 15: Social welfare

15. Social welfare including social services. Protection and well-being of children (including adoption and fostering) and of young adults. Care of children, young adults, vulnerable persons and older persons, including care standards. Badges for display on motor vehicles used by disabled persons.

## Exceptions

- Child support.
- Child trust funds, apart from subscriptions to such funds by—
  - a. a county council or county borough council in Wales, or
  - b. the Welsh Ministers.
- Tax credits.
- Child benefit and guardian's allowance.
- Social security.
- Independent Living Funds.
- Motability.
- Intercountry adoption, apart from adoption agencies and their functions, and functions of “the Central Authority” under the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption.
- The Children's Commissioner (established under the Children Act 2004 (c. 31)).
- Family law and proceedings, apart from—
  - a. welfare advice to courts, representation and provision of information, advice and other support to children ordinarily resident in Wales and their families, and
  - b. Welsh family proceedings officers.

## Subheading 16: Sport and recreation

16. Sport and recreational activities.

### Exception

Betting, gaming and lotteries.

## Subheading 17: Tourism

17. Tourism.

## Subheading 18: Town and country planning

18. Town and country planning, including listed buildings and conservation areas. Caravan sites. Spatial planning. Mineral workings. Urban development. New towns. Protection of visual amenity.

### Exception

Development consent under the Planning Act 2008.

## Subheading 19: Water and flood defence

19. Water supply, water resources management (including reservoirs), water quality and representation of consumers of water and sewerage services. Flood risk management and coastal protection.

### Exceptions

- Appointment and regulation of any water undertaker whose area is not wholly or mainly in Wales.
- Licensing and regulation of any licensed water supplier within the meaning of the Water Industry Act 1991 (c. 56), apart from regulation in relation to licensed activities using the supply system of a water undertaker whose area is wholly or mainly in Wales.

## Subheading 20: Welsh Language

20. Welsh language

### Exception

Use of the Welsh language in courts.

## Part 2: General Restrictions

### Subheading 1: Functions of a Minister of the Crown

- 1.1. A provision of an Act of the Assembly cannot remove or modify, or confer power by subordinate legislation to remove or modify, any pre-commencement function of a Minister of the Crown.
2. A provision of an Act of the Assembly cannot confer or impose, or confer power by subordinate legislation to confer or impose, any function on a Minister of the Crown.
3. In this Schedule “pre-commencement function” means a function which is exercisable by a Minister of the Crown before the day on which the Assembly Act provisions come into force.

### Subheading 2: Enactments other than this Act

2.
  1. A provision of an Act of the Assembly cannot make modifications of, or confer power by subordinate legislation to make modifications of, any of the provisions listed in the Table below—

Key: Column 1 = Enactment; Column 2 = Provisions protected from modification

#### Row 1

Column 1 European Communities Act 1972 (c. 68)

#### Column 2

The whole Act

#### Row 2

#### Column 1

Data Protection Act 1998 (c. 29)

#### Column 2

The whole Act

#### Row 3

#### Column 1

Government of Wales Act 1998 (c. 38)

#### Column 2

Sections 144(7), 145, 145A and 146A(1)

**Row 4****Column 1**

Human Rights Act 1998 (c. 42)

**Column 2**

The whole Act

**Row 5****Column 1**

Civil Contingencies Act 2004 (c. 36)

**Column 2**

The whole Act

**Row 6****Column 1**

Re-Use of Public Sector Information Regulations 2005 (S.I. 2005/1505)

**Column 2**

The whole set of Regulations

**Row 7****Column 1**

The Public Audit (Wales) Act 2013 (anaw 3)

**Column 2**

Sections 2(1) to (3), 3(2) to (4), 6(2) to (3) and section 8(1) in so far as that section relates to the Auditor General's exercise of functions free from the direction or control of the Assembly or Welsh Assembly Government.

2. Sub-paragraph (1) does not apply to any provision making modifications, or conferring power by subordinate legislation to make modifications, of section 31(6) of the Data Protection Act 1998 so that it applies to complaints under an enactment relating to the provision of redress for negligence in connection with the diagnosis of illness or the care or treatment of any patient (in Wales or elsewhere) as part of the health service in Wales.

3. Sub-paragraph (1), so far as it applies in relation to sections 145, 145A and 146A(1) of the Government of Wales Act 1998, does not apply to a provision to which sub-paragraph (4) applies.
4. This sub-paragraph applies to a provision of an Act of the Assembly which—
  - a. is a provision relating to the oversight or supervision of the Auditor General or of the exercise of the Auditor General's functions,
  - b. provides for the enforcement of a provision falling within paragraph (a) or is otherwise appropriate for making such a provision effective, or
  - c. is otherwise incidental to, or consequential on, such a provision.
3. A provision of an Act of the Assembly cannot make modifications of, or confer power by subordinate legislation to make modifications of, any provision of an Act of Parliament other than this Act which requires sums required for the repayment of, or the payment of interest on, amounts borrowed by the Welsh Ministers to be charged on the Welsh Consolidated Fund.
4. A provision of an Act of the Assembly cannot make modifications of, or confer power by subordinate legislation to make modifications of, any functions of the Comptroller and Auditor General or the National Audit Office.

### Subheading 3: This Act

5.
  1. A provision of an Act of the Assembly cannot make modifications of, or confer power by subordinate legislation to make modifications of, provisions contained in this Act.
  2. Sub-paragraph (1) does not apply to the following provisions—
    - a. sections 20, 22, 24, 35(1), 36(1) to (5) and (7) to (11), 53, 54, 78, 146, 147, 148 and 156(2) to (5);
    - b. paragraph 8(3) of Schedule 2.
    - c. any provision of Schedule 8.
  3. Sub-paragraph (1) does not apply to any provision—
    - a. making modifications of so much of any enactment as is modified by this Act, or
    - b. repealing so much of any provision of this Act as amends any enactment, if the provision ceases to have effect in consequence of any provision of, or made under, an Act of the Assembly.

## Part 3: Exceptions from Part 2

### Subheading 1: Functions of Ministers of the Crown

6.
  1. Part 2 does not prevent a provision of an Act of the Assembly removing or modifying, or conferring power by subordinate legislation to remove or modify, any pre-commencement function of a Minister of the Crown if—
    - a. the Secretary of State consents to the provision, or
    - b. the provision is incidental to, or consequential on, any other provision contained in the Act of the Assembly.
  2. Part 2 does not prevent a provision of an Act of the Assembly conferring or imposing, or conferring power by subordinate legislation to confer or impose, any function on a Minister of the Crown if the Secretary of State consents to the provision.

### Subheading 2: Comptroller and Auditor General and National Audit Office

7. Part 2 does not prevent a provision of an Act of the Assembly modifying, or conferring power by subordinate legislation to modify, any enactment relating to the Comptroller and Auditor General or the National Audit Office if the Secretary of State consents to the provision.

### Subheading 3: Restatement

8. Part 2 does not prevent an Act of the Assembly—
  - a. restating the law (or restating it with such modifications as are not prevented by that Part), or
  - b. repealing or revoking any spent enactment, or conferring power by subordinate legislation to do so.

### Subheading 4: Subordinate legislation

9. Part 2 does not prevent an Act of the Assembly making modifications of, or conferring power by subordinate legislation to make modifications of, an enactment for or in connection with any of the following purposes—
  - a. making different provision about the document by which a power to make, confirm or approve subordinate legislation is to be exercised,
  - b. making provision (or no provision) for the procedure, in relation to the Assembly, to which legislation made in the exercise of such a power (or the instrument or other document in which it is contained) is to be subject, and

- c. applying any enactment comprised in or made under an Act of the Assembly relating to the documents by which such powers may be exercised.

**SCHEDULE 8: [Schedule 8 omitted due to length - full text of schedules can be found online at <http://www.legislation.gov.uk/ukpga/2006/32/schedules>]**

## **Schedule 9: Devolution Issues**

### **Part 1: Preliminary**

#### **1.**

1. In this Schedule “devolution issue” means—

- a. a question whether an Assembly Measure or Act of the Assembly, or any provision of an Assembly Measure or Act of the Assembly, is within the Assembly's legislative competence,
- b. a question whether any function (being a function which any person has purported, or is proposing, to exercise) is exercisable by the Welsh Ministers, the First Minister or the Counsel General,
- c. a question whether the purported or proposed exercise of a function by the Welsh Ministers, the First Minister or the Counsel General is, or would be, within the powers of the Welsh Ministers, the First Minister or the Counsel General (including a question whether a purported or proposed exercise of a function is, or would be, outside those powers by virtue of section 80(8) or 81(1)),
- d. a question whether there has been any failure to comply with a duty imposed on the Welsh Ministers, the First Minister or the Counsel General (including any obligation imposed by virtue of section 80(1) or (7)), or
- e. a question of whether a failure to act by the Welsh Ministers, the First Minister or the Counsel General is incompatible with any of the Convention rights.

2. In this Schedule “civil proceedings” means proceedings other than criminal proceedings.

2. A devolution issue is not to be taken to arise in any proceedings merely because of any contention of a party to the proceedings which appears to the court or tribunal before which the proceedings take place to be frivolous or vexatious.

• Federal review of subnational legislation

## Part 2: Proceedings in England and Wales

### Subheading 1: Application of Part 2

3. This Part applies in relation to devolution issues in proceedings in England and Wales.

### Subheading 2: Institution of proceedings

4.
  1. Proceedings for the determination of a devolution issue may be instituted by the Attorney General or the Counsel General.
  2. The Counsel General may defend any such proceedings instituted by the Attorney General.
  3. This paragraph does not limit any power to institute or defend proceedings exercisable apart from this paragraph by any person.

### Subheading 3: Notice of devolution issue

5.
  1. A court or tribunal must order notice of any devolution issue which arises in any proceedings before it to be given to the Attorney General and the Counsel General (unless a party to the proceedings).
  2. A person to whom notice is given in pursuance of sub-paragraph (1) may take part as a party in the proceedings, so far as they relate to a devolution issue.

### Subheading 4: Reference of devolution issue to High Court or Court of Appeal

6. A magistrates' court may refer any devolution issue which arises in civil proceedings before it to the High Court.
7.
  1. A court may refer any devolution issue which arises in civil proceedings before it to the Court of Appeal.
  2. Sub-paragraph (1) does not apply—
    - a. to a magistrates' court, the Court of Appeal or the Supreme Court, or
    - b. to the High Court if the devolution issue arises in proceedings on a reference under paragraph 6.
8. A tribunal from which there is no appeal must refer any devolution issue which arises in proceedings before it to the Court of Appeal; and any other tribunal may make such a reference.



9. A court, other than the Court of Appeal or the Supreme Court, may refer any devolution issue which arises in criminal proceedings before it to—
  - a. the High Court if the proceedings are summary proceedings, or
  - b. the Court of Appeal if the proceedings are proceedings on indictment.

### **Subheading 5: References from Court of Appeal to Supreme Court**

10. The Court of Appeal may refer any devolution issue which arises in proceedings before it (otherwise than on a reference under paragraph 7, 8 or 9) to the Supreme Court.

### **Subheading 6: Appeals from superior courts to Supreme Court**

11. An appeal against a determination of a devolution issue by the High Court or the Court of Appeal on a reference under paragraph 6, 7, 8 or 9 lies to the Supreme Court but only—
  - a. with permission of the court from which the appeal lies, or
  - b. failing such permission, with permission of the Supreme Court.

## **Part 3: Proceedings in Scotland**

### **Subheading 1: Application of Part 3**

12. This Part applies in relation to devolution issues in proceedings in Scotland.

### **Subheading 2: Institution of proceedings**

13.
  1. Proceedings for the determination of a devolution issue may be instituted by the Advocate General for Scotland.
  2. The Counsel General may defend any such proceedings instituted by the Advocate General for Scotland.
  3. This paragraph does not limit any power to institute or defend proceedings exercisable apart from this paragraph by any person.

### **Subheading 3: Intimation of devolution issue**

14.
  1. A court or tribunal must order intimation of any devolution issue which arises in any proceedings before it to be given to the Advocate General for Scotland and the Counsel General (unless a party to the proceedings).

2. A person to whom notice is given in pursuance of sub-paragraph (1) may take part as a party in the proceedings, so far as they relate to a devolution issue.

#### **Subheading 4: Reference of devolution issue to higher court**

15. A court, other than any court consisting of three or more judges of the Court of Session or the Supreme Court, may refer any devolution issue which arises in civil proceedings before it to the Inner House of the Court of Session.
16. A tribunal from which there is no appeal must refer any devolution issue which arises in proceedings before it to the Inner House of the Court of Session; and any other tribunal may make such a reference.
17. A court, other than any court consisting of two or more judges of the High Court of Justiciary, may refer any devolution issue which arises in criminal proceedings before it to the High Court of Justiciary.

#### **Subheading 5: References from superior courts to Supreme Court**

18. Any court consisting of three or more judges of the Court of Session may refer any devolution issue which arises in proceedings before it (otherwise than on a reference under paragraph 15 or 16) to the Supreme Court.
19. Any court consisting of two or more judges of the High Court of Justiciary may refer any devolution issue which arises in proceedings before it (otherwise than on a reference under paragraph 17) to the Supreme Court.

#### **Subheading 6: Appeals from superior courts to Supreme Court**

20. An appeal against a determination of a devolution issue by the Inner House of the Court of Session on a reference under paragraph 15 or 16 lies to the Supreme Court.
21. An appeal against a determination of a devolution issue by—
  - a. a court consisting of two or more judges of the High Court of Justiciary (whether in the ordinary course of proceedings or on a reference under paragraph 17), or
  - b. a court consisting of three or more judges of the Court of Session from which there is no appeal to the Supreme Court apart from this paragraph, lies to the Supreme Court, but only with permission of the court from which the appeal lies or, failing such permission, with permission of the Supreme Court.

### **Part 4: Proceedings in Northern Ireland**

#### **Subheading 1: Application of Part 4**

22. This Part applies in relation to devolution issues in proceedings in Northern Ireland.

## Subheading 2: Institution of proceedings

23.

1. Proceedings for the determination of a devolution issue may be instituted by the Advocate General for Northern Ireland.
2. The Counsel General may defend any such proceedings instituted by the Advocate General for Northern Ireland.
3. This paragraph does not limit any power to institute or defend proceedings exercisable apart from this paragraph by any person.

## Subheading 3: Notice of devolution issue

24.

1. A court or tribunal must order notice of any devolution issue which arises in any proceedings before it to be given to the Advocate General for Northern Ireland and the Counsel General (unless a party to the proceedings).
2. A person to whom notice is given in pursuance of sub-paragraph (1) may take part as a party in the proceedings, so far as they relate to a devolution issue.

## Subheading 4: Reference of devolution issue to Court of Appeal

25. A court, other than the Court of Appeal in Northern Ireland or the Supreme Court, may refer any devolution issue which arises in any proceedings before it to the Court of Appeal in Northern Ireland.
26. A tribunal from which there is no appeal must refer any devolution issue which arises in proceedings before it to the Court of Appeal in Northern Ireland; and any other tribunal may make such a reference.

## Subheading 5: References from Court of Appeal to Supreme Court

27. The Court of Appeal in Northern Ireland may refer any devolution issue which arises in proceedings before it (otherwise than on a reference under paragraph 25 or 26) to the Supreme Court.

## Subheading 6: Appeals from Court of Appeal to Supreme Court

28. An appeal against a determination of a devolution issue by the Court of Appeal in Northern Ireland on a reference under paragraph 25 or 26 lies to the Supreme Court but only—
  - a. with permission of the Court of Appeal in Northern Ireland, or
  - b. failing such permission, with permission of the Supreme Court.

## Part 5: General

### Subheading 1: Direct references to Supreme Court

#### 29.

1. The relevant officer may require any court or tribunal to refer to the Supreme Court any devolution issue which has arisen in any proceedings before it to which that person is a party.
2. In sub-paragraph (1) “the relevant officer” means—
  - a. in relation to proceedings in England and Wales, the Attorney General or the Counsel General,
  - b. in relation to proceedings in Scotland, the Advocate General for Scotland, and
  - c. in relation to proceedings in Northern Ireland, the Advocate General for Northern Ireland.

#### 30.

1. The Attorney General or the Counsel General may refer to the Supreme Court any devolution issue which is not the subject of proceedings.
2. Where a reference is made under sub-paragraph (1) by the Attorney General in relation to a devolution issue which relates to the proposed exercise of a function by the Welsh Ministers, the First Minister or the Counsel General—
  - a. the Attorney General must notify the Counsel General of that fact, and
  - b. the function must not be exercised by the Welsh Ministers, the First Minister or the Counsel General in the manner proposed during the period beginning with the receipt of the notification and ending with the reference being decided or otherwise disposed of.

### Subheading 2: Costs

#### 31.

1. A court or tribunal before which any proceedings take place may take account of any additional expense of the kind mentioned in sub-paragraph (3) in deciding any question as to costs or expenses.
2. In deciding any such question the court or tribunal may award the whole or part of the additional expense as costs or expenses to the party who incurred it (whatever the decision on the devolution issue).
3. The additional expense is any additional expense which the court or tribunal considers that any party to the proceedings has incurred as a result of the participation of any person in pursuance of paragraph 5, 14 or 24.

### Subheading 3: Procedure of courts and tribunals

32. Any power to make provision for regulating the procedure before any court or tribunal includes power to make provision for the purposes of this Schedule including, in particular, provision—
- a. for prescribing the stage in the proceedings at which a devolution issue is to be raised or referred,
  - b. for the staying or sisting of proceedings for the purpose of any proceedings under this Schedule, and
  - c. for determining the manner in which and the time within which any notice or intimation is to be given.

### Subheading 4: References to be for decision

33. Any function conferred by this Schedule to refer a devolution issue to a court is to be construed as a function of referring the issue to the court for decision.

**Schedules 10-12: [Schedules 10-12 omitted due to length - full text of schedules can be found online at <http://www.legislation.gov.uk/ukpga/2006/32/schedules>]**

## Fixed-term Parliaments Act 2011

### Preamble

An Act to make provision about the dissolution of Parliament and the determination of polling days for parliamentary general elections; and for connected purposes.

[15th September 2011]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### 1. Polling days for parliamentary general elections

1. This section applies for the purposes of the Timetable in rule 1 in Schedule 1 to the Representation of the People Act 1983 and is subject to section 2.
2. The polling day for the next parliamentary general election after the passing of this Act is to be 7 May 2015.
3. The polling day for each subsequent parliamentary general election is to be the first Thursday in May in the fifth calendar year following that in which the polling day for the previous parliamentary general election fell.
4. But, if the polling day for the previous parliamentary general election—
  - a. was appointed under section 2(7), and

b. in the calendar year in which it fell, fell before the first Thursday in May, subsection (3) has effect as if for “fifth” there were substituted “fourth”.

5. The Prime Minister may by order made by statutory instrument provide that the polling day for a parliamentary general election in a specified calendar year is to be later than the day determined under subsection (2) or (3), but not more than two months later.
6. A statutory instrument containing an order under subsection (5) may not be made unless a draft has been laid before and approved by a resolution of each House of Parliament.
7. The draft laid before Parliament must be accompanied by a statement setting out the Prime Minister's reasons for proposing the change in the polling day.

## 2. Early parliamentary general elections

1. An early parliamentary general election is to take place if—
  - a. the House of Commons passes a motion in the form set out in subsection (2), and
  - b. if the motion is passed on a division, the number of members who vote in favour of the motion is a number equal to or greater than two thirds of the number of seats in the House (including vacant seats).
2. The form of motion for the purposes of subsection (1)(a) is—  
“That there shall be an early parliamentary general election.”
3. An early parliamentary general election is also to take place if—
  - a. the House of Commons passes a motion in the form set out in subsection (4), and
  - b. the period of 14 days after the day on which that motion is passed ends without the House passing a motion in the form set out in subsection (5).
4. The form of motion for the purposes of subsection (3)(a) is—  
“That this House has no confidence in Her Majesty's Government.”
5. The form of motion for the purposes of subsection (3)(b) is—  
“That this House has confidence in Her Majesty's Government.”
6. Subsection (7) applies for the purposes of the Timetable in rule 1 in Schedule 1 to the Representation of the People Act 1983.
7. If a parliamentary general election is to take place as provided for by subsection (1) or (3), the polling day for the election is to be the day appointed by Her Majesty by proclamation on the recommendation of the Prime Minister (and, accordingly, the appointed day replaces the day which would otherwise have been the polling day for the next election determined under section 1).

## 3. Dissolution of Parliament

1. The Parliament then in existence dissolves at the beginning of the 25th working day before the polling day for the next parliamentary general election as determined under section 1 or appointed under section 2(7).
2. Parliament cannot otherwise be dissolved.

3. Once Parliament dissolves, the Lord Chancellor and, in relation to Northern Ireland, the Secretary of State have the authority to have the writs for the election sealed and issued (see rule 3 in Schedule 1 to the Representation of the People Act 1983).
4. Once Parliament dissolves, Her Majesty may issue the proclamation summoning the new Parliament which may—
  - a. appoint the day for the first meeting of the new Parliament;
  - b. deal with any other matter which was normally dealt with before the passing of this Act by proclamations summoning new Parliaments (except a matter dealt with by subsection (1) or (3)).
5. In this section “working day” means any day other than—
  - a. a Saturday or Sunday;
  - b. a Christmas Eve, Christmas Day or Good Friday;
  - c. a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom;
  - d. a day appointed for public thanksgiving or mourning.
6. But, if—
  - a. on a day (“the relevant day”) one or more working days are fixed or appointed as bank holidays or days for public thanksgiving or mourning, and
  - b. as a result, the day for the dissolution of a Parliament would (apart from this subsection) be brought forward from what it was immediately before the relevant day to a day that is earlier than 30 days after the relevant day, the day or days in question are to continue to be treated as working days (even if the polling day is subsequently changed).

#### **4. General election for Scottish Parliament not to fall on same date as parliamentary general election under section 1(2)**

1. This section applies in relation to the ordinary general election for membership of the Scottish Parliament the poll for which would, apart from this section and disregarding sections 2(5) and 3(3) of the Scotland Act 1998, be held on 7 May 2015 (that is, the date specified in section 1(2) of this Act).
2. Section 2(2) of the 1998 Act has effect as if, instead of providing for the poll for that election to be held on that date, it provided (subject to sections 2(5) and 3(3) of that Act) for the poll to be held on 5 May 2016 (and section 2(2) has effect in relation to subsequent ordinary general elections accordingly).

## 5. General election for National Assembly for Wales not to fall on same date as parliamentary general election under section 1(2)

1. This section applies in relation to the ordinary general election for membership of the National Assembly for Wales the poll for which would, apart from this section and disregarding sections 4 and 5(5) of the Government of Wales Act 2006, be held on 7 May 2015 (that is, the date specified in section 1(2) of this Act).
2. Section 3(1) of the 2006 Act has effect as if, instead of providing for the poll for that election to be held on that date, it provided (subject to sections 4 and 5(5) of that Act) for the poll to be held on 5 May 2016 (and section 3(1) has effect in relation to subsequent ordinary general elections accordingly).

## 6. Supplementary provisions

1. This Act does not affect Her Majesty's power to prorogue Parliament.
2. This Act does not affect the way in which the sealing of a proclamation summoning a new Parliament may be authorised; and the sealing of a proclamation to be issued under section 2(7) may be authorised in the same way.
3. The Schedule (which contains consequential amendments etc) has effect.

## 7. Final provisions

1. This Act may be cited as the Fixed-term Parliaments Act 2011.
2. This Act comes into force on the day it is passed.
3. An amendment or repeal made by this Act has the same extent as the enactment or relevant part of the enactment to which the amendment or repeal relates.
4. The Prime Minister must make arrangements—
  - a. for a committee to carry out a review of the operation of this Act and, if appropriate in consequence of its findings, to make recommendations for the repeal or amendment of this Act, and
  - b. for the publication of the committee's findings and recommendations (if any).
5. A majority of the members of the committee are to be members of the House of Commons.
6. Arrangements under subsection (4)(a) are to be made no earlier than 1 June 2020 and no later than 30 November 2020.



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