

# LIAISON WITH THE UK GOVERNMENT ON ASSEMBLY BILLS, PARLIAMENTARY BILLS, ORDERS MODIFYING THE ASSEMBLY'S LEGISLATIVE COMPETENCE AND CHANGES TO THE WELSH MINISTERS' EXECUTIVE FUNCTIONS

## GUIDANCE TO WELSH GOVERNMENT DEPARTMENTS

### Summary

1. This is guidance for Welsh Government officials to follow in the interests of efficient and effective handling of Welsh Government and UK Government legislation where one government leads but the other has an interest. The guidance deals with four matters:
  - Assembly Bills;
  - Parliamentary Bills;
  - modifying the Assembly's Legislative Competence; and
  - changes to the Welsh Ministers' Executive Functions.
2. Early engagement and effective communication between the Welsh Government and the UK Government is crucial whenever proposals for Bills are likely to raise issues of concern to the other Government: for example, where Assembly Bills seek to modify certain functions of Ministers of the Crown, or have cross-border implications; or where parliamentary Bills seek to make provision in relation to Wales in areas of devolved legislative competence, or modify the Welsh Ministers' functions, or have cross-border implications.
3. The Assembly's legislative competence, and the Welsh Ministers' functions, can be modified by means of Orders in Council provided for under the Government of Wales Act 2006 ('the 2006 Act'), as well as in parliamentary Bills. Any proposals for such modification, whether through a parliamentary Bill or an Order in Council under the 2006 Act, should also be subject to early engagement and consultation between the Welsh and UK Governments.
4. It is therefore expected that Welsh Government and UK Government Departments will establish and maintain close working relationships when taking forward legislation in relation to Wales.
5. Discussions on forthcoming legislation are conducted on a confidential basis and there will be tight deadlines. Lead officials should seek to agree timescales and deadlines as early as possible and make clear to colleagues the importance of meeting them.
6. This guidance is reciprocal to the UK Government guidance to UK Government departments on handling [Parliamentary and Assembly Primary Legislation Affecting Wales](#) (Devolution Guidance Note 9 [DGN9]) and [Modifying the Legislative Competence of the National Assembly for Wales](#) (Devolution Guidance Note 17 [DGN17]). It should be read in conjunction with the [Memorandum of Understanding between the UK Government and Devolved Administrations](#).

## ASSEMBLY BILLS

### Key points

7. The Welsh Government should:

- identify and liaise with the lead UK Government Department(s) and the Wales Office on any issues in Bills which relate to UK Government responsibilities, at the earliest possible stage after securing a place in the legislative programme and securing Ministerial agreement to engage.
- confirm to Ministers at the point clearance for introduction is sought that -
  - potential vires or intervention issues have been explored;
  - the Bill is within the legislative competence of the Assembly; and
  - all issues relating to competence and matters which are the responsibility of the UK Government have either been, or are expected to be, resolved with the UK Government; or
  - where there is a difference of opinion, the Welsh Government's position has been agreed by the First Minister.

### Legislative competence

8. The Assembly has primary law-making powers for Wales in relation to a broad range of subjects set out in twenty areas in Schedule 7 to the 2006 Act. The Assembly is said to have 'legislative competence' (i.e. the power to pass primary legislation) in relation to these subjects.

9. Assembly Acts are Welsh laws, passed by the Assembly. They can make any provision that could be made by Act of Parliament, subject to the constraints set out in the 2006 Act. These include a prohibition on Assembly Bills containing provision which is incompatible with Convention Rights, as set out in the Human Rights Act 1998, or with EU law. Section 110 of the 2006 Act requires the Member in Charge of the Bill and the Presiding Officer, to satisfy themselves that any Bill introduced into the Assembly is within the legislative competence of the Assembly and make a statement to that effect.

### *Minister of the Crown functions*

10. An Act of the Assembly can do the following only with the consent of the Secretary of State:

- confer or impose a new function on a Minister of the Crown<sup>1</sup>;
- remove or modify a function which a Minister of the Crown could have exercised before the Assembly Act provisions came into force (i.e. before 5 May 2011) unless the provision removing or modifying the function is incidental to, or consequential on, any other provision in the relevant Assembly Act (in which case consent is not needed – see paragraph 12).

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<sup>1</sup> A Minister of the Crown is a Minister in the UK Government, and includes HM Treasury.

11. The consent in writing of the Secretary of State to any provision in an Assembly Bill that does either of the above should be obtained before the Bill is introduced in the Assembly. You should seek advice from Legal Services to establish whether the consent of the Secretary of State is required.
12. An Act of the Assembly can do the following without the consent of the Secretary of State:
  - modify or remove a Minister of the Crown function if the function became exercisable by the Minister, after the Assembly Act provisions came into force (i.e. from 5 May 2011);
  - make changes to a Minister of the Crown function which are incidental to or consequential on any other provision in the relevant Assembly Act;
13. If a Bill modifies or removes a Minister of the Crown function for which consent is required, but this has not been obtained, it will mean the Bill or part of the Bill is not within the Assembly's legislative competence if the Bill is passed.

#### *Powers of intervention*

14. The Counsel General and/or the Attorney General may refer an Assembly Bill to the Supreme Court to determine whether the Bill (or specific provision in the Bill) is within the Assembly's legislative competence. The Supreme Court may in turn seek a preliminary ruling from the European Court of Justice if the issue relates to compatibility with EU law.
15. In addition, the UK Government has powers to intervene to prevent an Assembly Bill from becoming law, even if it would be within the Assembly's legislative competence, if the Secretary of State has reasonable grounds to believe that it would have an adverse effect on non-devolved matters; that it might have a serious adverse impact on water resources, supply or quality in England; that it would have an adverse effect on the operation of the law as it applies in England; or that it would be incompatible with any international obligation or the interests of defence or national security.
16. Engagement between the Welsh Government and the UK Government is necessary on Bills prior to introduction, and in particular on any aspects which may require consent in respect of Minister of the Crown functions or could trigger questions as to their impact on UK Government responsibilities.

#### **Bills under preparation**

##### *Liaison with the UK Government on Welsh Government Bills*

17. When considering the case for legislation, Welsh Government Departments should consider, in conjunction with Legal Services, whether any aspects of the proposals appear to raise questions about legislative competence, or matters concerning UK Government responsibilities on which the UK Government will need to be consulted. The UK Government will need to be engaged at the earliest opportunity in order that any issues are resolved before the Bill is

introduced. The lead Minister will need to consider how best to explore these matters with the UK Government. There are a number of concordats in place which set out frameworks for cooperation between the Welsh Government and individual UK Government Departments:

<http://wales.gov.uk/about/organisationexplained/intergovernmental/concordats/?skip=1&lang=en>

18. Where there is a policy consultation on the content of a Bill, this will be the most straightforward vehicle for establishing whether the UK Government has any views, although the UK Government will not formally respond as part of that consultation. The Bill Team must be proactive in identifying and drawing attention to potential issues, and this must be kept under review during the preparation of instructions and drafting process.
19. Where a Draft Bill is published for consultation prior to introduction, this will also allow any questions about legislative competence, or impact on matters which are the responsibility of the UK Government, to be tested in detail; but these matters should have been the subject of discussion with the UK Government during the development of the Bill prior to consultation.
20. Where there is a need for Secretary of State consent in respect of Minister of the Crown functions, sufficient time should be allowed to engage with the relevant Department, and the Wales Office, to enable them to reach a position on whether or not to give consent, or to agree alternative courses of action. Following this engagement, the formal request for consent should be made in a letter from the Minister in charge of the Bill, to the relevant UK Government Minister and the Secretary of State for Wales. Where a Bill will be making changes to functions for which consent is not required, the Bill team should inform the relevant UK Department and the Wales Office, as there could be a difference of opinion as to whether or not consent is required, which needs to be resolved.
21. When clearance for introduction of the Bill is sought, Ministers must be briefed on the position with regard to legislative competence and the potential impact on matters which are the responsibility of the UK Government. As far as questions of legislative competence are concerned, the Minister must be satisfied that he or she can make the statement on legislative competence that he or she is required to make, as Member in Charge of the Bill (see paragraph 9 above). As far as issues impacting on non-devolved matters are concerned, Ministers must be satisfied that the UK Government has been given sufficient opportunity to express any views, and that any concerns voiced by the UK Government about the implications of the Bill for its areas of responsibility have either been resolved, or are expected to be resolved, before the Bill is passed. Where there is a difference of opinion between the Welsh and UK Governments, Ministers must be aware of the risk of a reference or formal intervention (see paragraphs 14 and 15 above) should they decide to proceed. The Welsh Government's position in such cases must be agreed by the First Minister.

22. On the day of introduction into the Assembly, the Legislative Programme Unit will send a copy of the Bill to the Wales Office, who will send it to other relevant UK Government Departments.

### **Bills before the Assembly**

23. The content of an Assembly Bill, including the policy it seeks to deliver, is for the National Assembly for Wales to scrutinise and approve. The UK Government will scrutinise the Bill to ensure that it does not impact adversely on matters which are the responsibility of the UK Government. It may make representations to the Welsh Government during the passage of the Bill requesting either clarification on effect, or specific amendments, and will come to its own decision on using the powers of reference or intervention if the Bill is passed.

### *Amendments*

24. Questions relating to legislative competence and Minister of the Crown functions need to be addressed when Government amendments are proposed to a Bill. As with Bill preparation, engagement needs to take place with UK Government as soon as possible.

25. These requirements apply also to non-government amendments which are made to the Bill at the amending Stages of Assembly consideration. Bill teams may need to liaise with UK Government to identify potential issues and, if necessary, seek Secretary of State consent in relation to changes to Minister of the Crown functions.

### *Members', Assembly Commission, and Committee Bills*

26. These Bills can also give rise to issues about legislative competence and Minister of the Crown functions which need to be discussed with the Wales Office and relevant UK Government Departments. The Welsh Government will liaise with the UK Government where possible, but its ability to do this will depend on the amount of information it has regarding the Bill before it is introduced. The Welsh Government may also make approaches on behalf of the Member in Charge.

## **PARLIAMENTARY BILLS**

### **Key points**

27. Welsh Government Departments should:

- identify proposals for parliamentary legislation on devolved matters as early as possible, and brief Ministers at an early stage;
- be proactive in seeking information from the lead UK Government Department and the Wales Office, and advising them of Welsh Government views;
- support UK Bill teams as required in relation to Welsh provisions in UK Bills.

## Principles

28. The Welsh Government follows the principle that primary legislation on devolved matters should generally be enacted by the National Assembly. However, there may be circumstances where it makes sense for a provision which is within the Assembly's legislative competence to be included in a parliamentary Bill. If provisions which are within the Assembly's legislative competence are included in a parliamentary Bill, Welsh Ministers will need to gain the consent of the Assembly by means of a Legislative Consent Motion (LCM).
29. Early and effective engagement is dependent on having good information from UK Government Departments about proposals for parliamentary Bills. Welsh Government Departments should build relationships in order to facilitate the exchange of information, and explain requirements such as the potential need for Assembly consent for relevant provisions.
30. Welsh Government Departments should engage with their UK Government counterparts as soon as they become aware of the development of parliamentary Bills, and keep in touch throughout the process. UK departments are themselves required to identify and substantially resolve devolution issues before a bill is introduced into Parliament, see paragraph 35.
31. Welsh Government Departments should identify a lead Welsh Government official to co-ordinate communications between the UK Bill Team, the Wales Office and Welsh Government interests (see paras 35-36 below).

## Nature of provisions relating to Wales in parliamentary Bills

32. The options for provisions relating to Wales in parliamentary Bills are varied. Officials will need to consider first of all whether or not the provisions fall within areas of policy which are devolved in Wales:
  - a) **Provisions in areas of policy responsibility which are not devolved in Wales:** while these provisions will often apply in the same way in both England and Wales (and possibly Scotland and Northern Ireland too), they may include functions for Welsh Ministers in non-devolved areas. Such provisions would not require a legislative consent motion, but Welsh Ministers' consent should be sought for any modification of their functions (see paragraph 45 below)
  - b) **Provisions in areas of policy responsibility which are devolved in Wales:** these provisions may apply in the same way in England and Wales (and possibly Scotland and Northern Ireland), or the provisions for Wales may be different. These provisions require a legislative consent motion, and officials will need to advise Welsh Ministers on the options, including whether or not the provisions should be made in the UK parliamentary bill.
33. If Welsh Ministers agree that provision in a devolved area of policy should be made in a UK parliamentary bill, then the options for those Welsh provisions include:

- a) “mirror” provisions making the same provision for Wales as for England but conferring powers on the Welsh Ministers rather than the Secretary of State, as regards Wales: this can include separate commencement provisions, or take the form of a Welsh Ministers’ power to apply the provisions in Wales
- b) different provision for Wales (while remaining within the scope of the Bill)
- c) provision which “saves” existing provisions for Wales – i.e. changes are made for England, but not for Wales
- d) provision which modifies the legislative competence of the Assembly (normally, we would expect modifications of the Assembly’s legislative competence to be taken forward through an Order in Council under section 109 of the Government of Wales Act 2006, but there are circumstances in which such modifications may be made through a parliamentary bill)

34. The choice of options – more than one of which may be used in the same Bill – is a matter of Ministerial policy. Any proposal to request provisions in a parliamentary Bill will need to be put to the lead portfolio Minister in the Welsh Government, though proposals that affect the Welsh Government’s legislative programme might need wider Cabinet clearance.

35. UK Cabinet clearance is needed to include provisions in UK Bills. Welsh Government Departments need to liaise closely with Bill Teams in lead UK Departments and the Wales Office in order to ensure that such clearance is given.

36. Devolution Guidance Note 9 sets out that all devolution issues with a parliamentary Bill, including any requirement for legislative consent, should be substantively resolved before the Bill is introduced.

### **Welsh Government lead official**

37. For all UK Bills, which relate to, or impact upon, devolved matters, there will be a Welsh Government lead official whose role will include ensuring that the relevant Welsh Government Department(s) have the information they need in order to be able to confirm their requirements.

38. The lead official’s role and responsibilities will include all or some of the following, depending on the complexity of the Bill and its relevance to Wales in devolved areas.

#### *Bills under preparation*

- be the main liaison point for the UK Bill team;
- obtain information from the UK Bill team about the content of the Bill, including draft clauses relevant to the Welsh Government and Assembly, where available, as far as possible in advance, to allow Welsh Government policy officials and lawyers to consider in good time and put advice to Welsh Ministers on the policy content and whether provisions fall within Assembly legislative competence or modify its competence;

- ensure that Ministerial policy clearance is sought for provisions in the Bill which are within the Assembly's legislative competence and instruct Welsh Government Legal Services, who will liaise with instructing solicitors in the lead Whitehall Department and Wales Office legal advisers;
- ensure that the Welsh Government has done everything it can to resolve any outstanding issues regarding the content of the Welsh provisions of the Bill before it is introduced, provided the Welsh Government has been given sufficient notice of the proposed content of the Bill to enable it to come to a view in good time;
- where Welsh provisions in the Bill fall within the Assembly's legislative competence or modify that competence, make plans to ensure that a Legislative Consent Memorandum and Motion are laid before the Assembly for consideration as required in accordance with the Assembly's Standing Orders.

### *Bills in Parliament*

- if relevant amendments are laid, arrange for tabling of a Legislative Consent Motion and Memorandum at the earliest possible point, usually within two weeks of introduction of the amendments themselves being agreed to (or, in the case of Government amendments, tabled), and inform both the lead UK Government department and the Wales Office;
- ensure briefing and speaking notes on Welsh provisions, and amendments to them, are provided to the UK Bill Team as required for various stages of the Bill progressing through Parliament. Deadlines and other arrangements for providing the briefing and speaking notes should be agreed between the Welsh Government lead official and the UK Bill team;
- brief the Welsh Ministers as required on the progress of the Bill;
- obtain Welsh Ministers' clearance of UK Government amendments, and Opposition amendments which the UK Government is minded to accept in principle, where the amendments fall within or modify the Assembly's legislative competence, or modify Welsh Ministers' functions.

39. Welsh Government Departments must also consider at the earliest possible stage whether they will need to consult on certain proposals, particularly if they would be likely to require a regulatory impact assessment.

40. Lead officials should maintain close contact with the Wales Office, and should seek early agreement with both the UK Bill Team and the Wales Office on the nature of the Welsh provisions to be included in the Bill. Lead officials should ensure that the Wales Office is alerted to any outstanding issues in good time. The aim should be to resolve issues regarding the Welsh provisions of the Bill by the time it is put to the UK Cabinet's Parliamentary Business and Legislation Committee for clearance to introduce it. Welsh Government officials should seek to resolve issues by then, but this can only be achieved if Welsh Government has been given sufficient notice of proposals to enable it to assess them in good time.



## **Clearance of Bill provisions**

41. “Mirror” provisions; different provision for Wales; and even decisions to maintain the “status quo” for Wales in areas for which the Welsh Ministers are responsible, will need Welsh Government Ministerial clearance. Financial implications must be clearly identified: for example it is possible for a Bill to transfer further executive functions to the Welsh Ministers or to confer new functions on them, either of which could have significant financial implications. The regulatory impact of such provisions must also be assessed and presented when seeking clearance.
42. Departments should note that the UK Government will only agree to include provisions in a parliamentary Bill if they meet the conditions set out in paragraph 16 of DGN9. These conditions are that the provisions fit within the scope of the Bill, will not adversely affect the handling or timing of the Bill and that there is no suitable Assembly Bill in which they could be included.
43. UK Government Departments should also notify the Welsh Government and the Wales Office of proposed consequential amendments to legislation which is within the Assembly’s legislative competence normally this should be done through direct liaison between UK Government and Welsh Government Legal Advisers. Such amendments do not require Ministerial consent but should be checked to ensure that the Welsh Government and UK Government have a common understanding of their effect.
44. DGN9 sets out in more detail the various cases where the UK Government would not normally seek to legislate without the agreement of Welsh Ministers or the Assembly

## **Consent for provisions which modify the Welsh Ministers’ functions**

45. The UK Government has agreed that it will seek Welsh Ministers’ consent for any provisions which modify Welsh Ministers’ executive functions where these fall outside the Assembly’s legislative competence (unless the provisions are incidental to or consequential on non-devolved matters, in which case the UK Government will consult the Welsh Ministers).
46. It is expected that consent will be sought via inter-Ministerial correspondence. In accordance with the Assembly’s Standing Orders, the Welsh Ministers should notify the Assembly by means of a Written Statement about provisions in parliamentary Bills which modify the Welsh Ministers’ functions, unless the provisions are incidental to or consequential on non-devolved matters.

## **Legislative consent motions**

47. If the relevant provisions are within or modify the Assembly’s legislative competence, and the Welsh Ministers are content with them, the Welsh Government will lay and promote a Legislative Consent Motion in the Assembly. The Assembly’s Standing Orders set out that, if the proposed provisions are within the Bill at introduction, then a Legislative Consent Memorandum must

normally be laid within two weeks, and a Legislative Consent Motion may also be tabled.

48. In the event that the motion is not approved by the Assembly, the Welsh Government should immediately inform the relevant UK Government department and the Wales Office and then proceed to discuss next steps. The Welsh Government would normally ask the UK Government to amend the relevant provisions of the Bill so that either the Welsh Government is able to support them via a further LCM (subject to the parliamentary timetable) or so that a LCM is not required, i.e. for example, to amend the provisions so that they do not relate to a devolved area.

49. The lead official should inform the UK Bill Manager of the outcome of the debate.

### **Statutory Instrument Consent Motions**

50. Where secondary legislation made by the UK Government amends primary legislation in a way which is within the competence of the National Assembly for Wales, a Statutory Instrument Consent Motion will be required, unless the amendments are incidental to or consequential on non-devolved matters.

51. While parliamentary Bills can be amended during their passage through Parliament if a LCM is not passed by the Assembly, statutory instruments cannot. It is therefore expected that UK Government Departments will contact the Welsh Government in good time in advance of laying a statutory instrument before Parliament for which Assembly consent may be needed. The Statutory Instrument Consent Motion will need to be passed by the Assembly before the UK Parliament considers the instrument in the case of those subject to affirmative parliamentary procedure and this will need to be factored into the UK Government timetable.

### **Private Members' Bills**

52. Where the UK Government has decided to give its backing to a Private Member's Bill, similar considerations will apply as for ordinary Government Bills.

## **MODIFYING THE ASSEMBLY'S LEGISLATIVE COMPETENCE**

53. As set out above, the subjects in relation to which the Assembly may pass laws are set out in Schedule 7 to the 2006 Act. These "subjects" appear under twenty headings which are broadly the areas over which the Welsh Ministers have responsibilities (although the Welsh Ministers have some functions in non-devolved areas).

54. Part 1 of Schedule 7 lists both subjects which are within the Assembly's legislative competence and exceptions to those subjects which are not. There are also 'carve-outs' from some exceptions to enable the Assembly to legislate in a specific area which would otherwise be covered by an exception. Each exception applies to all of the subjects in Part 1 of the Schedule, regardless of the headings

under which they are listed. Therefore any new or amended subjects inserted into Schedule 7 will be affected by all of the existing exceptions; and any new or amended exceptions will apply to all of the existing subjects (unless they are defining exceptions which are fixed only to the specific subject(s) in question).

55. Some areas which are outside the Assembly's competence (such as immigration and defence) are not included as exceptions in Part 1 of Schedule 7 on the basis that they could not be regarded as falling within any of the existing subjects.
56. The Welsh Government, or the UK Government, might identify a need to amend the Assembly's legislative competence and modify Schedule 7. This may be done through an Order in Council under section 109 of the 2006 Act or through provisions in a parliamentary Act.
57. The amendments could increase the Assembly's competence by inserting additional subjects into the Schedule on which the Assembly can legislate, or restrict the Assembly's competence by inserting further exceptions or restrictions into the Schedule. They could also increase or restrict the Assembly's competence by modifying existing subjects or exceptions, though amendments to subjects or exceptions could sometimes be made to clarify the Assembly's competence.
58. If the Assembly's legislative competence is to be modified there is a presumption that a section 109 Order should be used whenever feasible (see paragraph 12 of DGN 17). Amending the Assembly's legislative competence via a parliamentary Act does not provide for a formal role for the Assembly to approve the changes being made to its legislative competence (but see paragraph 65 below). For this reason a section 109 Order is normally used.

### **Orders under Section 109 of Government of Wales Act 2006 (Section 109 Orders)**

59. The Welsh Government or the UK Government can suggest that an Order is required, but need to liaise with each other to agree the principle and drafting before the Order is pursued. The collective agreement (both within the UK Government and the Welsh Government) is required if the Order is to progress successfully through both the Assembly and Parliament.
60. A Section 109 Order must be approved in draft by both the UK Parliament and the Assembly. If there is a need to modify the Assembly's competence by a particular deadline, time for inter-governmental negotiation, consultation with interested parties and parliamentary and Assembly procedure needs to be factored in.

### **Procedure for Making Section 109 Orders**

61. Subject to first reaching agreement at official level on the need for a Section 109 Order, the First Minister (or the Welsh Minister with policy responsibility in the relevant area) would normally write to the Secretary of State for Wales to seek agreement to the changes required, and the consequent modifications needed to

Schedule 7. The letter should be copied to the Secretary of State in the relevant UK Government Department, and to any other Government Departments with a policy interest in the Order.

62. Collective agreement by the Welsh Ministers and UK Ministers is needed for an order to be taken forward. The consent of UK Ministers is obtained via the Secretary of State for Wales and the Secretary of State in the relevant UK Government Department writing to the relevant Cabinet Committee (currently Home Affairs (HA) Committee) to seek clearance.
63. Instructions should be agreed by all parties before the Order is drafted, and should be as clear and straightforward as possible. It is crucial that all parties agree a process for agreeing instructions and drafting the Order, and are clear about roles and deadlines.
64. Draft Orders must be approved by both Houses of Parliament and the Assembly before they are made at a meeting of the Privy Council.

### **Provisions in parliamentary Bills**

65. In exceptional circumstances, the Welsh Government and UK Government may agree to modify the legislative competence of the Assembly by including provisions in parliamentary Bills - for example, if the scope of a Bill covered the subject area in which the UK Government and Welsh Government had agreed legislative competence should be conferred on the Assembly. It would not however be appropriate for the scope of a UK Bill to be widened simply to accommodate a provision modifying the Assembly's legislative competence.
66. The UK Government and the Welsh Government have agreed that the Welsh Ministers should seek the consent of the Assembly when such provisions are included in Bills. Further advice on the principles and processes to follow where parliamentary Bills make provision modifying the Assembly's legislative competence can be found in DGN 17.

## **CHANGES TO THE WELSH MINISTERS' EXECUTIVE FUNCTIONS**

67. Section 109 Orders are used only to modify the legislative competence of the Assembly. Changes to the Welsh Ministers' executive functions are made in a number of other ways, including:
  - Transfer of Functions Orders (TFOs), which are Orders in Council made under Section 58 of the 2006 Act. TFOs are generally used to transfer functions from Ministers of the Crown to the Welsh Ministers, and must be approved by both the Welsh Ministers and the Houses of Parliament before they are made.
  - Acts of the Assembly may confer functions on the Welsh Ministers, or modify their existing functions. As set out in Part 4 of the 2006 Act, they may also remove or modify Minister of the Crown functions if the Secretary of State

consents, if the removal or modification is incidental to or consequential on other provisions of the Assembly Act, or if the function became exercisable by the Minister of the Crown on or after the date when the Assembly Act provisions in the 2006 Act came into force (5 May 2011). In such cases the Act of the Assembly could, for example, remove a function from a Minister of the Crown and confer a similar function on the Welsh Ministers, or require the Minister of the Crown to exercise the function only with the agreement of, or following consultation with, the Welsh Ministers. Acts of the Assembly may also confer or impose a function on a Minister of the Crown with the consent of the Secretary of State.

- Acts of Parliament may confer or impose functions on the Welsh Ministers, or modify or remove their existing functions. The UK Government would normally include provisions having these effects in a parliamentary Bill only with the consent of the Assembly, in areas in which the Assembly has legislative competence, or the Welsh Ministers, in non-devolved areas (unless the changes to the functions of the Welsh Ministers are incidental to, consequential on etc. non-devolved matters, in which case the UK Government would normally only consult with the Welsh Ministers).
- In certain cases, the executive functions of the Welsh Ministers may be changed by making subordinate legislation, such as a Designation Order under section 2(2) of the European Communities Act 1972 and section 59 of the 2006 Act, or an Order (other than a TFO) which amends a parliamentary Act or UK subordinate legislation (such as a Henry VIII Order).

**Welsh Government  
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