

**To:** Business Committee

**From:** David Williams  
Office of the Counsel General

**Date:** 20<sup>th</sup> February 2004

**ASSEMBLY FUNCTIONS COVERED BY TRANSFER OF FUNCTIONS ORDERS (THIRD PAPER)**

**Issue**

1. The Business Committee has previously asked for a paper on Assembly Functions under Acts covered by the Transfer of Functions Orders (and primarily TFO 1999) where those functions have not yet been commenced. Commencement of pre-devolution Acts has remained with UK Ministers under the TFOs.
2. I previously submitted initial papers dated 16<sup>th</sup> January 2004 and 30<sup>th</sup> January to the Business Committee. Copies of those papers are at Annex A. A final updating paper was promised for Business Committee at its meeting on 24<sup>th</sup> February 2004.
3. At Annex B is that paper with the list of the Acts in the period 1990 - 1999, functions under which have been conferred on the Assembly by TFOs. The changes since the earlier papers are highlighted for ease of reference.
4. I will be in attendance at Business Committee on 24<sup>th</sup> February and will be happy to answer any queries of Committee Members.

**DAVID WILLIAMS**



Cynulliad National  
Cenedlaethol Assembly for  
Cymru Wales

Eich cyf . Your ref  
Ein cyf . Our ref

Dear Presiding Officer,

On 24<sup>th</sup> February, the Business Committee considered a paper on Assembly functions covered by Transfer of Functions Orders. The Committee agreed that the information was very helpful and that a copy should be provided to the Panel of Chairs for information. A copy will also be placed in the Assembly Library.

I have attached the paper as an annex to this letter.

Yours sincerely

Jenny Randerson AM  
Chair, Business Committee



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**To:** Business Committee

**From:** David Williams  
Office of the Counsel General

**Date:** 16 January 2004

## **ASSEMBLY FUNCTIONS COVERED BY TRANSFER OF FUNCTIONS ORDERS**

### **Issue**

The Business Committee has asked for a paper on Assembly functions under Acts covered by the Transfer of Functions Orders (and primarily TFO 1999) where those functions have not yet been commenced. Commencement of pre-devolution Acts has remained with UK Ministers.

This paper does not identify provisions in Acts, which have not yet been commenced if those provisions do not contain any Assembly functions conferred by the TFO

Annex A sets out the position for a number of Acts in the period 1990 –1998.

### ***Further Information***

It has not been possible, because of the large number of Acts involved, to cover all of the Acts covered by the various transfer of Functions Orders. It will take some additional time to check them all, however, I have initially chosen 1990 as a starting, which I think is reasonable in that increasingly with regard to pre-1990 Acts, the presumption will be that if provisions of such Acts have not yet been commenced then it is doubtful that they will ever now be commenced because policy or need for such legislation has changed. I considered that the Committee would wish to focus initially on the most recent Acts as it would be in respect of those Acts that commencement of outstanding Assembly functions may still be a live issue.

While I have concentrated on the period 1990 -1998, I have not been able to cover all Acts in that period. A number of the Acts in that period which relate to education; health; water and the environment are very large e.g. the Environment Act 1995 and the Education Act 1996 and it will take some further time to cover those Acts. I would propose to let the Committee have an updated paper covering all the Acts between 1990 and 1998 in time for its meeting on 3<sup>rd</sup> February.

In relation to the Acts covered by the paper, the paper does not address the question why any provisions have not yet been commenced.

YEAR	TITLE OF ACT	COMMENTS
1990	<p>Access to Health Records Act</p> <p>Caldey Island Act</p> <p><b>Environmental Protection Act</b></p>	<p>All Assembly functions commenced.</p> <p>All Assembly functions commenced.</p> <p><b>Certain provisions of the Act with Assembly functions have not yet been commenced</b></p> <ul style="list-style-type: none"> <li>- <b>section 52(8) (power to make certain regulations in relation to waste disposal authorities)</b></li> <li>- <b>sections 108(6) and (8), 110, 112(3) and (4) and 116 (various functions in relation to GMOS).</b></li> </ul> <p><b>NOTE: various provisions of this Act are prospectively inserted, substituted or repealed by the Environment Act 1995, Pollution Prevention and Control Act 1999, Anti-social Behaviour Act 2003, Waste and Emissions Trading Act 2003.</b></p>

	<p>Food Safety Act</p> <p>National Health Service and Community Care Act</p> <p><b>Planning (Hazardous Substances) Act</b></p> <p><b>Planning (Listed Buildings and Conservation Areas) Act</b></p> <p>Social Security Act</p> <p><b>Town and Country Planning Act</b></p>	<p><b>NOTE: Assembly functions are also vested by Schedule 2 to TFO 1999/672 and by Schedule 1 to TFO 2000/253.</b></p> <p>All Assembly functions commenced</p> <p>All Assembly functions commenced</p> <p><b>All Assembly functions commenced</b></p> <p><b>All Assembly functions commenced</b></p> <p>All Assembly functions commenced</p> <p><b>All Assembly functions commenced</b></p> <p><b>NOTE: as substituted by Schedule 3 to TFO 1999/672.</b></p>
<p>1991</p>	<p>Agriculture and Forestry (Financial Provisions) Act</p>	<p>All Assembly functions commenced.</p>

	<p>Caravans (Standard Community Charge and Rating ) Act</p> <p>Deer Act</p> <p>Dangerous Dogs Act</p> <p><b>Land Drainage Act</b></p> <p>New Roads and Street Works Act</p> <p>Road Traffic Act</p> <p>Smoke Detectors Act</p>	<p>All Assembly functions commenced.</p> <p>All Assembly functions commenced.</p> <p>All Assembly functions commenced.</p> <p><b>All Assembly functions commenced.</b></p> <p>New Roads and Street Works Act Sections 79 and 80 not commenced. : these deal with the duties of undertakers in recording where their apparatus in streets are located. The Assembly has functions of prescribing matters in Regulations as to these records. Section 79 is commenced in England</p> <p>All Assembly functions commenced.</p> <p>This Act makes provision with respect to the fitting of smoke detectors in new dwellings .The Assembly has a number of functions eg hearing appeals by builders against decisions of local authorities ; issuing guidance. The Act has not yet been brought into force.</p>
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	<p><b>Planning and Compensation Act</b></p> <p>Statutory Water Companies Act</p> <p>Water Consolidation(Consequential Provisions) Act</p> <p><b>Water Industry Act</b></p> <p><b>Water Resources Act</b></p>	<p><b>All Assembly functions commenced.</b></p> <p>All Assembly functions commenced.</p> <p>All Assembly functions commenced.</p> <p><b>All Assembly functions commenced.</b></p> <p><b>All Assembly functions commenced.</b></p>
1992	<p><b>Further and Higher Education Act</b></p>	<p><b>All Assembly functions commenced except:</b></p> <ul style="list-style-type: none"> <li>- <b>section 26 (for certain purposes relating to transfer of local authority staff or establishment of a F/HE institution)</b></li> <li>- <b>sections 44 and 45 (for certain purposes relating to FE institutions which were previously LEA schools)</b></li> <li>- <b>Schedule 8 paragraph 65.</b></li> </ul>

	<p>Local Government Act</p> <p><b>Local Government Finance Act 1992</b></p> <p>Museums and Galleries Act</p> <p>Protection of Badgers Act</p> <p>Sea Fisheries(Wildlife Conservation) Act</p> <p>Transport and Works Act</p> <p>Tourism (Overseas Promotion)(Wales) Act</p>	<p><b>NOTE: some of the provisions of this Act are prospectively inserted or substituted by the Teaching and Higher Education Act 1998; the School Standards and Framework Act 1998; the Learning and Skills Act 2000 and the Education Act 2002.</b></p> <p><b>NOTE : also in Schedule 2 to TFO 1999</b></p> <p>All Assembly functions commenced.</p> <p><b>All Assembly functions commenced.</b></p> <p>All Assembly functions commenced.</p> <p>All Assembly functions commenced.</p> <p>All Assembly functions commenced.</p> <p>All Assembly functions commenced.</p> <p>All Assembly functions commenced.</p>
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1993	<p>Agriculture Act</p> <p>Clean Air Act</p> <p>Cardiff Bay Barrage Act</p> <p><b>Leasehold Reform, Housing and Urban Development Act</b></p> <p>National Lottery etc Act</p> <p>Noise and Statutory Nuisance Act</p>	<p>All Assembly functions commenced.</p> <p>All Assembly functions commenced.</p> <p>All Assembly functions commenced.</p> <p><b>All Assembly functions commenced.</b></p> <p><b>NOTE: various provisions prospectively inserted, substituted or repealed by the Commonhold and Leasehold Reform 2002.</b></p> <p>All Assembly functions commenced.</p> <p>Section 9 and Schedule 3 not yet commenced. While these empower local authorities to adopt the scheme in Schedule 3 on audible intruder alarms, when adopted the Assembly will have power to prescribe in Regs. various</p>

	Radioactive Substances Act  Railways Act  Welsh Language Act	matters relating to the scheme  All Assembly functions commenced.  All Assembly functions commenced. [NOTE: only remaining Assembly function is under section 140 and this is prospectively repealed by the Transport Act 2000.]  All Assembly functions commenced.
1994	Coal Industry Act  Criminal Justice and Public Order Act  Education Act  Local Government (Wales) Act	All Assembly functions commenced.  All Assembly functions commenced.  All Assembly functions commenced.  All Assembly functions commenced.
1995	Activity Centres (Young Persons' Safety) Act  Carers(Recognition and Services) Act  <b>Environment Act</b>	All Assembly functions commenced.  All Assembly functions commenced.  <b>All Assembly functions commenced</b>  <b>NOTE: also in Schedule 2 to TFO 1999/672.</b>

	<p>Gas Act</p> <p>Health Authorities Act</p> <p>Home Energy Conservation Act</p> <p>Jobseekers Act</p> <p>Town and Country Planning(Costs of Inquiries) Act</p>	<p>All Assembly functions commenced.</p> <p>All Assembly functions commenced</p> <p>All Assembly functions commenced.</p> <p>All Assembly functions under Schedule 1 to TFO 2000/253 commenced</p> <p>All Assembly functions commenced.</p>
1996	<p>Asylum and Immigration Act</p> <p>Community Care (Direct Payments) Act</p> <p>Dogs (Fouling of Land ) Act</p> <p><b>Education Act</b></p>	<p>Only Assembly function ( section 9) has been repealed by The Immigration and Asylum Act 1999</p> <p>All Assembly functions commenced. [NOTE: some provisions containing Assembly functions are prospectively repealed by the Health and Social Care Act 2001.]</p> <p>All Assembly functions commenced.</p> <p><b>All Assembly functions commenced.</b></p>

	<p>Housing Act</p> <p>Housing Grants, Construction and Regeneration Act</p> <p>National Health Service( Residual Liabilities) Act</p> <p>Noise Act</p>	<p><b>NOTE: some provisions with Assembly functions are prospectively inserted, substituted or repealed by the Learning and Skills act 2000; the Special Educational Needs and Disability act 2001 and the Education Act 2002.</b></p> <p><b>NOTE : also in Schedule 2 to TFO 1999/672.</b></p> <p><b>All Assembly functions commenced except:</b></p> <ul style="list-style-type: none"> <li>- <b>section 87 and schedule 5 relating to amendments to the Landlord and Tenant Act 1987 in respect of the appointment of managers by leasehold valuation tribunals</b></li> </ul> <p><b>All Assembly functions commenced.</b></p> <p>All Assembly functions commenced.</p> <p>All Assembly functions commenced.</p>
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	<p>Nursery Education and Grant-Maintained Schools Act</p> <p>Party Walls etc Act</p> <p><b>School Inspections Act</b></p>	<p>All Assembly functions commenced. Some provisions with Assembly functions are prospectively repealed by the Education Act 2002.</p> <p>All Assembly functions commenced.</p> <p><b>All Assembly functions commenced.</b></p>
1997	<p><b>Education (Schools) Act</b></p> <p><b>Local Government (Contracts) Act</b></p> <p>Nurses, Midwives and Health Visitors Act</p> <p>National Health Service (Primary Care Act)</p>	<p><b>All Assembly functions commenced.</b></p> <p><b>All Assembly functions commenced.</b></p> <p>All Assembly functions commenced ( see Schedule 3 to TFO 2000/253 that substituted the previous entry for this Act in TFO 1999/672).</p> <p>NOTE : this Act is now mostly repealed by the Health Act 1999</p> <p>Certain Assembly functions not yet commenced, namely:</p> <p>- section 8A: inserted by the Health Act</p>

		<p>1999 and as result the power of commencement is with the Assembly .It concerns the power of a health authority (now a local health board ) to direct a primary care trust. In consequence it is now in effect spent as no power to create primary care trusts in Wales</p> <p>- section 21(1): this inserts section 28 C into National Helath Service Act 1977 and contains a regulation making power for the Assembly in relation to agreements for personal medical services</p> <p>- section 22 : this inserts section 28E into National Health Service Act 1977 and contains a regulation making power for the Assembly in relation to arrangements for personal medical services and dental services.Part of section 28E has been repealed under the Health Act 1999 )</p> <p>- sections 23 –25 : only comemced for limited purposes at present.These contain various regulation making powers for the Assembly</p> <p>-section 26 : this contains a regulation making power for the Assembly in relation</p>
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		<p>to charges for dental treatment</p> <p>-section 34 : only commenced for limited purposes so far.</p>
	<p>National Health Service (Private Finance ) Act</p> <p>Plant Varieties Act</p> <p><b>Road Traffic Reduction Act</b></p>	<p>All Assembly functions commenced</p> <p>All Assembly functions commenced</p> <p><b>All Assembly functions commenced</b></p>
1998	<p><b>Audit Commission Act</b></p> <p>Data Protection Act</p>	<p><b>All Assembly functions commenced</b></p> <p><b>NOTE:</b> The Public Audit (Wales) Bill will amend this Act.</p> <p>Section 30 was transferred to the Assembly by TFO 1999/672, but this was, with the consent of the Assembly,</p>

	<p>Petroleum Act</p> <p><b>Road Traffic Reduction (National Targets) Act</b></p> <p><b>School Standards and Framework Act</b></p>	<p>revoked by TFO 2000.</p> <p>All Assembly consultation functions under Schedule 2 to TFO 1999/672 commenced</p> <p><b>All Assembly functions commenced</b></p> <p><b>All Assembly functions commenced except:</b></p> <ul style="list-style-type: none"> <li>- section 39(1) (in part)</li> <li>- section 112(3)</li> <li>- section 128</li> <li>- Schedule 28 paragraph 5</li> <li>- Schedule 30 paragraphs 47, 70, 110, 114, 116 and 185 (in part)</li> <li>- Schedule 31 (in part)</li> </ul> <p><b>NOTE: some provisions with Assembly functions are prospectively inserted,</b></p>
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	<p>Social Security Act</p> <p><b>Teaching and Higher Education Act</b></p> <p>Government of Wales Act</p> <p>National Minimum Wage Act</p>	<p><b>substituted or repealed by the Education Act 2002 and the Independent Schools (Employment of Teachers in Schools with a Religious Character) Regulations 2003.</b></p> <p>All Assembly functions under Schedule 5 to TFO 2000/253 commenced</p> <p><b>All Assembly functions commenced except under section 18</b></p> <p><b>NOTE: some provisions with Assembly functions prospectively inserted, substituted or repealed by the Learning and Skills act 2000 and the Education Act 2002</b></p> <p>All Assembly functions commenced.</p> <p>All Assembly functions commenced.</p>
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1999	Disability Rights Commission Act  Tax Credits Act	Assembly consultation function under Schedule 2 to TFO 2000/253 commenced  Assembly functions under Schedules 1 and 2 to TFO 2000/253 commenced
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