

Research Briefing **The Counsel General – A Constitution quick guide**

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The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales, agrees Welsh taxes and holds the Welsh Government to account.

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The Counsel General

Section 49 of the *Government of Wales Act 2006* ("the Act") provides for the appointment of a **Counsel General to the Welsh Government** who will:

- provide legal advice to the government;
- oversee the work of the Legal Services Department which provides legal services to the Welsh Government;
- oversee prosecutions on behalf of the Welsh Government;
- oversee representation of the Welsh Government in the courts;
- consider whether bills passed by the Assembly need to be referred to the Supreme Court for determination as to whether they are within the Assembly's competence (exercised independently of government);
- answer questions about his/her work in the Assembly; and
- perform other functions in the public interest including, where the Counsel General considers it appropriate, institute, defend or appear in any legal proceedings relating to functions of the Welsh Government (exercised independently of government).

Under section 45 of the 2006 Act, the Counsel General is a member of the Welsh Government.

This role is analogous with the role of the Attorney-General and Solicitor General in the UK Government.

Terms of appointment

The Counsel General is appointed by the Monarch on the recommendation of the First Minister, but the recommendation for the appointment must be approved by the National Assembly. The person appointed need not be an Assembly Member, although an Assembly Member could serve as Counsel General (the First Minister, Ministers and Deputy Ministers are expressly forbidden to do so in the Act). The Explanatory Notes to the Act describe the office as "of 'ministerial' status" but the holder cannot be one of the 'Welsh Ministers'.

The First Minister may, with the agreement of the National Assembly, recommend to the Monarch at any time the removal of the Counsel General; the Counsel General may tender resignation to the Monarch at any time. Unlike Welsh Ministers and Deputy Welsh Ministers, the Counsel General does not have to resign after a vote of no confidence in the Welsh Ministers. However, he or she ceases to hold office on the nomination of a new First Minister under section 47 (but could be re-appointed by the in-coming First Minister).

If the office of Counsel General is vacant, or if the Counsel General is for any reason unable to act, the functions of the office can be exercised by a person designated by the First Minister. There is no requirement for the approval of the Monarch or the agreement of the National Assembly to this designation. However, the period during which Counsel General functions can be exercised by virtue of a designation is limited to a maximum of six months and a designation comes to an end if a person is nominated for appointment as First Minister.

Participation of the Counsel General in Assembly Proceedings

The National Assembly's Standing Orders make it clear that the Counsel General will be treated the same as Welsh Ministers in Assembly Proceedings. The one exception is that a Counsel General who is not an AM, will not be able to vote. Standing Order 9.4 states:

If the Counsel General is not a Member, the Standing Orders apply to the Counsel General as they apply to Members and the Counsel General may participate in Assembly proceedings but may not vote.

The Counsel General, whether an AM or not, will be expected to answer oral and written questions and to make oral or written statements.

Section 34 of the 2006 Act deals with the participation of the Counsel General in the proceedings of the Assembly and includes a provision enabling the Counsel General to refuse to provide documents or to answer questions about particular criminal cases (the Counsel General may be conducting criminal proceedings on behalf of the Welsh Government) if he or she considers that doing so might prejudice the proceedings in that case or would otherwise be contrary to the public interest.

Legal Proceedings

Under **section 67** of the 2006 Act, the Counsel General, as the representative of the Welsh Government in the courts, will be able to institute, defend or appear in any legal proceedings relating to matters with respect to which any functions exercisable by the Welsh Government, provided the Counsel General considers it appropriate to do so for the promotion or protection of the public interest.

Scrutiny of Assembly Bills by Supreme Court

Section 112 of the 2006 Act provides a mechanism through which either the Counsel General or the UK's Attorney-General can obtain a decision by the Supreme Court as to whether Assembly Bills or particular provisions of Assembly Bills are within the Assembly's legislative competence. This may only be done within the four week period starting with the date the Bill was passed by the National Assembly. In the Fourth Assembly this occurred on three occasions. Two Bills were referred by the Attorney General and one by the Counsel General.

Under section 111B of the 2006 Act, the Counsel General can also ask the Supreme Court to decide whether an Assembly Bill relates to a protected subject-matter. The protected subject-matters are set out in section 11A of the 2006 Act and include the name of the Assembly and persons entitled to vote at Assembly elections.

Further information

For further information on any aspect of the constitution, please contact Alys Thomas (alys.thomas@assembly.wales).