

# WALES BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Wales Bill as brought from the House of Commons on 13 September 2016 (HL Bill 63).

- These Explanatory Notes have been prepared by the Wales Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill. So where a provision of the Bill does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.



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## Overview of the Bill

- 1 The Wales Bill seeks to implement those elements of the St David's Day agreement which require legislative changes. It is aimed at creating a clearer and stronger settlement in Wales which is durable and long-lasting.
- 2 The Bill is an enabling Bill and the majority of the provisions in the Bill set out the powers that are being transferred to the National Assembly for Wales (the Assembly) and/or the Welsh Ministers.
- 3 In particular, the Wales Bill amends the Government of Wales Act 2006 (GoWA) by moving to a reserved powers model for Wales. This is the model that underpins the devolution settlement in Scotland. The reserved powers model set out in the Bill will provide a clearer separation of powers between what is devolved and what is reserved, enabling the Assembly to legislate on any subject except those specifically reserved to the UK Parliament.
- 4 The Bill includes a declaration that the Assembly and the Welsh Ministers are considered a permanent part of the UK's constitutional arrangements and will not be abolished without a decision of the people of Wales. It is also declared that the UK Parliament will not normally legislate with regard to devolved matters without the consent of the Assembly, whilst retaining the sovereignty to do so.
- 5 The Bill also devolves further powers to the Assembly and the Welsh Ministers in areas where there was political consensus in support of further devolution. These include:
  - a. Devolving greater responsibility to the Assembly to run its own affairs, including deciding its name;
  - b. Devolving responsibility to the Assembly for ports policy, speed limits, bus registration, taxi regulation, local government elections, sewerage and energy consenting up to 350MW (see below for additional detail);
  - c. Devolving responsibility to Welsh Ministers for marine licensing and conservation and energy consents in the Welsh offshore region; and extending responsibility for building regulations to include excepted energy buildings;
  - d. Devolving power over all elements of Assembly elections; and
  - e. Devolving powers over the licensing of onshore oil and gas extraction

## Policy background

- 6 In November 2014 the Government established what became known as the St David's Day process. Its aim was to determine where there was political consensus to implement the recommendations of Sir Paul Silk's Commission on Devolution in Wales second report (Silk II) on the powers of the Assembly (see *Empowerment and Responsibility: legislative powers to strengthen Wales*, published in March 2014). The process also looked at whether there was political consensus to implement for Wales some elements of the Smith Commission proposals for Scotland (see *Report of the Smith Commission for further devolution of powers to the Scottish Parliament*), published in November 2014).
- 7 The command paper, *Powers for a purpose: Towards a lasting devolution settlement for Wales*, published on 27 February 2015 (Cm 9020), set out the recommendations on which there was

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political consensus. Those recommendations requiring legislative change were included in the draft Wales Bill which was published on the 20 October 2015 for pre-legislative scrutiny (Cm 9144). The Bill as introduced includes changes that have been made as a result of that scrutiny process and changes that have been made as a consequence of discussions with the Welsh Government and the Assembly Commission.

- 8 The St David's Day process also examined some of the powers which are being devolved to Scotland under the Smith Commission agreement. The Bill takes forward two significant commitments from this exercise around which there was strong political consensus. These are - devolving all powers in relation to Assembly elections, including the electoral system, conduct, franchise and registration, and devolving the licensing of onshore oil and gas extraction (including shale gas licensing).
- 9 The St David's Day agreement also committed the Government to examine whether there was a strong case to implement for Wales any of the other recommendations from the Smith Commission. As a result of this work the Bill includes:-
  - provisions giving a formal consultative role to the Welsh Government and Assembly in designing renewables incentives and OFGEM strategic priorities;
  - a duty on OFGEM to lay its annual report and accounts before the Assembly, submit reports, and appear before Assembly Committees;
  - the devolution of responsibility for mineral access rights for underground onshore extraction of oil and gas in Wales; and
  - the devolution of powers to the Assembly to set gender quotas in respect of public bodies in Wales, and the devolution of traffic signs.

## Legal background

- 10 The Bill is an enabling Bill which changes the basis of the legislative competence of the Assembly, moving from a conferred powers model to a reserved powers model. The Bill devolves additional executive powers to Welsh Ministers.
- 11 The Bill also includes provisions which set out the constitutional relationship of the Assembly and Welsh Government within the United Kingdom's constitutional arrangements. It does not amend this relationship.

## Territorial extent and application

- 12 The Bill extends to the whole of the UK. However, the territorial extent of a Bill can be different from its application. Application means the territory where a Bill produces a practical, legal effect. The details of this Bill's application are set out in the following paragraphs.
- 13 The majority of the Bill clauses apply to the whole of the UK as they are of constitutional significance, devolving powers away from the UK Parliament and Secretaries of State.

The only exceptions to this are clauses 9-16 (which relate to the Assembly's internal arrangements and therefore only apply to Wales) and clause 46 (which applies to England and Wales because it confers a power to be exercised if provision in an Assembly Act has an adverse impact on sewerage services in England).

### **Part 1: Constitutional arrangements (clauses 1-8 and 17-22)**

- 14 These clauses not only make constitutional provision about the status of the Welsh devolution settlement (clauses 1-2), but they also set out the matters that are to be devolved from Parliament and Secretaries of State to the Assembly and Welsh Ministers (clauses 3-7 and 16-21). They both extend and apply to the whole of the UK.
- 15 There is a political convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Welsh Assembly, the Scottish Parliament, or the Northern Ireland Assembly without the consent of the legislature concerned, given through a devolved legislature passing a legislative consent motion (“LCM”). An LCM is not required in the Scottish Parliament or the Northern Ireland Assembly for clauses 3-8 and 17-22, given (i) the constitutional significance of these clauses and (ii) the fact that Wales and Welsh devolution arrangements are not matters within the legislative competence of the Scottish Parliament or the Northern Ireland Assembly. However, the majority of these clauses trigger the need for an LCM in the Assembly as they relate to the competence of the Assembly and Welsh Ministers.

### **Part 2: Legislative and executive competence: further provisions (clauses 23-48)**

- 16 These clauses make further provision about the matters that will form part of the Assembly’s legislative competence and the Welsh Ministers’ executive competence. For the same reason as set out in relation to clauses 1-8 and 17-22 above, it is not considered that Part 2 of the Bill includes any provisions that require an LCM in the Scottish Parliament or the Northern Ireland Assembly. However, given their effect on the powers of the Assembly and Welsh Ministers, the majority of these clauses require an LCM in the Assembly.

### **Part 3: Miscellaneous (clauses 49-52)**

- 17 Clause 49 allows the Office for Budget Responsibility to request Welsh public finance information from devolved bodies. Clauses 50-52 provide for the role of Welsh Ministers in relation to Ofgem, the Coal Authority and Ofcom. Neither the Scottish Parliament nor the Northern Ireland Assembly could make equivalent provision in relation to the four bodies provided for in these clauses, therefore LCMs in Scotland and Northern Ireland will not be required. As this relates to substantive new functions for Welsh Ministers, an LCM will be required in the Welsh Assembly.
- 18 See the table in Annex A for a more detailed summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding LCMs and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

# Commentary on provisions of the Bill

## Part 1: Constitutional Arrangements

### Chapter 1: Permanence of the National Assembly for Wales and Welsh Government

#### Clause 1: Permanence of the National Assembly for Wales and Welsh Government

- 19 Clause 1 inserts a new Part A1, with new sections A1 and A2, into GoWA.
- 20 Section A1 provides that the Assembly and the Welsh Government are a permanent part of the United Kingdom's constitutional arrangements, and that those institutions are not to be abolished except on the basis of a decision of the people of Wales in a referendum.
- 21 Subsection (2) sets out that the purpose of this section is to signify the commitment of the UK Parliament and UK Government to the Assembly and Welsh Government.
- 22 Section A2 recognises the existence of Welsh law.
- 23 Subsection (1) confirms that there is a body of Welsh law made by the Assembly and Welsh Ministers. The law made by the Assembly and Welsh Ministers is only *part* of the law that applies in Wales.
- 24 Subsection (2) explains that the purpose of making this declaratory statement does not in any way affect the devolution boundary and in particular the fact that the single legal jurisdiction is a reserved matter. However, it is nevertheless recognised that the legislation made by the Assembly and Welsh Ministers forms part of the law of England and Wales.

### Chapter 2: Convention about Parliament legislating on devolved matters

#### Clause 2: Convention about Parliament legislating on devolved matters

- 25 Clause 2 inserts subsection (6) into section 107 of GoWA so it is recognised in statute that, although the sovereignty of the UK Parliament is unchanged by the legislative competence of the Assembly, the UK Parliament will not normally legislate for devolved matters in Wales without the Assembly's consent.

### Chapter 3: Legislative competence

#### Clause 3: Legislative competence

- 26 Clause 3(1) replaces current section 108 of GoWA with a new section 108A. The new section sets out the limits on the legislative competence of the Assembly.
- 27 Subsections (1)-(7) of new section 108A define how the legislative competence of provisions in Assembly Acts is to be assessed.
- 28 Subsection (1) of new section 108A replicates section 108(2) to provide that an Act of the Assembly is not law so far as any of its provisions is outside the legislative competence of the Assembly.

- 29 Subsection (2) of new section 108A sets out that a provision in an Assembly Act is outside competence if any one of the paragraphs (a)-(e) apply. There are five separate and independent tests for an Assembly Act provision to satisfy before it will be within competence. If any one of the following five paragraphs applies to an Assembly Act provision, it will be outside competence. Flowcharts 1 and 2 at Annex B below explain further how the five tests in paragraphs (a)-(e) are to be applied.
- a. Paragraph (a) replicates section 108(6)(b) of GoWA and provides that an Assembly Act provision will be outside competence if it extends beyond England and Wales. This reflects the existing limitation that an Assembly Act provision cannot form part of a legal system other than the unified jurisdiction of England and Wales.
  - b. Paragraph (b) provides that an Assembly Act provision will be outside competence if it applies otherwise than in relation to Wales or confers, imposes, modifies or removes functions exercisable otherwise than in relation to Wales. However, new subsections (3), (4), (5) and (7) together make up the exception to paragraph (b), whereby an Assembly Act provision can apply otherwise than in relation to Wales. See below for further explanation of these subsections.
  - c. Paragraph (c) provides that an Assembly Act provision will be outside competence if it relates to any of the reserved matters, as set out in Schedule 7A, having regard to the exceptions listed in that Schedule. "Relates to" is to be interpreted in accordance with the purpose test (see subsection (6)).
  - d. Paragraph (d) provides that an Assembly Act provision will be outside competence if it breaches any of the restrictions set out in Part 1 of Schedule 7B, subject to the exceptions in Part 2 of Schedule 7B. It is important not to conflate this paragraph (d) test with the separate test in paragraph (c) above. For example, even though an Assembly Act provision may satisfy paragraph (c) by not relating to a reserved matter, it may nevertheless be outside competence by breaching the restrictions in Schedule 7B. Each of the five tests of legislative competence in paragraphs (a)-(e) are to be applied independently of each other.
  - e. Paragraph (e) replicates section 108(6)(c) of GoWA and provides that an Assembly Act provision will be outside competence if it is incompatible with the Convention rights or with EU law.
- 30 Subsection (3) of new section 108A provides an exception to new subsection (2)(b) so that an Assembly Act provisions can apply otherwise than in relation to Wales if it:
- a. is ancillary (defined in new subsection (7)) to a provision in an Assembly Act or Measure or to a "devolved provision" (defined in subsection (4) below) in an Act of Parliament; and
  - b. has no greater effect otherwise than in relation to Wales than is necessary to give effect to the provision.
- 31 "Wales" is defined in section 158(3) of GoWA and does not include the Welsh zone beyond the territorial sea. Existing provision in Assembly Acts apply to England if they satisfy the test in section 108(5) of GoWA. Once the Bill is in force, an Assembly Act provision will need to satisfy the test in section 108A(3) before it can apply beyond Wales.
- 32 Subsection (4) provides that, for the purposes of subsection (3)(a), a "devolved provision" in an Act of Parliament is one that would be within the Assembly's legislative competence. However, in applying this test, paragraphs 8-11 of Schedule 7B are to be ignored. Paragraphs 8-11 require Secretary of State or Treasury consent for Assembly Act provisions that alter certain reserved

authorities' functions. Such consent would never be required for an Act of Parliament which is why paragraphs 8-11 of Schedule 7B are to be ignored when assessing whether a provision in an Act of Parliament would be within the Assembly's legislative competence.

- 33 Subsection (5) of new section 108A clarifies that, in determining what is "necessary" for the purposes of subsection (3)(b), it is not relevant that the UK Parliament could itself have enacted the provision.
- 34 Subsection (6) of new section 108A replicates section 108(7) of GoWA to include the so-called 'purpose test', which provides that, for the purposes of subsection (2)(c), the question of whether an Assembly Act provision "relates to" a reserved matter, is to be determined by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances.
- 35 Subsection (7) of new section 108A defines "ancillary" for the purposes of GoWA. The term "ancillary" is used in section 108A(3)(a) (as inserted by clause 3), paragraph 6(2) of Schedule 7A (as inserted by Schedule 1), and paragraphs 2(1) and 5(3)(b) of Schedule 7B (as inserted by Schedule 2). The definition is based on the wording that is currently in section 108(5) of GoWA. A provision is considered ancillary to another if it:
  - a. provides for the enforcement of the other provision, or is otherwise appropriate for making that provision effective, or
  - b. is otherwise incidental to, or consequential on, that provision.
- 36 Clause 3(2) replaces Schedule 7 to GoWA with new Schedules 7A and 7B. Schedules 7A and 7B are as set out in Schedules 1 and 2 to the Bill respectively.

### Schedule 1: New Schedule 7A to the Government of Wales Act 2006

- 37 New Schedule 7A sets out the reserved matters for the purposes of section 108A(2)(c), as inserted by clause 3(1) of the Bill. Clause 3(2) provides that this Schedule, together with new Schedule 7B, replaces Schedule 7 to GoWA.
- 38 The following terms are used in Schedule 7A to describe the subject matters that are reserved to the UK Parliament and those which are devolved to the Assembly:
  - a. Reservation: A reservation is a description of a subject matter, about which only the UK Parliament can pass primary legislation (and any secondary legislation enabled by provision in an Act) in relation to Wales. Any subject not reserved, is devolved to the Assembly (but, see 'carve out' below). The reservations may, because of the fairly broad terms in which they are described, include some matters that are intended to be devolved. Such matters are therefore listed as an exception.
  - b. Exception: An exception to a reservation describes a subject which would otherwise form part of the reservation but is excepted, so that it is within the Assembly's legislative competence. Exceptions are specific to the individual reservations under which they are listed; they are not of general application (see paragraph 12 of Part 2 of Schedule 7A).
  - c. Carve Out: A carve out is a specific matter which would otherwise form part of the exception, if it were not effectively 're-reserved' to the UK Parliament by being carved out of the exception.
- 39 The reservations, less the exceptions, plus the carve outs equals the totality of the matters reserved to the UK Parliament. Similarly, the exceptions (having regard to the carve outs) plus the subjects not mentioned anywhere in Schedule 7A equals the totality of the subject matters

devolved to the Assembly. However, even where an Assembly Act provision does not relate to a reserved matter, this is only one part of the legislative competence test (section 108A(2)(c)) and an Assembly Act provision must of course also satisfy the tests in paragraphs (a), (b), (d) and (e) in section 108A(2).

- 40 As an example of the three categories of subject see Section E2 of Schedule 7A:
- a. Reservation: “Railway services” (reserved).
  - b. Exception: “Financial assistance so far as relating to railway services” (devolved).
  - c. Carve out: “but this exception does not apply in relation to financial assistance relating to the carriage of goods” (reserved).
- 41 Part 1 of Schedule 7A lists the general reservations, whereas Part 2 lists the specific reservations. Part 3 contains provisions about Schedule 7A as a whole.

## **PART 1 – GENERAL RESERVATIONS**

### **The Constitution**

- 42 Paragraph 1 provides that certain aspects of the Constitution are reserved matters. These aspects are:
- a. the Crown, including the succession to the Crown and a regency,
  - b. the union of the nations of Wales and England,
  - c. the Parliament of the United Kingdom.
- 43 The general reservation of “the Crown” in paragraph 1 includes the reservation of Crown property, of the Crown’s private property and the Crown Estate, and matters such as honours and appointments.
- 44 Paragraph 2 provides for exceptions to be made from that basic reservation; it also clarifies the scope of what is excepted and what is reserved.
- 45 Paragraphs 2(1)(a) and 2(1)(b) provide that paragraph 1 does not reserve Her Majesty’s executive functions or functions exercisable by any person acting on behalf of the Crown. This enables the Assembly to legislate about those functions where they do not relate to other reserved matters. It should be read in conjunction with clause 18 which inserts a new section 58A into GoWA.
- 46 Paragraph 2(1)(c) provides that paragraph 1 does not reserve the use of the Welsh Seal. The creation of a Welsh Seal is provided for under section 116(1) of the GoWA. That Act also provides that the First Minister is to be the Keeper of the Welsh Seal (section 116(2)) and that the Seal is to be used in connection with the Royal Assent to Assembly Bills (section 115(4)). By paragraph 13 of Part 1 of Schedule 7 to that Act the Assembly is able to provide that the Welsh Seal should have other uses; by paragraph 2(1)(c) of this reservation the Assembly retains legislative competence as regards the Welsh Seal.
- 47 Paragraph 2(2) provides that paragraph 2(1) does not affect the reservation by paragraph 1 of the management of the Crown Estate in accordance with any enactment regulating the use of land. This ensures that the Assembly cannot legislate about the Crown Estate Commissioners or their functions of managing the Crown property, rights and interests known as the Crown Estate under the Crown Estate Act 1961.
- 48 Paragraph 2(3) provides that paragraph 2(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. This supplements the reservations in Section B3 (national security and official secrets) of the Schedule.

49 Paragraph 2(4) clarifies that, in paragraph 2, the meaning of “executive function” does not include:

(a) a function conferred or imposed by any legislation or the prerogative;

(b) a function conferred or imposed as a result of any legislation or the prerogative.

#### **Public service**

50 Paragraph 3 states that the Civil Service of the State is a reserved matter. The Civil Service includes the Home Civil Service (which includes staff of the Welsh Government, see section 52 of GoWA) and the Diplomatic Service. The effect is that the Assembly is not able to legislate about matters relating to Civil Servants in Wales, including their recruitment, selection, management, conduct, discipline, numbers, grading and terms and conditions of service. Matters relating to Civil Service pensions are reserved by Section F4 of this Schedule.

51 The Home Civil Service is ultimately regulated by the Royal Prerogative, and its management has been delegated to the Minister for the Civil Service. The Civil Service Management Code is issued under the authority of the Civil Service Order in Council 1995. Under the Civil Service (Management Functions) Act 1992, the Minister for the Civil Service has further delegated management functions to Ministers and office holders in charge of Departments. These include the authority to prescribe qualifications for appointment as Civil Servants, to determine the number and grading of posts (outside the Senior Civil Service) in such Departments and a wide range of other management functions.

#### **Political parties**

52 Paragraph 4 reserves the registration of political parties and the funding of political parties, including accounting requirements, although paragraph 5 excludes from this the making of payments to any political party for the purpose of assisting members of the Assembly to perform their Assembly duties. Section 24 of GoWA makes provision for financial assistance to groups of Assembly members.

#### **Single legal jurisdiction of England and Wales**

53 This paragraph reserves the single legal jurisdiction of England and Wales so as to reserve the core elements of the shared legal system of England and Wales. This includes the courts, judges, civil and criminal proceedings, pardons for criminal offences, private international law and judicial review of administrative action.

54 This maintains the common court structure and judiciary in England and Wales as well as common rules on civil and criminal proceedings including bail, costs, custody pending trial, disclosure, enforcement, evidence (which include rules on burden and standard of proof), procedure, limitation of actions, prosecutors and remedies.

55 The reference to sentencing in paragraph 6(1)(c) of Schedule 7A protects the decision-making process the judge must follow in sentencing. This would involve, for example, the requirements set out in the Criminal Justice Act 2003 to consider the purposes of sentencing; to take into account the statutory aggravating factors; to follow sentencing guidelines; to decide whether the community order or custody threshold is passed; and to impose a sentence commensurate with the seriousness of the offence.

56 By virtue of paragraph 6(1)(d), the Assembly is not able to legislate to pardon people for criminal offences.

- 57 Paragraph 6(1)(e) reserves private international law so that the way the single jurisdiction of England and Wales deals with laws from other jurisdictions is reserved and paragraph 6(1)(f) reserves judicial review of administrative action.
- 58 Paragraphs 6(2) and (3) enable, by way of exception, the Assembly to provide for certain appeals or applications relating to a civil, devolved matter to be made to a court, where this is ancillary (as defined in s.108A(7)) to a provision of an Act of the Assembly or an Assembly Measure and not otherwise dealt with by a Tribunal in paragraph 7 or existing civil appeal to a Court. The exception does not apply to appeals or applications in criminal proceedings.
- 59 “Prosecutors” in paragraph 6(1)(c) refers to anyone who commences a prosecution, including the Crown Prosecution Service and Serious Fraud Office, government departments and governmental organisations, statutory bodies such as local authorities and regulators, and private bodies and individuals. However, as clarified by paragraph 6(4), the Assembly may specify who has prosecuting responsibility for a devolved offence but the procedure of how prosecutions are conducted including provision for immunity from prosecution such as under section 71 of the Serious Organised Crime Act 2005 or the power of the CPS to take over criminal proceedings under section 6(2) of the Prosecution of Offences Act 1985, even for devolved offences, remains reserved by way of the criminal proceedings reservation. Should the Assembly wish to specify a reserved authority as being responsible for prosecuting a devolved offence or require such a reserved authority to obtain consent before prosecuting, then this is possible with the consent of the appropriate Minister: paragraphs 8(1)(a) or 10(1) of new Schedule 7B.

### **Tribunals**

- 60 This section reserves tribunals, including membership of tribunals, appointment and remuneration of tribunal members, tribunal functions, tribunal procedure and appeals against tribunal decisions. It does not reserve any devolved tribunal (a tribunal which has exclusively devolved functions exercisable only in Wales) (paragraph 7(2)). Nor does it reserve any application or appeal which relates to a devolved matter (and is not an appeal against the decision of a tribunal other than a devolved tribunal) in the case of a tribunal which has devolved functions and reserved functions (paragraph 7(3)).
- 61 The Tribunals, Courts and Enforcement Act 2007 is the main statute in relation to tribunals. It establishes the First-tier Tribunal and Upper Tribunal in England and Wales and makes provision with respect to their membership and composition, functions, jurisdiction, appeals and procedure.

### **Foreign affairs etc.**

- 62 Paragraph 8(1) reserves foreign affairs. The areas reserved include regulation of international trade, international development assistance and co-operation and international relations. International relations encompass relations with the European Union and its institutions, relations with territories outside the UK and with other international organisations. This means that the conduct of international relations, including conduct of relations with the European Union are matters reserved to the UK Parliament and UK Government.
- 63 Certain areas fall outside the scope of the reservation. Sub-paragraph (3)(a) provides that these areas include observing and implementing international obligations, obligations under the Human Rights Convention and obligations under EU law. EU law and international obligations are defined in section 158(1) of the GoWA. The Human Rights Convention is defined in paragraph 8 as meaning the Council of Europe’s Convention for the Protection of

Human Rights and Fundamental Freedoms and its Protocols. The effect of sub-paragraph (3)(a) is that the Assembly will be able to legislate for the purpose of observing and giving effect to those obligations so far as they relate to devolved matters.

- 64 In relation to executive competence in this area, no power has been conferred on Welsh Ministers to implement international obligations. Section 82 of GoWA gives the Secretary of State the power to direct Welsh Ministers both to desist from any action incompatible with international obligations or that action is required by them to give effect to such obligations. Section 114 of GoWA gives the Secretary of State the power to make an intervention order if provisions in an Assembly bill are incompatible with any international obligation. Section 81 limits the power of Welsh Ministers to make subordinate legislation that is incompatible with Convention rights.
- 65 Further, certain enactments are protected from modification by the Assembly by virtue of paragraph 5 of new Schedule 7B to GoWA. These include the European Communities Act 1972 and the Human Rights Act 1998.

### **Defence**

- 66 Paragraph 9 reserves all matters relating to defence and the armed forces. Defence includes matters relating to the armed forces (including, for example, their equipment, resources and deployment), defence policy, strategy, planning and intelligence, and plans for the maintenance of essential supplies and services in case of war.
- 67 The reservation will not however prevent the Assembly from conferring enforcement powers on persons other than members of the naval, military or air forces of the Crown (including reserve forces), in relation to sea fishing.
- 68 Paragraph 9(1)(a) reserves the defence of the realm. The defence of the realm is a supplementary concept to that of the armed forces (which are identified separately, see below) designed to cover all the matters for which the Ministry of Defence is responsible, for defence purposes. These matters include the various defence establishments and contractors carrying out work for defence purposes the Ministry of Defence Police and the services cadet forces (which do not form part of the armed forces but serve defence purposes), and special provisions for the acquisition, use or disposal of land and property for defence purposes.
- 69 Paragraph 9(1)(b) reserves the naval, military and air forces of the Crown, including reserve forces. This makes it clear that all matters concerned with the armed forces themselves are reserved. This includes their command, establishment, maintenance, organisation, staffing and funding and all matters connected with the enlistment, management, disciplining (including policing, prosecution and trial within the armed forces' system of justice) and pay and conditions and allowances of both the military and civilian components of the armed forces and the civilian component, such as contractors working abroad for the armed forces, of the armed forces' community). This reservation also covers the creation of offences relating particularly to the armed forces (for example, the unauthorised wearing of military uniforms), matters concerned with the territorial, auxiliary and volunteer reserve associations, special provisions relating to the status of members of the armed forces and the disclosure of information on military activities. The reservation also covers benefits to members and former members of the armed forces and their dependants and the matter of war graves. Equipment and explosives research for the purposes of the armed forces are also covered.
- 70 Paragraph 9(1)(c) reserves all matters relating to visiting forces. These are the armed forces of other countries visiting or based in the UK, including both their military and civilian components.

- 71 Paragraph 9(1)(d) reserves international headquarters and defence organisations. This is simply to make clear that matters concerned with headquarters or organisations designated for the purposes of the International Headquarters and Defence Organisations Act 1964 are reserved.
- 72 Paragraph 9(1)(e) reserves trading with the enemy and enemy property. This covers matters relating to the control of trade with the enemy and the confiscation, control or administration of enemy property. These matters are all aspects of the conduct of war and the conclusion of peace.
- 73 Paragraph 9(2) provides that the conferral of enforcement powers on a person in relation to sea fishing is not reserved except in the case of a person who is a member of the naval, military or air forces of the Crown, including reserve forces. This paragraph does not alter the existing devolution position. Certain members of the naval, military or air forces of the Crown automatically have enforcement powers in relation to sea fishing conferred on them as marine enforcement officers as a consequence of the Marine and Coastal Access Act 2009. Under the same Act any person may have sea fishing enforcement powers conferred on them by being appointed to be marine enforcement officers by Welsh Ministers.

## **PART 2 – SPECIFIC RESERVATIONS**

- 74 Paragraph 10 explains that the matters listed in Part 2 of Schedule 7A are, like those listed in Part 1 of Schedule 7A, reserved matters.
- 75 Paragraph 11 provides that the reservations are to be read together with their exceptions and interpretation provisions.
- 76 Paragraph 12 provides that the exceptions and interpretation provisions that are listed within reservations apply only to those reservations. In other words, exceptions and interpretations do not apply to other reserved matters.

### **Head A – Financial and Economic Matters**

#### **Section A1 – Fiscal, economic and monetary policy**

- 77 This section reserves fiscal, economic and monetary policy, with the exception of devolved taxes and local taxes.
- 78 The reserved matters include the issue and circulation of money, taxes and excise duties including vehicle excise duty (and the bodies which administer them), government borrowing and lending (including the issue of Government Securities), the exchange rate, the Bank of England and control over UK public expenditure. This does not affect the Assembly's ability to allocate resources, whether part of its assigned budget or raised through its tax-varying powers. By reserving the Bank of England by name in Part 2 of Schedule 7A, paragraph 199 of Schedule 7A ('particular authorities') applies and reserves the functions and constitution of the Bank.
- 79 This reservation does not impact on the devolved taxes that were created in the Wales Act 2014. Devolved taxes are therefore excepted from this reservation, along with local taxes to fund local authority expenditure.

#### **Section A2 – The currency**

- 80 This section reserves matters relating to the currency.
- 81 The matters reserved are coinage, legal tender and bank notes. This includes the denominations of money in the currency and the coins or notes which constitute legal tender and what coins and bank notes may be issued.

### **Section A3 – Financial services**

- 82 This section reserves financial services. The reservation expressly includes:
- a. investment business, e.g. managing investments or providing investment advice and the authorisation and regulation of those who undertake such activities, as in the Financial Services Act 1986;
  - b. banking and deposit-taking e.g. the authorisation and regulation of those carrying on banking or deposit-taking business, as in the Banking Act 1987;
  - c. collective investment schemes e.g. unit trusts and open-ended investment companies and their regulation and authorisation, as in the Financial Services Act 1986; and
  - d. insurance.
- 83 The expression “financial services” also includes financial services other than those expressly mentioned, such as the services provided by building societies or friendly societies.
- 84 This reservation contributes to the preservation of common markets for financial services, and depositor, investor and policyholder protection, across the UK.

### **Section A4 – Financial markets**

- 85 This section reserves financial markets, such as investment exchanges or money markets. The reserved matters are expressly stated to include:
- a. the listing and public offers of securities and investments, such as the matters which have to be disclosed in the application for official or unofficial listing of securities by the Stock Exchange;
  - b. the transfer of securities e.g. on paper in the case of certificated securities or electronically in the case of uncertificated securities, as in the CREST system; and
  - c. insider dealing. This reserves all matters relating to what constitutes insider dealing and its consequences.

### **Section A5 – Dormant accounts**

- 86 This section reserves the distribution of money from dormant bank and building society accounts.
- 87 The distribution of balances held on dormant bank and building society accounts is governed by the Dormant Bank and Building Society Accounts Act 2008 (“Dormant Accounts Act”).
- 88 Part 1 of the Dormant Accounts Act deals with the transfer of such balances to an authorised reclaim fund and, from the authorised reclaim fund, to the distributor specified in section 16(1), which is currently the Big Lottery Fund (BLF).
- 89 Part 2 of the Dormant Accounts Act deals with the distribution of dormant account money by BLF. Section 16(1) specifies that BLF shall distribute dormant account money for meeting expenditure that has a social or environmental purpose. The apportionment of dormant account money between the various UK nations is addressed by section 17 and in secondary legislation (currently, the Distribution of Dormant Account Money (Apportionment) Order 2011, SI 2011/1799). Management and control of all dormant account money distributed by BLF is subject to directions addressed by section 22(4).
- 90 This reservation does not affect the existing devolution of executive competence to Welsh Ministers, who have powers: to further restrict (by order made by statutory instrument) the

purposes for which, or the kinds of person to which, BLF may distribute dormant account money for meeting Welsh expenditure (see section 19 of the Dormant Accounts Act); to give directions to BLF in relation to Welsh expenditure (section 22); and to instruct BLF to prepare or replace a strategic plan for its distribution of dormant accounts money for meeting Welsh expenditure (Schedule 3).

## **Head B – Home Affairs**

### **Section B1 – Elections**

- 91 Subsection (A) of this Section (paragraph 18) reserves all matters concerning elections for membership of the House of Commons and the European Parliament, which includes who may stand or vote in those elections, procedures under which votes are counted and candidates returned, what the constituencies and timings of those elections should be, campaign expenditure by political parties, controlled expenditure and donations to third parties.
- 92 Subsection (B) (paragraphs 19 to 25) reserves certain matters in relation to elections for membership of the Assembly and local government elections in Wales.
- 93 Paragraph 19 reserves the subject-matter of sections 3(1A) and 13A of GoWA which concern the coincidence of Assembly elections and reserved elections.
- 94 Paragraph 20 reserves the subject-matter of section 37ZA(2) of the Representation of the People Act 1983 which concerns the coincidence of local government elections in Wales and Assembly elections.
- 95 Paragraph 21 reserves:
  - a. the combination of polls at elections or referendums that are outside the legislative competence of the Assembly with polls at (i) Assembly elections, (ii) local government elections in Wales or (iii) referendums held under Part 2 of the Local Government Act 2000; and;
  - b. the combination of polls at ordinary Assembly elections with polls at ordinary local government elections in Wales.
- 96 The reservation at paragraph 22 provides that the Individual Electoral Registration Digital Service for applications for registration, or for verifying information contained in applications for registration in relation to elections for membership of the Assembly or local government elections in Wales, is reserved.
- 97 Paragraph 23 of the reservation sets out the subject-matter of those provisions in the Political Parties, Elections and Referendums Act 2000 (“the 2000 Act”) which are reserved in relation to elections for the membership of the Assembly and local government elections in Wales. In particular, the subject matter of sections 1 to 4 of the 2000 Act, which relate to the establishment and constitution of the Electoral Commission are reserved (with some exceptions); however, many of the Electoral Commission’s general functions and enforcement functions under Parts 1 and 10 of the 2000 Act are not reserved in relation to elections for membership of the Assembly.
- 98 Paragraph 24 reserves campaign expenditure by political parties, controlled expenditure and donations to third parties, but only where a regulated period in respect of such expenditure for elections to the Assembly or local government elections in Wales overlaps with the regulated period for elections for membership of the House of Commons or European Parliament.
- 99 Sections 145 to 148 and 150 to 154 of the 2000 Act make provision for the enforcement of the regulatory framework provided by that Act. This includes various powers exercisable by the Electoral Commission to investigate matters and, where appropriate, to impose civil sanctions.

These sections also create a number of criminal offences. Paragraph 25 reserves the subject matter of these sections as they apply for the purposes of any provision, so far as the subject matter of such a provision is itself reserved by either paragraph 23 or 24 of Section B1.

### **Section B2 - Nationality and immigration**

100 This section reserves nationality and immigration.

101 Nationality and immigration covers a range of matters, including: entry to the UK; extending leave to remain in the UK, the granting of political or other forms of asylum and humanitarian protection; the status and capacity in the UK of non-British citizens, the grant and regulation of permission to work and study; free movement of persons within the European Economic Area; and the issue of passports and other travel documents.

102 Nationality and immigration are governed by statute, namely the Immigration Act 1971, British Nationality Act 1981, Immigration Act 1988, Asylum and Immigration Appeals Act 1993 (substantially repealed), Special Immigration Appeals Commission Act 1997, Immigration and Asylum Act 1999, British Overseas Territories Act 2002, Nationality, Immigration and Asylum Act 2002, Asylum and Immigration (Treatment of Claimants, etc) Act 2004, Immigration, Asylum and Nationality Act 2006, UK Borders Act 2007, Criminal Justice and Immigration Act 2008, Borders, Citizenship and Immigration Act 2009 and Immigration Act 2014 as well as the Immigration Rules (HC 395 as amended) and secondary legislation made pursuant to the powers in the aforementioned legislation.

103 Passports and other travel documents are not subject to statutory provision, but are issued under the Royal Prerogative.

104 The reservation includes the exercise of functions under the legislation described above; 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; and the issue of travel documents.

### **Section B3 - National security and official secrets**

105 This section reserves national security. National security powers are integral to the functioning of the United Kingdom.

106 This section reserves special powers and other special provisions for dealing with terrorism. This reserves competence to make special provision about terrorism such as is made in the Terrorism Act 2000, the Terrorism Act 2006, the Counter-Terrorism Act 2008, the Terrorism Prevention and Investigation Measures Act 2011 or the Counter-Terrorism and Security Act 2015. The reservation does not catch general provisions of the criminal law or public order statutes which, although not directed against terrorists as such, could be used to deal with terrorists.

107 This section also reserves the subject matter of the Official Secrets Acts 1911-1989, which contain provision protecting against certain acts of espionage and against unauthorised disclosure of certain sensitive information.

### **Section B4 - Interception of communications, communications data and surveillance**

108 This reservation applies to the entire statutory framework which governs these activities. This includes the ability to specify that particular public authorities should be able to conduct these activities. The oversight regime and statutory safeguards which apply to these activities are also wholly reserved. These are some of the most intrusive activities which public authorities can undertake.

### **Section B5 - Crime, public order and policing**

- 109 This section reserves the prevention, detection and investigation of crime; reserves the preservation of public order and policing.
- 110 This section makes Police and Crime Commissioners in general a reserved matter, including their functions and their election.
- 111 The reservations under this section do not extend to powers of entry, search and seizure relating to the detection or investigation of an offence of a kind that could be created by a provision falling within the Assembly's legislative competence.

### **Section B6 - Anti-social behaviour**

- 112 This section reserves the subject matter of Parts 1 to 6 of the Anti-social Behaviour, Crime and Policing Act 2014, which sets out coercive and other measures to deal with anti-social behaviour, crime and disorder and behaviour having detrimental effect on the quality of life in a locality, including recovery of possession of dwelling houses on the grounds of such behaviour.
- 113 Part 1 makes provision for a civil injunction to prevent anti-social behaviour. Part 2 makes provision for an order on conviction to prevent behaviour which causes harassment, alarm or distress. Part 3 contains a power for the police to disperse people who are causing, or likely to cause, harassment, alarm or distress or who are, or are likely to be, taking part in crime or disorder. Part 4 sets out powers to deal with community protection and makes provision for a community protection notice, a public spaces protection order and provisions to close premises associated with nuisance or disorder. Part 5 makes provision for the possession of houses on anti-social behaviour grounds. Part 6 contains provisions on establishing a community remedy document and dealing with responses to complaints of anti-social behaviour.
- 114 This section also reserves matters in relation to dangerous dogs and dogs dangerously out of control as matters concerning anti-social behavior also reserved. This is consistent with the reserving generally of the maintenance of public order but does not affect the devolved subject matter of animal welfare.

### **Section B7 - Modern slavery**

- 115 This section reserves the subject-matter of the Modern Slavery Act 2015. The Act sets out the UK Government's legislative response to the problem of modern slavery. Its provisions include criminal offences, law enforcement powers and protections for victims which are crucial to ensuring an effective response to this serious crime.

### **Section B8 - Prostitution**

- 116 This section reserves matters in relation to prostitution.
- 117 This covers the prevention of harm, exploitation and public nuisance related to the purchase and sale of sexual services, including the control of the sale of sexual services.
- 118 The legislative framework in relation to prostitution is principally covered by the Sexual Offences Act 1956 (brothel keeping), Sexual Offences Act 2003 (soliciting, controlling prostitution for gain and causing or inciting prostitution for gain, and paying for the sexual services of a prostitute subject to force, threats or coercion), Street Offences Act 1959 (loitering or soliciting and Engagement and Support Orders).

### **Section B9 - Emergency powers**

- 119 This section reserves emergency powers. This covers the circumstances in which such powers are exercised, what the powers are, including their limitations, and ancillary provision.
- 120 Emergency powers include sector-specific provisions, and the generic emergency powers set out in Part 2 of the Civil Contingencies Act 2004 (CCA).
- 121 The CCA provides a power to make emergency regulations in order to respond urgently to actual or imminent emergencies which threaten serious damage to human welfare, the environment, or the security of the UK through war or terrorism, and where existing legislative provision is inadequate.
- 122 Emergency regulations may make provision of any kind that is necessary to prevent or deal with the emergency in question; however they must be proportionate to the aspect or effect of the emergency they are directed at. Other limitations also apply.
- 123 Emergency regulations which relate wholly or partly to Wales may not be made unless a senior Minister of the Crown has consulted Welsh Ministers. However this requirement may be disapplied if necessary for reasons of urgency.

### **Section B10 - Extradition**

- 124 This section reserves extradition. The Extradition Act 2003 makes legislative provision for extradition. Extradition is the process under which a person may be surrendered by one territory to another, so as to face prosecution for an alleged crime or, where a person has been convicted of a crime, to serve a sentence or other form of detention imposed by a court.

### **Section B11 - Rehabilitation of offenders**

- 125 This section reserves the subject matter of the Rehabilitation of Offenders Act 1974 (ROA) which governs the disclosure of criminal records information for employment and for certain other purposes such as licensing, and court and tribunal proceedings. The legislation determines when cautions and convictions may become 'spent' meaning that they no longer have to be disclosed for most purposes and the individual is treated as rehabilitated for the purpose of the ROA. The Exceptions Order to the ROA lists those sensitive occupations and activities where certain spent cautions and convictions may be disclosed and taken into account and specifies which old and minor spent cautions and convictions may be protected from disclosure for these purposes.
- 126 The rehabilitation periods relating to convictions, and the policy on protected spent cautions and convictions, are based on the sentence imposed. The sentencing framework is a reserved matter and therefore the ROA must also be reserved as the two must be aligned as between England and Wales.

### **Section B12 - Criminal records**

- 127 This section reserves criminal records, including the disclosure and barring regime, which is operated by the Disclosure and Barring Service (DBS).
- 128 The DBS was established by the Protection of Freedoms Act 2012. The DBS operates a barring service for certain sensitive areas of employment and also provides criminal records disclosures.
- 129 The legislative regime for criminal disclosure and barring is provided by a number of statutes:
- Rehabilitation of Offenders Act 1974
  - Safeguarding Vulnerable Groups Act 2006
  - Protection of Freedoms Act 2012

- The Police Act 1997

130 The Police Act 1997 provides for the provision of criminal records certificates and the framework within which the DBS works. There is a very close interaction between the Police Act 1997 and the ROA and associated regulations. The provisions of the ROA, the foundations of the DBS regime are a reserved matter.

131 However, other aspects of the legislation underpinning the disclosure and barring regime can be affected, or touched on, by devolved matters.

132 Section 56 of the Safeguarding Vulnerable Groups Act 2006 requires the Secretary of State to obtain the consent of the Welsh Ministers before making certain secondary legislation relating to barring and notification; there is also a duty to consult with the Welsh Ministers on legislation regarding other aspects of regulated activity, barring etc.

133 Additionally, the current Schedule 7 to GoWA provides that the provision of social care is devolved. Given the role of safeguarding and barring in social care this means that there is inevitably a cross over between aspects of the work of the DBS and the Criminal Records regime.

134 A similar situation applies in the context of education. Under the Education Act 2002 local authorities and school governing bodies have a general duty to promote the welfare of children and make safeguarding arrangements – that duty is devolved. The regulation and inspection of children's homes and social care providers for children is also devolved.

#### **Section B13 - Dangerous items**

135 This section reserves the subject-matter of the Firearms Acts 1968 to 1997.

136 These Acts are the Firearms Act 1968, the Firearms Act 1982, the Firearms (Amendment) Act 1988, the Firearms (Amendment) Act 1992 and the Firearms (Amendment) Act 1997.

137 These Acts, *inter alia* :

-make it a criminal offence in certain circumstances and without authority to possess, handle, purchase, acquire, sell, distribute or transfer certain firearms and imitation firearms;

-provide for the need for, and issue of, firearms certificates in relation to certain firearms and ammunition;

-make provision for the regulation of firearms dealers; and

- provide for the licensing and regulation of target shooting clubs.

138 The Acts distinguish between different types of firearms in certain respects and make different provision for different types.

139 This section also reserves the subject matter of the Poisons Act 1972 which makes provisions for the sale and supply of certain poisons and explosives precursors to members of the public and the acquisition, importation, use and possession of poisons and explosives precursors by members of the public. The Act also makes provision for reporting of suspicious transactions of poisons and explosives precursors.

140 Section B5 reserves the prevention, detection and investigation of crime. Section B13 prevents the Assembly from legislating in respect of knives and offensive weapons that are also knives (for instance, a bayonet) in matters that are not caught by section B5. For instance, it will prevent the Assembly from implementing a licensing regime for knives and for offensive weapons that are also knives.

#### **Section B14 - Misuse of and dealing in drugs or psychoactive substances**

- 141 This section reserves the legal framework concerning the misuse or dealing in drugs or psychoactive substances.
- 142 This covers drugs or psychoactive substances as defined respectively in the Misuse of Drugs Act (“controlled drugs” which includes drugs subject to a temporary class drug order) and the Psychoactive Substances Act 2016 (any substance which is: ‘capable of producing a psychoactive effect in a person who consumes it’ subject to a list of exempted substances in Schedule 1).
- 143 The law on the misuse of drugs and drug trafficking is principally set out in the Misuse of Drugs Act 1971 and its subordinate legislation as well as sections 12-14 of the Criminal Justice (International Co-operation) Act 1990 (substances useful for manufacture of controlled drugs).
- 144 The Psychoactive Substances Act 2016 outlaws the trade (i.e. production, importation/exportation, supply and possession with intent to supply) for the purposes of human consumption of psychoactive substances (as defined in the Act). There is no possession offence except in a custodial institution. The production etc. of these substances for any other purpose is not caught. Exempt substances include controlled drugs under the Misuse of Drugs Act 1971; medicinal products as defined by the Human Medicines Regulations 2010; alcohol, nicotine/tobacco, caffeine and food (i.e. substances that are already regulated through existing legislation or because their psychoactive effect is negligible).
- 145 Precursor legislation is set out in Regulation (EC) No. 273/2004 and Regulation (EC) No.111/2005 enacted by Controlled Drugs (Drug Precursors) (Intra-Community Trade Regulations) 2008 (SI 2008 No.295) and Controlled Drugs (Drug Precursors) (Community External Trade) Regulations 2008 (SI 2008 No.296).

#### **Section B15 - Private security**

- 146 This section reserves Private Security. This covers the regulatory regime for private security, which is currently regulated by the Security Industry Authority (SIA). The SIA was established by the Private Security Industry Act 2012. The SIA’s main functions are to provide licensing and approvals for certain areas of the security industry. It also acts in an enforcement role.

#### **Section B16 - Entertainment and late night refreshment**

- 147 This section reserves powers to make provisions for regulating the classification of film and video recordings (including video games). This includes the age rating certification of film, video recordings and video games. This section also reserves entertainment and late night refreshment, which are regulated by the Licensing Act 2003. This includes entertainment licensing, ensuring that there is a coherent regulatory framework throughout England and Wales.
- 148 Late night refreshment is defined in the Licensing Act 2003 (section 1 and paragraph 1 of Schedule 2), as the sale of hot food and hot drink to the public between the hours of 23.00 and 05.00. The Licensing Act 2003 includes certain exemptions (see paragraphs 2A, 3, 4 and 5 of Schedule 2), where the premises are not used by the public, such as the provision of refreshments to guests staying at a hotel, or the provision of refreshments by an employer to an employee.

#### **Section B17 - Alcohol**

- 149 This section reserves the sale and supply of alcohol, which is regulated by the Licensing Act 2003.

150 This includes the licensing of alcohol sales by retail and the pricing and promotion of alcohol. There are a number of provisions in the Licensing Act 2003 which relate to the pricing and promotion of alcohol, including a power under section 19A which allows the Secretary of State to impose mandatory conditions relating to the sale of alcohol on all licensed premises where the Secretary of State considers this appropriate for the promotion of the licensing objectives. Mandatory licence conditions made under this power include conditions governing irresponsible promotions, and a prohibition on sales of alcohol below the permitted price.

151 This reservation does not include the wholesale sale of alcohol.

#### **Section B18 - Betting, gaming and lotteries**

152 This section reserves lotteries, including the National Lottery, ensuring that the same framework is in place throughout the UK, and betting and gaming, ensuring that the same framework is in place throughout Great Britain.

#### **Section B19 - Hunting**

153 This section reserves hunting with dogs. The hunting of any wild mammal with a dog is prohibited in England and Wales by the Hunting Act 2004, unless the hunting qualifies as exempt hunting under that Act.

#### **Section B20 - Scientific and educational procedures on live animals**

154 This section reserves scientific and educational procedures on live animals. Such procedures are regulated by the Animals in Science Regulation Unit in the Home Office who are responsible for inspection and licensing of such procedures and for the policy and legislation in this area for England, Wales and Scotland.

#### **Section B21 - Lieutenancies**

155 This section reserves the lieutenancies, including the processes for appointments and their functions which are set out in the Lieutenancies Act 1997.

#### **Section B22 - Charities and fund-raising**

156 This section reserves charities. The Charities Act 2011 is the main statute making provision in relation to charities. This includes the definition of “charity” and “charitable purpose”, the requirements for most charities to register with and be regulated by the Charity Commission for England and Wales, and charities’ accounting and reporting requirements among others.

157 This reservation does not affect the ability of the Assembly or Welsh Government to confer, impose, or modify functions of public bodies operating within devolved areas who also happen to be charities.

158 This section also reserves fund-raising for charitable, philanthropic or benevolent purposes. Specifically, it is concerned with the collection of charitable donations by making a solicitation to members of the public. The main statutory provisions on this are Part 2 of the Charities Act 1992 and the House to House Collections Act 1939.

159 This reservation does not inhibit the power of the Assembly to legislate to raise and distribute funds to charities and similar bodies for devolved purposes.

### **Head C - Trade and Industry**

#### **Section C1 - Business associations and business names**

160 This section reserves the creation, operation, regulation and dissolution of business associations. Business associations include any entity that is not a natural person which is

established for undertaking any business whether or not the business is for profit. The reservation does not prevent the Assembly from establishing a business association, such as a company for devolved purposes, but any such company would be required to comply with the relevant UK legislation. What is reserved is the legislative competence to provide how a company is created, operated, regulated and dissolved.

161 For example, in respect of registered social landlords (which may take the form of a company or an Industrial and Provident Society) the Assembly has competence to make provision on the requirements to become a registered social landlord (as a devolved housing matter). However this reservation prevents the Assembly from making provision about requirements for companies or Industrial and Provident Societies more broadly, or creating a new type of business association.

162 Excepted from the reservation is the creation, operation, regulation and dissolution of particular public bodies or public bodies of a particular type established by or under any enactment. This is to ensure that the Assembly is able to legislate to create and provide for the operation, regulation and dissolution of any public bodies for devolved purposes. These might include a particular statutory body, or types of statutory bodies, such as local authorities or other bodies required to carry on activities within a devolved area. This exception therefore permits the Assembly to establish public bodies for devolved purposes only: it would not permit the Assembly to establish bodies for purposes relating to a reserved matter.

163 This section also reserves the regulation of the name under which an individual or a business association carries on business.

#### **Section C2 - Insolvency and winding up**

164 This section reserves the subject matter of insolvency and the winding up of solvent business associations.

165 These reservations cover all matters relating to insolvency for individuals, limited companies and other business associations. They also cover the winding up of solvent business associations, (for example members' voluntary winding up) and the regulation of insolvency practitioners.

#### **Section C3 - Competition**

166 This section reserves the regulation of anti-competitive practices and agreements; abuse of dominant position, and monopolies and mergers. This reservation ensures the continuation of a common UK-wide system for the regulation of competition matters. Responsibility for competition policy rests with the UK Government.

167 Competition matters are currently principally regulated by (a) the Competition Act 1998 which introduced a prohibition approach to anti-competitive agreements and abuse of a dominant position and (b) the Enterprise Act 2002 which regulates mergers and gives powers to investigate markets. In addition, the Enterprise and Regulatory Reform Act 2013 established the Competition and Markets Authority which is responsible for competition regulation in the UK, with rights of appeal to the Competition Appeal Tribunal. The reservation includes all matters relating to that regulation.

#### **Section C4 - Intellectual property**

168 This section reserves all matters relating to intellectual property and the work of the Intellectual Property Office. This includes patents design right, trademarks and copyright and all other existing and future analogous rights and matters such as publication rights, rights in performances, the law on passing-off, trade secrets and database rights.

169 The only exception to this is that the intellectual property with respect to plant varieties and seeds is not reserved.

#### **Section C5 – Import and export control**

170 This section reserves import and export licensing and the implementation of the UK's EU and UN obligations in this area.

171 This reservation reserves import and export licensing within the UK in addition to the implementation of any import, export and trade controls sanctions or arms embargos that are adopted at EU or UN level.

172 This section also reserves all matters related to the Common Commercial Policy of the EU, which falls within the exclusive competence of the EU.

173 The exceptions to this reservation ensure that the Assembly is able to regulate the movement into and out of Wales of those things listed for reasons connected with the exercise of functions within areas of devolved competence, such as environmental protection. It makes clear however that devolved competence does not extend to prohibition and regulation related to the protection of endangered plants and animals, which remains reserved.

#### **Section C6 - Consumer protection**

174 This section reserves the regulation of the following matters:

- a. the sale and supply of goods and services to consumers. This covers the terms on which goods and services are sold and supplied to consumers. It is intended that the Assembly will continue to have legislative competence in relation to the regulation of, for example, tattooing and body piercing where the purpose of the provision is the protection of public health;
- b. guarantees in relation to such goods and services. Statutory implied terms in relation to the sale and supply of goods and services to consumers are covered by the reservation at (a) above;
- c. hire purchase, including the subject-matter of Part 3 of the Hire Purchase Act 1964 which deals with title to motor vehicles which are disposed of while subject to hire purchase agreements;
- d. trade descriptions, except in relation to food. This deals with all matters related to false trade descriptions and is not limited to the protection of consumers. It includes the subject-matter of the Trade Descriptions Act 1968;
- e. advertising and price indications. This deals with all matters related to the regulation of advertising and price indications. This includes relevant provisions in the Consumer Protection Act 1987 and the EC Directive on Price Indications;
- f. auctions and mock auctions of goods and services. This relates to all matters related to sale of goods and services by auction and the prohibition of mock auctions i.e. sales which purport to be auctions, but in which the right to bid is restricted, goods are sold below the bid price or are given away, and similar trading practices intended to put undue pressure on customers. This currently includes the Auctioneers Act 1845, the Auctions (Bidding Agreements) Act 1969 and the Mock Auctions Act 1961; and
- g. hall-marking and gun barrel proofing. This covers the regulation of hallmarks applied to articles of precious metal. Gun barrel proofing is the process of testing a gun for safety in order to disclose any fault or weakness and is a statutory requirement for all small arms.

175 Matters relating to the safety of, and liability for, services to consumers are reserved.

176 The exception to this section is intended to ensure that the Assembly continues to have

competence in relation to food safety (including packaging and other materials which come into contact with food) and the protection of interests of consumers in relation to food.

177 This section reserves the regulation of:

- a. the activities of estate agents to the extent that those activities are regulated by the Estate Agents Act 1979. It does not apply to things done in the course of this profession by a practising solicitor or person employed by an estate agent; nor does it include activities relating to letting property, which is a devolved responsibility.
- b. timeshares including the minimum information which must be given to consumers prior to contract, the minimum contents of contracts and for the cancellation of agreements without penalty within a cooling off period.
- c. the regulation of package travel, package holiday and package tours, which includes requirements on information given to consumers, in brochures and otherwise, content and form of contracts, provisions which traders must make for the protection of consumers' pre-payments, other obligations of traders and related offences and civil rights of consumers.

178 This section reserves the protection of people, whether consumers or others who receive unsolicited goods or services and from trading schemes (for example, pyramid selling) and is largely provided for by Part 11 of the Fair Trading Act 1973.

179 The reservation of the regulation of trading schemes in relation to consumer protection matters should not be read as reserving the regulation of trading schemes in relation to matters that are not reserved elsewhere.

180 This section reserves the subject matter of Part 8 of the Enterprise Act 2002, which concerns the enforcement of various pieces of consumer legislation with civil undertakings and orders.

#### **Section C7 - Product standards, safety and liability**

181 This section covers all legislation which lays down rules relating to:

- product standards, imposed as a result of an EU obligation;
- product safety, and liability;
- product labelling requirements;

which must be complied with before a product can be placed on the market.

182 This section reserves product technical standards and requirements imposed as a result of an obligation in EU law.

183 This section reserves the power to make provision for the appointment of national accreditation bodies, which certify or assess conformity to technical standards in relation to products or environmental management systems.

184 This section reserves product safety and product liability.

185 The exception to these reservations ensure that the Assembly is able to legislate in relation to food (which includes drink) food products and packaging and other materials which come into contact with food and the protection of interests of consumers in relation to food.

#### **Section C8 - Weights and measures**

186 This section reserves units and standards of weight and measurement.

187 This section reserves regulation of trade involving weighing, measuring or quantities. This

includes the subject matter of the Weights and Measures Act 1985. Having a single set of rules for weights and measures makes it easier for business to trade across Great Britain and easier for consumers to make choices where products are sold by quantity.

#### **Section C9 - Telecommunications and wireless telegraphy**

188 This section reserves powers governing telecommunications and wireless telegraphy (including electromagnetic disturbance such as radio interference), thus allowing a consistent approach across the UK including a common regulator (Ofcom).

189 This section reserves powers to make provisions for regulating Internet services, ensuring the same framework is in place throughout the UK.

190 This section reserves powers to make provision in relation to electronic encryption ensuring a consistent approach throughout the UK.

#### **Section C10 - Post**

191 This section reserves postal services and post offices, which includes the subject matter of the Postal Services Act 2011 and remaining provisions of the Postal Services Act 2000, to support the UK's universal postal service. This includes postal regulation, competition, provision of UK postal services, designation and ownership of the company that runs the UK's post office network, and powers to provide public subsidy to that company.

192 The exception permits financial assistance for the provision of services to be provided from public post offices (other than postal services and services relating to money or postal orders).

#### **Section C11 - Research Councils**

193 This section reserves Research Councils, within the meaning of the Science and Technology Act 1965. This includes the funding of scientific research in accordance with section 5 of that Act, so far as it relates to Research Councils.

194 This section reserves the Arts and Humanities Research Council within the meaning of Part 1 of the Higher Education Act 2004. This includes research in arts and humanities in accordance with section 10 of that Act, so far as it relates to that Research Council.

195 The reservations cover the ability of Research Councils to provide grants and other support for research across the UK. This includes funding for national facilities for use by all UK researchers, along with negotiation and payment of subscriptions to international facilities, which helps sustain international competitive excellence of the UK research base. The definition of Research Councils includes Innovate UK.

#### **Section C12 - Industrial development**

196 This section reserves both the Secretary of State's ability to designate Assisted Areas and the financial limits specified in section 8(5) and 8(7) of the Industrial Development Act 1982. The reservation on the financial limits means that financial assistance to industry under section 8 of the Industrial Development Act 1982 by Welsh Ministers, Scottish Ministers and UK Ministers combined cannot exceed total expenditure thresholds which are set by UK Ministers. However, the reservation of section 8(5) and (7) would not prevent the Assembly from creating its own separate powers for Welsh Ministers in relation to financial assistance to industry and setting the financial limits on such powers, which would apply in relation to Wales only.

197 This section reserves the Industrial Development Advisory Board, which is a statutory body provided for under section 10 of the Industrial Development Act 1982.

198 The Industrial Development Advisory Board, or IDAB as it is commonly known, has a

statutory role to advise the Secretary of State on the exercise of his functions under sections 7 and 8 of the Industrial Development Act 1982 (provision of financial assistance to industry).

#### **Section C13 - Protection of trading and economic interests**

199 This section reserves the subject-matter of Part 2 of the Industry Act 1975.

200 Part 2 of the Industry Act 1975 gives powers to the Secretary of State to prevent control of an “important manufacturing undertaking” in the United Kingdom from passing to a person resident outside the United Kingdom where such a change of control would be contrary to specified interests of the United Kingdom relating to public policy, public health or public security (and subject to other restrictions on the exercise of these powers). The Secretary of State is empowered to act by means of “prohibition order” or “vesting order”, to which Parliamentary procedures apply.

201 This section reserves the subject matter of the Protection of Trading Interests Act 1980. This Act allows the Secretary of State to prohibit, where appropriate, the application of certain trade sanctions adopted by other countries, to persons in the UK, where the operation of those measures would, in his view, damage the economic interests of that person.

#### **Section C14 - Assistance in connection with exports of goods and services**

202 This section reserves the subject-matter of the Export and Investment Guarantees Act 1991. This Act makes provision as to the functions exercisable by the Secretary of State through the Export Credits Guarantee Department; and makes provision as to the delegation of any such functions and the transfer of property, rights and liabilities attributable to the exercise of any such functions.

#### **Section C15 - Water and sewerage**

203 This section reserves the appointment and regulation of water and sewerage undertakers whose areas of appointment are wholly or mainly in England. Under sections 6 and 7 of the Water Industry Act 1991, water and sewerage undertakers are appointed for every area of England and Wales. Some undertakers are appointed to areas that cross the national boundary between England and Wales. The Assembly may legislate for the appointment and regulation of undertakers whose appointment areas are wholly in Wales. By virtue of section 108A(2)(b) of GoWA 2006, in respect of undertakers whose appointment areas are partly in England but mainly in Wales, the Assembly may only legislate for appointment and regulation in the Welsh parts of those areas.

204 This section reserves the regulation and licensing of water supply and sewerage licensees. This reservation is subject to the exceptions in Section C15 for the regulation of licensees in relation to licensed activities that use the water supply or sewerage systems of undertakers wholly or mainly in Wales. Water supply and sewerage licensees are licensed to use the water supply and sewerage system of undertakers in order to provide services. The Assembly can legislate for the regulation of the licensed activities of water supply and sewerage licensees using the water supply and sewerage systems of undertakers whose appointment areas are wholly in Wales. In respect of licensees using the water supply or sewerage systems of undertakers whose appointment areas are partly in England but mainly in Wales, the Assembly may only legislate for the regulation of those licensees’ activities in the Welsh parts of those areas. The Assembly may not legislate in respect of licensing.

#### **Section C16 - Pubs Code Adjudicator and the Pubs Code**

205 This section reserves the subject matter of Part 4 of the Small Business, Enterprise and Employment Act 2015 which outlines the following:

- A statutory Pubs Code, regulating the practices and procedures of pub-owning businesses (being landlords who own 500 or more tied pubs) in their dealings with their tied tenants in England and Wales.

- An independent Adjudicator (and office) to arbitrate Pubs Code disputes and to investigate systemic breaches of the Code by pub-owning businesses. The Adjudicator is conferred with certain powers, including to apply a levy to, and impose sanctions on, pub-owning businesses and to issue guidance relating to the Pubs Code.

### **Section C17 - Sunday trading**

206 This section reserves Sunday trading. This includes the subject-matter of the Sunday Trading Act 1994, which limits the opening hours of large stores (those with a relevant floor area over 280 square metres / 3,000 square feet) to 6 continuous hours (between 10am and 6pm) on a Sunday in England and Wales.

207 This reservation does not cover opt-out rights for shop workers in respect of Sunday working which are contained in the Employment Rights Act 1996. Those rights are separately reserved under 'H1 Employment and Industrial Relations'.

## **Head D - Energy**

### **Section D1 - Electricity**

208 This section reserves generation, transmission, distribution and supply of electricity. This covers all aspects of regulation of the electricity industry, including in particular much of the subject-matter of Part 1 of the Electricity Act 1989, which makes provision about the licensing and regulation by the Gas and Electricity Markets Authority of activities relating to electricity.

### **Section D2 - Oil and gas**

209 This section reserves oil and gas and the regulation of the UK oil and gas industry. Subject to express exceptions, this covers all the UK Government's powers and functions in relation to the oil and gas industry prior to the coming into force of the Act, including:

- a. the ownership of, exploration for and exploitation of deposits of oil and natural gas. This covers the subject-matter of the Petroleum Act 1998 and related legislation, which vest ownership of oil and gas deposits in the Crown and provides for a system of licensing persons to explore for and exploit such deposits;
- b. pipelines and offshore installations. This covers the regulation of pipelines and offshore installations, including the construction or laying, and abandonment of offshore installations and pipelines, and the non-land use planning aspects of the regulation of pipelines on land. Offshore installations means those installations related to oil and gas located seaward of the inward baseline for the territorial sea.
- c. marine licensing so far as relating to oil and gas exploration and exploitation. This covers licensing of marine activities so far as relating to oil and gas exploration and exploitation in territorial waters. The Marine and Coastal Access Act 2009 provides that the Secretary of State is the appropriate licensing authority for licensable marine activities for any anything done in the course of any activity concerning the exploration for or production of petroleum. The 2009 Act also exempts from the need to obtain a marine licence certain activities licensable under the Petroleum Act 1998. The marine environment apart from this reservation is generally not reserved;
- d. restrictions on navigation, fishing and other activities to ensure safe operation of offshore activities. Offshore activities means those activities related to oil and gas located seaward of the

inward baseline for the territorial sea. Part 3 of the Petroleum Act 1987 provides for safety zones where navigation is restricted in the immediate vicinity of installations in territorial waters or the Continental Shelf;

- e. liquefaction and regasification of gas; this includes regasification of Liquefied Natural Gas prior to storage or conveyance into the national grid and liquefaction of Natural Gas for transport or storage.
  - f. the manufacture or production of gas;
  - g. the conveyance, shipping and supply of gas. This covers, in particular, the subject-matter of Part 1 of the Gas Act 1986, which makes provision about the licensing and regulation by the Gas and Electricity Markets Authority of activities relating to gas.
- 210 There is no limitation in paragraphs (e) to (g) to natural gas only. The effect of this is that these paragraphs may apply equally to manufactured gas which is used for fuel, including biogas (made from the anaerobic digestion of plant matter or waste) or biomethane (biogas which has been processed for injection into the gas grid).
- 211 The exceptions to the reservation are: the granting and regulation of licences to search and bore for and get petroleum within the Welsh onshore area, except for any consideration payable for such licences ; and access to land for the purpose of searching or boring for or getting petroleum under an onshore petroleum licence.

### **Section D3 - Coal**

- 212 This section reserves coal, including the regulation of the UK coal industry. Land restoration is excepted.
- 213 General legislative and executive competence is reserved in relation to the UK coal industry, including the ownership of coal reserves, regulation of deep and opencast mining, subsidence and water discharge in relation to coal mines.
- 214 The reservation covers all legislation relating to coal, including in particular ownership and exploitation, deep and opencast mining, subsidence and water discharge. Policy towards the UK coal industry continues to be dealt with on a UK basis, in consultation with the Welsh Ministers when appropriate. Operational matters in relation to coal reserves and the issue of mining licences are for the Coal Authority, which is a GB body and which receives grant in aid from the UK Government.
- 215 The exception to the reservation relates to the subject-matter of sections 53 and 54 of the Coal Industry Act 1994 which cover environmental duties in relation to planning approval and obligations to restore land affected by coal-mining operations.

### **Section D4 - Nuclear energy**

- 216 This section reserves all matters relating to nuclear energy and nuclear installations including nuclear safety, nuclear security and safeguards, and liability for nuclear occurrences. The areas covered by the reservation include the development, production and use of nuclear energy, nuclear site licensing, nuclear safety, liability for nuclear occurrences and insurances in respect of such liability, and nuclear safeguards required by international treaties.
- 217 This section reserves the Office for Nuclear Regulation (“ONR”) which is a statutory body set up under section 77 of, and Schedule 7 to, the Energy Act 2013. By virtue of paragraph 198 of Schedule 7A, the ONR is a particular authority so that its constitution is reserved. The conferring, imposing, modifying or removing of ONR’s functions or functions specifically exercisable in relation to it is also reserved.

### **Section D5 - Heat and cooling**

218 This section reserves the production, distribution and supply of heat and cooling in the same way that the production, supply and distribution of electricity and gas are reserved elsewhere in the Bill. Combined heat and power systems (also known as co-generation) are installations which simultaneously produce electrical power and also capture heat for use. Heat and cooling networks and renewable heat incentive schemes are defined in the reservation and would include, for example, heat networks (district heating), the Combined Heat and Power Quality Assurance (CHP QA) scheme; the Heat Networks Delivery Unit (HNDU); and the Renewable Heat Incentive (RHI).

### **Section D6 - Energy conservation**

219 This section reserves energy conservation. This includes energy efficiency measures implemented by prohibition or regulation. Non-regulatory measures to encourage energy efficiency are devolved. This section also includes the subject-matter of the Energy Act 1976. The 1976 Act enables the Secretary of State to make orders regulating or prohibiting the use of various fuels, or electricity, where that appears desirable for the purpose of conserving energy, and to give directions for conserving fuel stocks.

220 The 1976 Act also enables the Secretary of State to make orders regulating or prohibiting the production, supply or acquisition of various fuels or electricity while an Order in Council is in force. An Order in Council may be made where the fuller powers it allows are needed to implement an international obligation or to deal with an actual or threatened emergency. The 1976 Act also allows for exemptions from certain legal requirements while an Order in Council is in force.

## **Head E - Transport**

### **Section E1 - Road transport**

221 This section reserves road freight transport services. This includes goods vehicle operator licencing and the traffic commissioners (insofar as they regulate the freight industry).

222 This section reserves the regulation of the construction and equipment of motor vehicles and trailers and the regulation of the use of motor vehicles and trailers on roads. It covers (amongst other things) legislation relating to the construction and use of motor vehicles and trailers as well as rules of the road applying to motor vehicles and trailers including but not limited to the highway code, wearing of seating and helmets on motorcycles, vehicle and trailer loading and plated weights.

223 This reservation does not reserve the following matters:

- devolved aspects of traffic management and regulation;
- the setting of speed limits;
- traffic signs;
- pedestrian crossings.

224 This section reserves road traffic offences. This includes:

- the offences themselves;
- the penalties for those offences;
- the system of penalty points, disqualifications and other road traffic specific penalties; and

-the specific court and fixed penalty procedures applicable to road traffic offences

This reservation does not prevent Welsh Ministers from changing the national speed limit or traffic signs on roads in Wales.

225 This section reserves driver licensing. This includes:

- medical restrictions;
- driving tests;
- mandatory driver training (both pre and post licence issue); and
- driver CPC (certificates of professional competence).

226 This section reserves driving instruction. This reserves all aspects of the regulation of driving instruction for all classes of motor vehicles.

227 This section reserves drivers' hours. This includes maximum driving hours, minimum rest breaks and the use of tachographs and other equipment to monitor compliance.

228 This section reserves traffic regulation, other than speed limits, traffic signs or pedestrian crossings, on special roads. This largely relates to traffic regulation on motorways.

229 This section reserves the power to exempt vehicles from any statutory provision imposing a speed limit. This reservation also reserves the power to make provision about the training of drivers of vehicles at high speed.

230 The reservation in paragraph 109 is linked with the exemption from speed limit reservation in paragraph 108 and reserves the application of traffic signs and pedestrian crossings in relation to vehicles being used for a speed exempted purpose in Wales.

231 This section reserves all matters connected with international road transport services for passengers and goods.

232 This section reserves Public Service Vehicle Operator Licensing. Public Service Vehicles (PSVs) operator licences are required by operators of PSVs (buses and coaches). This includes the functions of the traffic commissioners in regulating the industry.

233 This section reserves documents relating to vehicles and drivers for the purposes of travel abroad for both private and commercial use of vehicles. This includes for example:

- a. international driving permits,
- b. ECMT (European Conference of Ministers of Transport) multilateral road haulage permits,
- c. road haulage permits issued and recognised under bilateral treaties.

234 Paragraph 113 reserves the regulation and the registration of new and used vehicles and motor insurance.

235 This section reserves the subject matter of the Severn Bridges Act 1992 in so far as it applies to the Second Severn crossing, except for the provisions of the 1992 Act which relate to the construction of the Second Severn crossing. The other crossing which is mentioned in the 1992 Act is situated wholly in England so it is reserved by virtue of section 108A(2)(b) of GoWA.

### **Section E2 - Rail transport**

236 This section reserves railway services. This includes the provision and regulation of railway services and rail safety.

237 The interpretation provision under section E2 defines "railway services" more specifically, by reference to section 82 of the Railways Act 1993. This means it includes:

- services in relation to the carriage of passengers, luggage, parcels, mail and goods and services in relation to stations,
- maintenance facilities, and
- the provision and operation of the rail network itself.

238 However, the wider meaning of "railway" in section 81(2) of the Railways Act 1993 is excluded from the definition. This means tramways and guided transport systems are devolved.

239 Also devolved is the subject listed under the exception to section E2: financial assistance so far as relating to railway services. This means that the Assembly is able to legislate in relation to capital and revenue grants for services relating to the carriage of passengers, stations, maintenance facilities and the rail network itself.

240 However, carved out from this exception and therefore reserved, is financial assistance in connection with:

- the carriage of goods,
- a railway administration order, which includes government financial assistance under section 63 of the Railways Act 1993 where railway administration orders are made, or
- Regulation (EC) No. 1370/2007 of the European Parliament and of the Council on public passenger transport services by rail and by road. These Regulations provide for compensation to a passenger service operator who is required to run a service which would not be commercially viable.

241 This section reserves the subject-matter of the Channel Tunnel Act 1987 which makes provision for the construction and operation of the Channel Tunnel, and for the operation of the Shuttle services and other services through it, and safety and security within the tunnel system.

### **Section E3 - Marine and waterway transport etc.**

242 This section reserves the navigational rights and freedoms of ships (which are vessels used in navigation). Navigational rights and freedoms apply in the sea (under customary international law and the United Nations Convention on the Law of the Sea or UNCLOS) and innavigable tidal and non-tidal waters (under common law, immemorial usage, legislation or express grant or dedication). Interference with navigational rights and freedoms is covered by the reservation, save that the regulation of works which may obstruct or endanger navigation is reserved only in the case of works relating to, or for constructing, reserved trust ports or harbours not wholly in Wales.

243 This section reserves shipping, and technical and safety standards of vessels that are not ships (regardless of whether the vessel is capable of navigation) including all the subject-matter of:

- (a) section 2 of the Protection of Wrecks Act 1973, which concerns wrecks which pose a danger to shipping and divers;
- (b) the Dangerous Vessels Act 1985, which concerns dangerous vessels in harbours; and
- (c) the Merchant Shipping Act 1995, which covers a wide range of matters relating to shipping.

244 The reservation of shipping applies to ships on the sea or any other waterway. It includes all aspects of shipping, for example the regulation of ships and shipping services, including ships in harbours, the register of ships, technical and safety standards of ships, fire safety on ships,

environmental harm caused by ships, carriage of goods and passengers, employment and engagement of seafarers, war risks insurance, salvage and wreck, protection of shipping and trading interests, lighthouses and navigational aids, implementation of international maritime Conventions, international maritime bodies and financial assistance. In relation to vessels that are not ships, technical and safety standards are reserved.

- 245 There is an exception for financial assistance for shipping services to, from or within Wales and an exception for the regulation of the carriage of animals on vessels for the purposes of protecting human, animal or plant health, animal welfare or the environment, reflecting matters that have been devolved.
- 246 This section reserves reserved trust ports, as defined in clause 32 of the Bill, and harbours not wholly in Wales. The reservation includes the development, operation, maintenance and management of reserved trust ports and harbours not wholly in Wales and their harbour authorities.
- 247 This section reserves pilotage other than devolved pilotage. Devolved pilotage is defined as pilotage that relates to a harbour wholly in Wales other than a reserved trust port and that is provided in a pilotage jurisdiction under section 2(1) of the Pilotage Act 1987 that does not extend beyond Wales. The reservation includes the subject matter of the Pilotage Act 1987 (other than in relation to devolved pilotage).
- 248 This section reserves coastguard services and maritime search and rescue with the exception of the subject matter of the Fire and Rescue Services Act 2004.
- 249 Maritime search and rescue services are required by international maritime Conventions and are initiated and coordinated by the Maritime and Coastguard Agency (MCA), an executive agency of the Department for Transport. The Fire and Rescue Services Act 2004 enables fire and rescue authorities to provide search and rescue services and, under section 20, a fire and rescue authority which has the power to act outside the authority's area can exercise the power at sea or under the sea. The provision of maritime search and rescue services is reserved except that their provision by fire and rescue authorities under the Fire and Rescue Services Act 2004 is devolved by the exception.
- 250 This section reserves hovercraft. Hovercraft are not ships and can be operated over land as well as over water. The Hovercraft Act 1968 allows hovercraft to be regulated under laws relating to ships, aircraft, motor vehicles or other means of transport. Hovercraft are in practice regulated as if they were ships. Shipping legislation, for example, legislation relating to seafarer working conditions, environmental harm and safety, is generally applied to hovercraft. The reservation covers hovercraft whether operated over water or land.

#### **Section E4 - Air transport**

- 251 The reservation is in respect of aviation, air transport, airports and aerodromes. This includes the provision and regulation of aviation services and aviation safety, licensing, powers to set noise controls at airports, the arrangements for compensation and repatriation of passengers on an operator's insolvency and the economic regulation of aviation. The reservation ensures the consistent implementation of international legislation across the United Kingdom by the designated regulator and also retains commonality for standards and specifications across GB/UK. It has three exceptions which mirror the exceptions in the GoWA.

#### **Section E5 - Transport security**

- 252 This section reserves transport security in relation to transport matters. This means that road transport security, rail transport security, maritime security (including security at ports and harbours), and aviation security are all reserved matters.

253 The exception to section E5 provides that the regulation of transport security relating to the carriage of adults who supervise persons travelling to and from the places where they receive education or training, is devolved. This makes it clear that the security of such persons is a devolved education matter and not a reserved transport matter.

#### **Section E6 - Other matters**

254 This section reserves technical specifications for public passenger transport for disabled persons including the subject-matter of section 125(7) and (8) of the Transport Act 1985 and Part 12 of the Equality Act 2010. Section 125(7) and (8) of the Transport Act 1985 together require the Secretary of State to consult the Disabled Persons Transport Advisory Committee before issuing guidance as to measures with a view to making access to public transport services by road easier for disabled persons and making such transport better adapted to the needs of disabled people. Part 12 of the Equality Act 2010 makes provision about standards of accessibility for the transport of disabled people by taxi, bus or train and sets out measures to require the adoption of such standards by the relevant operators.

255 This section reserves the regulation of technical specifications for fuel or other energy sources or processes used in road, rail, marine, waterway or air transport. This covers any technical specification set out in domestic, European or international law for fuel or other energy sources or processes used across all modes of transport

256 This section reserves the regulation of the carriage of dangerous goods (including the transport of radioactive material).

#### **Head F - Social Security, Child Support, Pensions and Compensation**

##### **Section F1 - Social security schemes**

257 This section reserves schemes supported from central or local public funds which provide financial assistance for social security purposes to or in respect of individuals. This includes individuals who qualify in various ways as outlined in the non-exhaustive list in the interpretation paragraph.

258 The reservation relates to social security benefits, state pensions, allowances, grants, loans and any other form of financial assistance (such as payments out of the Social Fund, pension credit, universal credit and disability benefits) which are directly administered and funded by central or local government, in whole or in part.

259 The reservation also includes compensation schemes, including lump sum schemes, which make payments because of accident, injury or disease.

260 The reservation covers all aspects of the establishment, financing and administration of such benefits and activity connected with them (such as decision-making, appeals and anti-fraud activity). The reservation does not prevent the Welsh Ministers from providing benefits or allowances for other purposes within its competence, such as education maintenance grants or fosterage allowances, financial assistance to meet child care costs, or council tax reduction schemes as permitted under executive powers granted in the Local Government Finance Act 1992.

261 The exception exempts the devolved area of social welfare, social services, care and support in so far as the reservation concerns financial assistance. Accordingly, the exception is limited to the provision by a local authority of financial assistance in respect of the costs of care or support which the local authority would otherwise provide by way of services.

262 This section reserves requiring persons aside from central government (including companies, employers and local or other authorities) to establish and administer schemes for social

security purposes, to make payments to or in respect of those schemes, and to keep records and supply information in connection with the schemes and in connection with any payments made.

263 The reservation includes payments and activities to do with National Insurance, such as the requirement on individuals to pay and employers to collect National Insurance contributions. It also covers other types of social security provision that operate through requirements on employers or others to make payments in accordance with a regulatory framework (such as statutory sick pay and statutory maternity pay) rather than by direct central or local government delivery.

### **Section F2 - Child Support**

264 This section reserves the subject-matter of the Child Support Acts 1991 and 1995 as amended and any further legislation in this area which concerns the state's interest in parental obligations to maintain their children and its power to establish or assume paternity. The provisions of the Child Support Acts include the duty upon the Secretary of State to determine whether there is a liability to pay maintenance in respect of a child not living with both parents, to assess and collect any amounts due and to enforce payment. The reservation also covers legislation regarding the jurisdiction and powers of the courts to make individual decisions on child maintenance.

265 This section reserves section 30(1) and (2) of the Child Support Act 1991.

266 These provisions empower the Secretary of State to collect periodical payments other than child support payments (for example payments made under an order to cover the costs of education or training; to meet expenses attributable to a disability; or additional maintenance payments appropriate in high income cases), which are payable for the benefit of the child or any other person.

### **Section F3 - Occupational and Personal Pensions**

267 This section covers all matters and statutory provisions relating to occupational and personal pensions, including public service pensions which are a particular category of occupational pensions.

268 Pension schemes within these categories have the meanings given to them in section 1 of the Pension Schemes Act 1993.

269 The reservation includes regulation of pensions and pension schemes, which is given further definition in the interpretation paragraph; those subject to regulation form a non-exhaustive list, which includes trustees, managers, employers and members. Regulation covers both the activities of the Pensions Regulator and the Financial Conduct Authority (and/or any other regulatory body that may be set up), and the statutory framework for pensions. That framework includes requirements affecting the administration of schemes, the financial management of schemes, including rules on investments, contributions and solvency, and the rights of individual scheme members in relation to transferring and accessing benefits, indexation of rights, requirements for equal treatment of men and women, and rules on the disclosure of information to scheme members.

270 The exception relates to the competence of the Assembly to make provision for the payment of pensions and establishment and administration of schemes in relation to Assembly Members, Welsh Ministers and the Counsel General, under sections 20 and 53 of GoWA and members of local authorities, which is given further definition in the interpretation paragraph.

271 In all these cases, the provision made will remain subject to the general requirements of pensions' legislation and the relevant regulatory body. Pensions are defined as including

gratuities and allowances. The reference to pension protection covers arrangements to provide a measure of protection (including payments and compensation) to members in the event of schemes not able to meet their obligations, such as the Pension Protection Fund and the Financial Assistance Scheme, and any other body or scheme that may be set up to protect members' pensions.

#### **Section F4 - Public sector compensation**

272 This section reserves public sector compensation, whether in the form of a compensation scheme or as part of a public service pension scheme. This includes payments made to public sector workers as a result of incapacity or death as a result of injury or illness and payments made to public sector workers as a result of leaving employment or office. The reservation includes regulation of payments made as a result of leaving office or employment.

273 An exception is made in respect of payments to Assembly Members, the First Minister, Welsh Ministers, the Counsel General, Deputy Welsh Ministers, and members of local authorities (including members of Fire and Rescue Authorities, National Park Authorities and conservation boards for an area of outstanding natural beauty.)

#### **Section F5 - Armed forces compensation etc.**

274 This section covers compensation payments, allowances and other benefits provided to serving or former members of the Armed Forces (both regulars and reserves), their spouses, civil partners and certain other dependants, and entitled civilians under schemes provided for in secondary legislation made by the Secretary of State for Defence or the Defence Council under statutory or prerogative powers.

275 Payments under the various Armed Forces' occupational pensions schemes are covered under the reservation in section F3 (occupational and personal pensions).

276 The reservation includes the determination of claims, the provision and administration of compensation, war pensions and ancillary benefits, and the establishment and regulation of public bodies, including tribunals and advisory and executive bodies with related functions.

277 Compensation payments are made in respect of illness, injury, disablement and death of service personnel, ex-service personnel and a wider range of auxiliary, reserve and other personnel, including (in certain circumstances) civilians. As regards the main scheme for the payment of compensation payments which is due to service in the armed forces before 6 April 2005, currently this is set out in the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006. Entitlement arises where disablement or death of a member of the armed forces occurred or arose during this period.

278 Where injury or illness is caused or made worse by, or death is caused by, service in the armed forces on or after 6 April 2005, compensation currently is payable under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011. Lump sum compensation payments and, for more serious injuries or death, additional regular payments are payable.

279 Other compensation benefits covered by this reservation include resettlement grants, redundancy schemes, payments such as those made under the Armed Forces Early Departure Payments Scheme Regulations 2014 and the Armed Forces Early Departure Payments Scheme Order 2005 and payments to assist service personnel or ex-service personnel undertake further training or education such as those paid under the Armed Forces (Enhanced Learning Credit Scheme and Further and Higher Education Commitment Scheme) Order 2012.

280 The second limb of the reservation mirrors the second limb of F4 (public sector compensation) to ensure that regulation of the compensation schemes is reserved.

281 The third limb of the reservation reserves the subject-matter of a number of particular schemes made under the following enactments which enable provision to be made other than for or in respect of members of the armed forces. These are:

- a. the Personal Injuries (Emergency Provisions) Act 1939. The 1939 Act makes provision for a scheme for making payments in respect of certain personal injuries to civil defence volunteers and civilians during the Second World War;
- b. the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939, sections 3 to 5 and 7. Section 3 makes provision for the payment of awards to or in respect of mariners in British ships who have suffered war-related injury or detention. Section 4 makes similar provision for pilots, crews of pilot boats, lighthouses etc, section 5 for certain persons serving on naval ships, and section 7 makes general provision for these schemes; and
- c. the Polish Resettlement Act 1947. The 1947 Act makes provision for war pensions and other payments and assistance to be given to Polish naval and armed forces under British command during the Second World War and Polish resettlement forces and their dependants.

## **Head G - Professions**

### **Section G1 - Architects, auditors, health professionals and veterinary surgeons**

282 This section reserves the regulation of four categories of professions.

(a) Architects.

283 The reservation of the regulation of the profession of architect is provided for by the Architects Act 1997 which applies to the UK as a whole.

284 Responsibility for regulation rests with the Architects Registration Board, a statutory body, and includes in particular the maintenance of the register, professional qualifications, and control over standards of professional competence and conduct.

(b) Auditors

285 The reservation of the regulation of the profession of auditor includes in particular professional qualifications, eligibility to practice, and control over standards of professional competence and conduct.

(c) Health Professions

286 The reservation of the regulation of the health professions includes those defined in the interpretation section under eight principal pieces of legislation which apply to the UK as a whole or Great Britain, and any other profession concerned with physical or mental health of individuals.

287 There are eight independent statutory bodies who are responsible for regulating these professions. These are the General Chiropractic Council, the Dental Council, the General Medical Council, the General Optical Council, the General Osteopathic Council, the General Pharmaceutical Council, the Nursing and Midwifery Council, and the Health and Care Professions Council.

288 These regulatory bodies share the objective in exercising their functions of protecting the public.

289 The professions regulated under this set of legislation are: doctors, dentists, clinical dental technicians, dental hygienists, dental nurses, dental technicians, dental therapists, orthodontic

therapists, nurses, midwives, chiropractors, osteopaths, pharmacists, pharmacy technicians, opticians, optometrists, dispensing opticians, arts therapists, biomedical scientists, chiropodists/podiatrists, clinical scientists, dieticians, hearing aid dispensers, occupational therapists, operating department practitioners, orthoptists, paramedics, physiotherapists, practitioner psychologists, prosthetists/orthotists, radiographers and speech and language therapists. Paragraph (b) of the interpretation clause covers any groups of practitioners that have not yet been the subject of specific statutory regulation, thus reserving health professions that may require such regulation in the future. However, this reservation would not prevent the Assembly from regulating, for public health reasons, practitioners and businesses (such as tattooists and body piercers) whose services are not provided for health-related reasons, and who are therefore not concerned with the physical or mental health of individuals.

290 Social Workers in England only are also regulated under this legislative framework. Social work in Wales is not governed by this same set of legislation and is an exception to the reservation. Social care workers are a regulated profession in Wales, though not in England and therefore are also an exception to this reservation.

291 The General Optical Council also regulates students in optometry and dispensing optics.

292 The General Dental Council, General Optical Council and General Pharmaceutical Council also have responsibilities in relation to the regulation of businesses and premises who offer dental, optical or pharmaceutical services.

(d) Vets

293 The regulation of the profession of veterinary surgeon is reserved without exception.

## **Head H - Employment**

### **Section H1 - Employment and industrial relations**

294 This section reserves employment rights and duties and industrial relations, except for the setting of wages for agricultural workers insofar as this is dealt with by the Agricultural Sector (Wales) Act 2014.

295 This section reserves employment rights and duties, and industrial relations, including the subject-matter of the following:

- a. the Employers' Liability (Compulsory Insurance) Act 1969, which requires employers to insure against liability for injury or disease sustained by employees and arising out of and in the course of their employment;
- b. the Employment Agencies Act 1973, which regulates employment agencies and employment businesses;
- c. the Pneumoconiosis etc. (Workers' Compensation) Act 1979, which makes provision for lump sum payments to be paid by the State to or in respect of persons disabled by industrial lung diseases caused by various kinds of noxious dust at work;
- d. the Trade Union and Labour Relations (Consolidation) Act 1992. This Act covers a wide range of matters relating to collective labour relations including trade unions, employers' associations, industrial relations and industrial action;
- e. the Employment Tribunals Act 1996, which relates to employment tribunals and the Employment Appeal Tribunal;
- f. the Employment Rights Act 1996. This Act consolidates enactments about employment rights including protection of wages, maternity rights, unfair dismissal and redundancy;

- g. the National Minimum Wage Act 1998. This Act provides for the setting of minimum wages in almost all sectors of employment;
- h. the Working Time Regulations 1998. These regulations implement aspects of EU Directives on working time: in relation to the protection of young people at work; annual leave, breaks, and rest periods; protections for night workers; and rules for a maximum 48 hour working week including the individual right to opt-out;
- i. the Employment Relations Act 1999. This Act introduced changes to trade union and industrial action legislation including the recognition and derecognition of trade unions by employers. It also introduced new rights and changes to various employment rights including family-related employment rights and new rights for workers to be accompanied in certain hearings;
- j. the Transnational Information and Consultation of Employees Regulations 1999. These Regulations provide for UK employees' rights to be represented by a European Works Council;
- k. the Employment Act 2002. This Act introduces new and/or amends existing individual employment rights in relation to paternity, adoption leave and maternity pay, flexible working and fixed term work. It also covers employment tribunal reform and resolving disputes between employers and employees;
- l. the Gangmasters (Licensing) Act 2004 established the Gangmasters Licensing Authority, which regulates labour providers, employment agencies and businesses who supply workers ('gangmasters') to the regulated sectors anywhere in the UK, including the sea bed, shore, and any estuary or tidal river adjacent to the UK. It also created offences relating to acting as and using an unlicensed gangmaster;
- m. the Employment Relations Act 2004. This Act made further changes to industrial action and trade union recognition law. It also made changes to the enforcement procedures relating to the National Minimum Wage and the Agricultural Minimum Wage;
- n. the Work and Families Act 2006. This Act makes provision about statutory rights to leave and pay in connection with the birth or adoption of children; an extension of the right to request flexible working; changes to annual leave entitlements; and increases in the maximum amount of a week's pay for the purposes of calculating certain remedies in employment tribunals;
- o. the Transfer of Undertakings (Protection of Employment) Regulations 2006, which provide for the protection of employees' rights on the transfer of an undertaking, such as the sale or disposal of a business;
- p. the Agency Workers Regulations 2010. These Regulations ensure agency workers benefit from equal entitlement rights in terms of basic working and employment conditions;
- q. Part 2 of the Enterprise and Regulatory Reform Act 2013 made changes to the employment tribunal process including provision for agreement of disputes without the need for determination at tribunal and financial penalties for employer breach. It also introduced increased protections available for whistleblowers.

296 The subject-matter of the Agricultural Sector (Wales) Act 2014 is excepted from the reservation. This Act establishes the Agricultural Advisory Panel for Wales which has the power to fix minimum wages, holiday entitlements and other terms and conditions of employment for agricultural workers in Wales. Apart from this exception about the wages of agricultural workers in Wales, matters relating to wages will fall within the reservation. So, for example, the Assembly is not able to legislate to set a national minimum wage.

## **Section H2 - Industrial training boards**

297 The Industrial Training Act 1982 provides for the establishment of an Industrial Training Board (ITB), and the powers of an ITB to raise a statutory levy, the terms of which are set out in secondary legislation. This section reserves the three ITBs that exist currently i.e. Film Industry Training Board, the Construction Industry Training Board or the Engineering Construction Industry Training Board

## **Section H3 - Job search and support**

298 This reservation covers the provision of advice and support to assist people to select, train for, obtain and retain employment or to assist people to obtain suitable employees, including such assistance for disabled persons. The intention behind this reservation is to reserve legislative competence in relation to all work-related programmes for which the Secretary of State is responsible under the Disabled Persons (Employment) Act 1944 and section 2 of the Employment and Training Act 1973 (e.g. Access to Work and Work Choice). Under the Disabled Persons (Employment) Act 1944, the Secretary of State makes arrangements to facilitate disabled people to obtain employment or work on their own account and to train for such employment.

299 Excepted from the reservation is legislative competence in respect of vocational training, matters relating to careers services and education generally. The National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672) extended concurrent executive functions in relation to the Employment and Training Act 1973, except for sections 2, 4, 5 and 11. These are exercisable by the Welsh Ministers concurrently with Ministers of the Crown, as the functions transferred to the Assembly were converted to functions exercisable by Welsh Ministers by the operation of paragraph 30 of Schedule 11 to GoWA 2006. However, the functions exercisable by the Assembly under section 2 do not include the function of making arrangements for the principal purpose of helping all those (as distinct from a particular section of the population of Wales) without work to find employment and to help employers to fill vacancies, or any function ancillary to that function. Additionally, the functions under sections 2, 5(3) and 11(1) (now repealed) are exercisable by the Assembly free from the requirement for Treasury approval and the function under section 5(2)(b) is exercisable by the Assembly free from the requirement for the approval of the "Minister for the Civil Service".

## **Head J - Health, Safety and Medicines**

### **Section J1 - Abortion**

300 This section covers the power to legislate in relation to abortion (currently the Abortion Act 1967 and regulations made under it). Welsh Ministers already have the power to approve independent sector settings to perform abortions and to make regulations concerning notification requirements. They are also responsible for the provision of abortion services within Wales.

301 The Department of Health processes notification of abortions performed in Wales and publishes annual statistics on behalf of Welsh Ministers.

### **Section J2 - Xenotransplantation**

302 Xenotransplantation is the transplantation of viable organs or other tissues (e.g. bone or cells) from animals to humans, or the use of viable animal tissue extra-corporeally, perhaps as part of a medical device.

303 There is currently no legislation which specifically regulates xenotransplantation, but there are other statutory provisions which touch upon it. For example, the welfare of animals which have been genetically modified for xenotransplantation purposes is covered by the Animals (Scientific Procedures) Act 1986. The subject-matter of that Act, which regulates the use of

*These Explanatory Notes relate to the Wales Bill as brought from the House of Commons on 13 September 2016 (HL Bill 63).*

animals for experimental or scientific purposes (including vivisection), is reserved by section B20. A non-statutory body, the UK Xenotransplantation Interim Regulatory Authority (UKXIRA) exists to monitor and regulate developments in the xenotransplantation field.

304 The whole area of xenotransplantation is reserved including the regulation of any activities connected with xenotransplantation.

### **Section J3 - Embryology, surrogacy and genetics**

305 Certain matters in the health field, which raise major ethical issues and/or which require expertise to be pooled at a United Kingdom level for them to be satisfactorily regulated, are reserved. The reservation of surrogacy reserves surrogacy arrangements, as defined by the Surrogacy Arrangements Act 1985, including the subject-matter of the 1985 Act.

306 The 1985 Act defines surrogacy arrangements by reference to a 'surrogate mother' who is a woman who carries a child in pursuance of an arrangement made before she began to carry the child and made with a view to that child being handed over to, and the parental rights being exercised by, another person. The arrangement is a surrogacy arrangement if, were a woman to whom the arrangement relates to carry a child in pursuance of it, she would be a surrogate mother.

307 The Act makes provision prohibiting third parties from initiating or negotiating any surrogacy arrangements on a commercial basis, receiving any payments from the surrogate mother or the person for whom she is carrying the child and advertising in connection with surrogacy arrangements.

308 The Act does not however deal with the legality under the common law of surrogacy arrangements. It is not an offence under the common law or the 1985 Act for persons to enter into a private arrangement. Section 36(1) of the Human Fertilisation and Embryology Act 1990 ("the 1990 Act") amended the 1985 Act to the effect that no surrogacy arrangement is enforceable and the 1990 Act also makes provision as to the parentage of children born as the result of surrogacy arrangements.

309 The Assembly will not be able to legislate in respect of any matter relating to surrogacy arrangements within the meaning of the 1985 Act, including the legality of surrogacy arrangements for the purposes of the criminal law or the enforceability of any such arrangements for the purposes of the civil law nor will the Assembly be able to amend the provisions of the 1985 Act.

310 The embryology reservation reserves the subject-matter of the 1990 Act, as amended, which deals principally with:

- the regulation of the creation, keeping or using of human embryos or gametes outside the body;

- the regulation or prohibition of any activities involving the creation, keeping or using of human embryos or gametes outside the body, including research and the provision of infertility treatment services; and

- the definition of the parents of any child being or having been carried by a woman as the result of the placing in her of an embryo or of eggs and sperm or her artificial insemination.

311 The 1990 Act also established the Human Fertilisation and Embryology Authority, which regulates research or treatment which involves the creation, keeping and using of human embryos outside the body, or the storage or donation of human eggs and sperm.

312 The Human Fertilisation and Embryology Act 2008 Act amended the 1990 Act to make provision regarding the parentage of children born as a result of surrogacy arrangements and

confers a power on the Courts to make an Order providing for a child born as a result of a surrogacy arrangement to be treated in law as the child of the couple who commissioned the surrogate mother to carry the child.

313 All matters relating to human genetics not already reserved by the reservation of the subject-matter of the 1990 Act are reserved. This includes research, testing or treatment concerning the human genome or genetic disorders including gene therapy research and all matters relating to the social, ethical and economic consequences of human genetics, such as providing genetic tests for insurance or employment purposes or patenting genetic material.

**Section J4 - Medicines, medical supplies, biological substances etc.**

314 This section reserves Medicinal Products. This includes the regulation of prices and profit.

315 The interpretation provision under section E2 states that “Medicinal Products” has the same meaning as in the Human Medicines Regulations 2012 (SI 2012/1916).

316 It also covers medicines regulation including manufacturing, licensing, wholesale dealing, advertising and regulation of clinical trials.

317 This section reserves Medical Supplies, and includes the regulation of prices. “Medical Supplies” has the same meaning as in section 260 of the NHS Act 2006.

318 This section reserves biological standards including testing of biological substances.

319 In the context of the work of the National Institute for Biological Standards and Control/Medicines and Healthcare products Regulatory Agency, “biological substances” means specifically “biological medicines”. These are a specific class of medicinal substances which are manufactured from biological sources as a starting material. Examples would be medicines made from human blood (eg albumin or immunoglobulins), from microbes (eg vaccines), or from biotechnology processes such as engineered cells (eg antibodies).

320 This section reserves veterinary medicinal products, including manufacture, authorisations for use and regulation of prices.

321 The reservation has the effect of reserving the monitoring (pharmacovigilance) and taking action on reports of bad effects from veterinary medicines; testing for residues of veterinary medicines or illegal substances in animals and animal products; the assessment and processing of applications authorisations to sell veterinary medicinal products (including homeopathics) in the UK; controlling how veterinary medicines are made and distributed in the UK; advising ministers on developing veterinary medicines policy; and making, updating and enforcing UK legislation on veterinary medicines.

322 This section reserves specified feed additives. The reservation has the effect of reserving the approval and inspection of feed business operators wishing to manufacture and distribute certain types of animal feeding stuffs containing specified feed additives. The approval and inspection covers the production, labelling, possession supply record-keeping requirements and sampling of feeding stuffs containing specified feed additives and ensures that the requirements of EU Regulation 1831/2003 are met. It also covers the potential for enforcement action to be taken in cases where the requirements of the Veterinary Medicines Regulations are not adhered to.

323 This section reserves the approval and inspection of feed business operators wishing to manufacture and distribute certain types of animal feeding stuffs containing veterinary medicinal products. The approval and inspection covers the production, labelling, possession supply, record-keeping requirements and sampling of feeding stuffs containing veterinary

medicinal products. It also ensures that prescriptions for feeding stuffs containing veterinary medicines are completed correctly and the feed produced matches the prescription. It also covers the potential for enforcement action to be taken in cases where the requirements of the Veterinary Medicines Regulations are not adhered to.

324 This section reserves the vaccine damage payments scheme (VDPS). The VDPS provides a one-off, tax-free lump sum payment (currently £120,000) for people who have become severely disabled as a result of vaccination against those diseases listed in the Vaccine Damage Payments Act 1979. Policy responsibility for VDPS legislation resides in the Department for Health, while the Department for Work and Pensions administers the Scheme, makes payments and takes professional medical advice on each individual case.

325 In Great Britain the assessment of the level of disablement for the VDPS is the same as that used for the purposes of section 103 of the Social Security Contributions and Benefits Act 1992. In Northern Ireland it is the same as that used for the purposes of section 103 of the Social Security Contributions and Benefits Act (Northern Ireland) 1992.

#### **Section J5 - Welfare foods**

326 This section reserves welfare foods. The UK Government makes provision for welfare foods schemes in regulations made under section 13 of the Social Security Act 1988 (which concerns benefits under schemes for improving nutrition for pregnant women, mothers and children). The current schemes are the Nursery Milk Scheme and the Healthy Start Scheme. The Nursery Milk Scheme provides for reimbursement of the cost of specific amounts of milk provided to children under the age of 5 who are looked after for a prescribed amount of time by approved day care providers. The Healthy Start Scheme provides food vouchers, which can be exchanged for Healthy Start food at retailers registered to receive the vouchers, and vitamins vouchers, which can be exchanged at NHS outlets. Entitlement to Healthy Start is linked to whether the recipient or, as the case may be, a member of their family, is in receipt of certain means tested social security benefits or child tax credit

#### **Section J6 - Health and safety**

327 This section reserves the Health and Safety Executive (“HSE”), which is a statutory body established under Part 1 of the Health and Safety at Work etc. Act 1974 (“the 1974 Act”). By virtue of the reservation in paragraph 198 of Schedule 7A for particular authorities, the constitution of HSE is reserved. The conferring, imposing, modifying or removing of HSE’s functions, or functions specifically exercisable in relation to it, is also reserved.

328 In addition, this section reserves the rest of the subject matter of Part 1 of the 1974 Act. That Part makes provision for the general purposes of securing the health, safety and welfare of persons at work, protecting persons other than persons at work against risks to health or safety arising out of or in connection with the activities of persons at work, and controlling the keeping and use of explosive or highly flammable or otherwise dangerous substances, and generally preventing the unlawful acquisition, possession and use of such substances. The reservation of the subject matter of Part 1 of the Health and Safety at Work etc Act 1974 includes process fire precautions, fire precautions in relation to petroleum and petroleum spirit, and fire safety on ships and hovercraft, in mines and offshore installations. All other aspects of fire safety in Wales, including regulation and prohibition, are within the legislative competence of the Assembly.

329 This section reserves the Employment Medical Advisory Service (EMAS), which is established by Part II of the 1974 Act. EMAS has functions of advising Ministers, HSE, employers and employees on health in relation to employment. By virtue of the reservation in paragraph 198 of Schedule 7A relating to particular authorities, the effect of this reservation is that the

Assembly is not able to legislate about EMAS's functions, or functions specifically exercisable in relation to it, but may, for example, legislate about promoting health in the work place.

330 This section covers the taking of steps for the purposes of protecting the public in Wales from radiation (whether ionising or not). Such steps could include the conduct of research or taking of other steps for advancing knowledge or understanding; providing technical services; providing services for the prevention, diagnosis or treatment of illness arising from exposure to radiation; providing training; providing information and advice; and making available the services of any person or any facilities. Such functions are currently performed by the Centre for Radiation, Chemical and Environmental Hazards, Centre for Radiation which is part of Public Health England.

## **Head K - Media, Culture and Sport**

### **Section K1 - Media**

331 This section reserves broadcasting and other media.

332 All regulatory responsibilities relating to television and radio broadcasting are reserved including the functions of Ofcom (the independent communications regulator).

333 All media content including press and digital, and related issues such as journalistic freedom, are reserved matters.

334 All EU and international responsibilities relating to broadcasting and other media, including those arising under various EU directives and other international agreements are reserved.

335 This section reserves the BBC. By virtue of the reservation in paragraph 198 of Schedule 7A for particular authorities, the constitution of the BBC is reserved. The conferring, imposing, modifying or removing of BBC's functions, or functions specifically exercisable in relation to it, is also reserved.

### **Section K2 - Public lending right**

336 This section reserves the Public Lending Right, so that authors, illustrators and other rights holders have the right to receive payment for the loans of their books by public libraries across the UK.

### **Section K3 - Government Indemnity Scheme**

337 This section reserves the power to legislate to issue Government indemnities for objects, such as paintings and antiquities, on loan to museums, art galleries etc.

338 The current "Government Indemnity Scheme" is established under powers conferred by sections 16 and 16A of the National Heritage Act 1980. It empowers the Secretary of State to issue indemnities in favour of lenders, for the loss of or damage to objects loaned to certain institutions, bodies or persons, including museums, art galleries, libraries, and the National Trust.

### **Section K4 - Property accepted in satisfaction of tax**

339 This section reserves the power to legislate in relation to payments to Her Majesty's Revenue and Customs in respect of property accepted in satisfaction of tax, and the disposal of such property.

### **Section K5 - Sports grounds**

340 This section reserves sports grounds safety. This ensures a consistent approach to sports grounds safety across England and Wales to ensure the safety of spectators.

341 This includes but is not limited to:

- designation of sports grounds by the Secretary of State under the Safety of Sports Grounds Act 1975 as requiring a local authority safety certificate;
- regulation of regulated stands under Part 3 of the Fire Safety and Safety of Places of Sports Act 1987;
- the football licensing scheme established by the Football Spectators Act 1989 to regulate the spectator viewing accommodation, including a requirement for all-seater accommodation at Premier League and Football League Championship grounds.

342 The Sports Grounds Safety Authority operates the licensing scheme and monitors local authority safety certificates.

## **Head L - Justice**

### **Section L1 - The legal profession, legal services and claims management services**

343 This reservation covers legal services and the legal profession. This includes all matters within the subject matter of the Legal Services Act 2007, which provides the regulatory framework for legal services and provisions relating to the regulation of the legal profession; together with the establishment, powers and functions of the Legal Ombudsman scheme, through the Office for Legal Complaints.

344 This reserves the regulation of authorised persons and entities, which are listed below and include the functions of the Legal Services Board, as the oversight regulator, and the individual regulators, which are themselves governed by different primary legislation or Charter in some cases). The Approved Regulators currently authorised and active are:

The Law Society (through the Solicitors Regulation Authority)

The Bar Council (through the Bar Standards Board)

The Chartered Institute of Legal Executives (through CILEX Regulation)

The Chartered Institute of Patent Attorneys (through the Intellectual Property Regulation Board)

The Institute for Trade Mark Attorneys (through the Intellectual Property Regulation Board)

The Institute of Chartered Accountants in England and Wales (through their Probate Committee)

The Association of Costs Lawyers (through the Costs Lawyers Standards Board)

The Council for Licenced Conveyancers

The Master of the Faculties

### **Section L2 - Legal aid**

345 Responsibility for the provision of legal aid in England and Wales rests with the Lord Chancellor under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (and its predecessor legislation, the Access to Justice Act 1999, which continues to apply to a number of older cases).

346 The legal aid scheme is administered by the Legal Aid Agency, an executive agency sponsored by the UK Government's Ministry of Justice. This section therefore provides that legal aid is a reserved matter.

### **Section L3 - Coroners**

347 This section reserves the subject matter of Part 1 of the 2009 Act. This means that matters such as coroners' statutory duties, appointments and remuneration, and areas for which coroners sit are reserved matters.

348 Under Schedule 2 to the 2009 Act, if the Lord Chancellor is considering altering coroner areas in Wales he or she must consult Welsh Ministers and any other person he or she thinks appropriate.

349 Under section 24 of the 2009 Act local authorities are responsible for funding local coroner services.

### **Section L4 - Arbitration**

350 This section reserves arbitration. The reservation is intended to cater for any agreement to submit a dispute, other than by litigation, to a person or persons for a decision. The reservation is also intended to operate where there is a statutory obligation to arbitrate a dispute. The reservation is not intended to cater for other forms of alternative dispute resolution such as mediation or conciliation.

### **Section L5 - Mental capacity**

351 This section reserves the subject matter of the Mental Capacity Act 2005. The 2005 Act provides a statutory framework to empower and protect vulnerable people who are not able to make their own decisions. It makes it clear who can take decisions, in which situations, and how they should go about this. It enables people to plan ahead for a time when they may lose capacity. It also establishes the Court of Protection, for taking decisions in cases concerning people who lack capacity, and the Office of the Public Guardian, with functions in particular in relation to Lasting Powers of Attorney and the supervision of deputies appointed to take decisions on behalf of persons who lack capacity.

352 The subject matter of the 2005 Act includes deprivation of liberty. Deprivation of Liberty Safeguards (DoLS) exist to protect individuals who lack capacity and are accommodated in a care home and/ or hospital and subject to restrictions on their freedom of movement and choice that may amount to a "deprivation of liberty".

353 "Managing authorities" (care homes and hospitals) apply to "supervisory bodies" (local authorities) who commission independent assessments and make the ultimate decision as to whether to authorise a deprivation of liberty if shown to be the least restrictive appropriate care/ treatment and in the best interests of the person concerned.

### **Section L6 - Personal data**

354 This section reserves the protection of personal data. The Data Protection Act 1998 is the current statutory framework for the protection of personal data. The 1998 Act transposes Directive 95/46/EC into UK legislation.

### **Section L7 - Information rights**

355 This section reserves public access to information held by a public authority. Information held by the Assembly, the Assembly Commission, the Welsh Government or any Welsh public authority is excepted from the reservation. However, information which has been supplied by a Minister of the Crown or government department and which is held by any of those bodies in confidence continues to be reserved. Subject to that qualification, however, the Assembly can legislate about public access to information held by any of the excepted bodies.

### **Section L8 - Public sector information**

- 356 This section reserves the subject matter of the INSPIRE Regulations 2009 (S.I. 2009 No. 3157). These Regulations implement Directive 2007/2/EC, establishing an Infrastructure for Spatial Information in the European Community (INSPIRE).
- 357 The aim of INSPIRE is to facilitate better environmental policy across the European Union by improving the joining up of and access to existing spatial data across the European Union. Spatial data is defined in the INSPIRE Regulations as any data with a direct or indirect reference to a specific location or geographical area. The INSPIRE Regulations impose a duty on public authorities to establish and operate network services in relation to any spatial data set or spatial data service they hold or operate. This enables the spatial data sets and spatial data services to be available for use by other public authorities. The INSPIRE Regulations also provide a mechanism for public access to spatial data sets and special data services, subject to limitations.
- 358 This section reserves the subject matter of the Re-use of Public Sector Information Regulations 2015 (SI 2015 No. 1415). These Regulations implement Directive 2013/37/EU, which amends Directive 2003/98/EC, and govern the re-use of public sector information.
- 359 The legal framework for the re-use of public sector information is designed to facilitate the re-use (by members of the public and organisations) of documents that public sector bodies have collected or produced in order to fulfil public tasks, for purposes other than those public tasks.

### **Section L9 - Public records**

- 360 Paragraph 171 reserves the subject matter of the Public Records Act 1958 (“the 1958 Act”). The 1958 Act makes provision for the preservation, care of, and responsibility for, public records and provides a basis for archival custody by a statutory archival institute or other body.
- 361 “Public records” are defined in Schedule 1 to the 1958 Act and comprise records of government departments and certain non- departmental public bodies.
- 362 “Welsh public records” also currently fall within the 1958 Act by virtue of section 146 of GoWA. Welsh public records include the records of the Welsh government (the Welsh Office from 1964 until 1999; National Assembly for Wales from May 1999 to June 2007; the Welsh Assembly Government from June 2007 to May 2011) and a number of sponsored bodies affiliated to it.

### **Section L10 - Compensation for persons affected by crime and miscarriages of justice**

- 363 This section reserves the provision of compensation for persons affected by crime. This includes, for example, the Criminal Injuries Compensation Scheme made by the Secretary of State for Justice under the Criminal Injuries Compensation Act 1995 and the Victims of Overseas Terrorism Scheme made under section 47 of the Crime and Security Act 2010. The Criminal Injuries Compensation Authority administers both schemes.
- 364 This section reserves the provision of compensation for miscarriages of justice. The Secretary of State for Justice will continue to administer the scheme under S.133 of the Criminal Justice Act 1988.

### **Section L11 - Prisons and offender management**

- 365 This section reserves prisons and offender management.
- 366 Sub-paragraph (1) sets out the reservation in respect of prisons and other institutions for the detention of persons charged with or convicted of offences. It should be read with the exception in respect of accommodation provided by or on behalf of a local authority for the purpose of restricting the liberty of children or young persons.

367 Sub-paragraph (2) reserves the management of persons charged with or convicted of offences (whether or not they are detained), and the management of other persons required to be detained. This includes all matters in relation to the detention of such persons or the management in the community of such persons, for example where a person is detained, how a person is treated, disciplinary measures, a person's temporary release from detention and a person's licence conditions.

368 Sub-paragraph (3) sets out matters which are within the reservation and is not an exhaustive list. There are two exceptions. The first refers to accommodation provided by or on behalf of a local authority for the purpose of restricting the liberty of children or young persons. The second refers to the provision of health care, social care, education or training in the context of prisons and offender management.

### **Section L12 - Family relationships and children**

369 This reservation comprises four areas which cover the field of family law (family law and proceedings having been explicitly excepted from the conferred matter of social welfare under Schedule 7 to GoWA). Those areas are:

- (1) Marriage, civil partnership and cohabitation, covering the nature of the relationship and its formation; formal and substantial validity including formal requirements such as registration and capacity to enter into the relationship; the legal incidents of the relationship (such as the duty to maintain between spouses or civil partners, and the effect on property rights); and dissolution including the grounds and process for divorce or other dissolution, and financial provision and property adjustment on divorce or other dissolution;
- (2) Parenthood, parental responsibility, child arrangements and adoption, covering who is a parent, the nature of parental responsibility and how it is acquired and may be lost or its exercise restricted; private law arrangements for children (such as the various matters which may be the subject of a child arrangements order or other Part 2 order under the Children Act 1989); and adoption (including the nature and effect of adoption, and intercountry adoption as well as domestic adoption), but not adoption agencies and their functions, which are the subject of an exception to this reservation reflecting the carving out of this aspect from the exception to the conferred matter of social welfare under current Schedule 7 to the GoWA;
- (3) Public law children orders and proceedings, such as proceedings for care or supervision orders and other proceedings related to the care, supervision or protection of children;
- (4) Civil remedies in respect of domestic violence, domestic abuse and female genital mutilation, such as non-molestation orders, occupation orders, forced marriage protection orders and other protective orders assigned to the family court or Family Division of the High Court.

370 In this reservation the term 'adoption' is used to include both domestic and intercountry adoption. The functions of the Central Authority under the Hague Convention on Protection of Children and Co-operation in respect of intercountry adoption are not included in the exception for adoption agencies and their functions.

### **Section L13 - Gender recognition**

371 Paragraph 178 reserves gender recognition. This is the process by which a person changes their legal gender and the legal implications and registration of that change.

372 This means the subject matter of the Gender Recognition Act 2004 and the operation and functioning of the Gender Recognition Panel are reserved matters.

#### **Section L14 - Registration of births, deaths and places of worship**

- 373 This section reserves the registration of births (including stillbirths) and deaths and their associated functions. Death certification is an integral feature of the registration of deaths under the Births and Deaths Registration Act 1953 (which applies to England and Wales), and is therefore reserved. The registration of marriages and adoptions is also reserved by the substantive reservations.
- 374 This section reserves the recording by the Registrar General of buildings used as places of religious worship under section 2 of the Places of Worship Registration Act 1855.

#### **Head M - Land and Agricultural Assets**

##### **Section M1 - Registration of land and land charges**

- 375 This section reserves the subject matter of the Land Charges Act 1972, which makes provision in connection with all functions and powers relating to land charges and the registers of pending actions, writs and orders and deeds of arrangement include functions and activities carried out by the Chief Land Registrar (and its staff), Secretary of State, Lord Chancellor and HM Treasury.
- 376 It also reserves the subject matter of the Land Registration Act 2002 which makes provision in connection with all functions and powers relating to land registration and the provision of services relating to land or other property, and to the operation of HM Land Registry and include functions and activities carried out by the Chief Land Registrar (and his staff), Secretary of State, Lord Chancellor, Lord Chief Justice and HM Treasury.
- 377 This section also reserves Part 1 of the Commonhold and Leasehold Reform Act 2002 which makes provision in connection with all functions and powers relating to registration of commonhold land and units and includes functions and activities carried out by the Chief Land Registrar (and his staff), the Secretary of State and the Lord Chancellor.

##### **Section M2 - Local land charges**

- 378 This section reserves local land charges. The Land Charges Act 1975 makes provision in connection with the keeping of local land charges registers and the registration of matters therein. The reservation covers what may be a local land charge, where they are to be registered and related matters set out in the 1975 Act and the rules made under it. The reservation is subject to an exception for fees. The power to set fees in relation to local land charges was transferred to the Assembly in 2004. The reservation does not affect the creation by Assembly Acts of individual local land charges by local authorities and others in Wales to enforce or otherwise give effect to provision for a devolved purpose.

##### **Section M3 - Registration of agricultural charges and debentures**

- 379 This section reserves the subject matter of sections 9 and 14 of the Agricultural Credits Act 1928 which make provision in connection with all functions and powers relating to agricultural charges and debentures on farming stock. These include functions and activities carried out by the Chief Land Registrar (and his staff), Secretary of State and HM Treasury.

##### **Section M4 - Development and buildings**

- 380 This section reserves planning including the subject matter of Parts 2 to 8 of the Planning Act 2008, but only in relation to certain types of development.
- 381 Applications for planning permission are generally determined by local planning authorities in the area that the development is brought to ensure that local communities are able to engage with the process. Given the localist nature of the system, town and country planning is generally devolved.

382 This section reserves the Community Infrastructure Levy ("CIL). The CIL is a planning charge used as a tool for local authorities in England and Wales to help deliver infrastructure to support the development of their area. It was brought into force on 6 April 2010 by the CIL Regulations 2010, which provide that development may be liable for a CIL charge if the respective local planning authority has opted to set a charge in its area.

383 This section reserves the compulsory purchase of land. The compulsory purchase of land includes the process for making and confirming compulsory purchase orders; the process for entry and taking possession of land once compulsory powers have been obtained; and compensation.

384 This section reserves the design and construction of buildings, the demolition of buildings, and services, fittings and equipment provided in or in connection with buildings. These are all the subject matter of the Building Act 1984. Functions of the Secretary of State under that Act however have largely been transferred to the Welsh Ministers. Certain further functions are transferred by clause 47 (transfer of functions in relation to excepted energy buildings) of the Bill.

### **Head N - Miscellaneous**

#### **Section N1 - Equal opportunities**

385 This section reserves equal opportunities and outlines the exceptions to it, to clarify the scope of the Assembly's competence to legislate for equal opportunities, which is defined in the interpretation clause.

386 Specifically, the Assembly can encourage equal opportunities in Wales, including observance of the law on equal opportunities by employers, service providers and those who exercise public functions by means other than legislating for prohibitions or the making of regulations.

387 The Assembly may also impose duties on Welsh public authorities) requiring them to put arrangements in place to ensure that their functions are carried out in a way that pays due regard to their obligations to meet equal opportunities law in Wales and Great Britain.

388 The exception also specifies that the Assembly may legislate about the appointment of those with particular protected characteristics, (as defined in the Equality Act 2010) to non-executive appointments on the boards of Welsh public authorities.

389 In addition the Assembly may introduce, for Welsh public authorities, protections and requirements that supplement but do not modify the existing provisions of the Equality Act 2010 and may for ease and effectiveness use passages from that Act when formulating new legislation, provided this does not affect how such text applies for the original purposes intended in the Act.

#### **Section N2 - Control of weapons**

390 This section reserves the control of weapons of mass destruction.

391 There are three existing enactments dealing with matters covered by this reservation: the Biological Weapons Act 1974, which prohibits the development, production, acquisition and possession of certain biological agents and toxins and of biological weapons; the Chemical Weapons Act 1996, which is concerned with the control of chemical weapons and certain toxic chemicals; and the Nuclear Explosions (Prohibition and Inspections) Act 1998. Certain matters relating to firearms are also reserved.

392 This reserves the control of nuclear, biological, chemical and any other weapon of mass destruction, as distinct from other weapons, such as firearms which is covered by section B13.

### **Section N3 - Ordnance Survey**

393 Ordnance Survey is the national mapping agency of Great Britain and is a UK government-owned company. Mapping is not generally a reserved matter but, by reserving Ordnance Survey by name in Part 2 of Schedule 7A, this means paragraph 198 of Schedule 7A entitled 'particular authorities' applies and reserves the functions and constitution of Ordnance Survey.

### **Section N4 - Time**

394 The reservation covers:

- the designation of the timescales and time zones used in the UK and matters related to them such as Greenwich Mean Time or co-ordinated Universal Time;
- the determination of summer time, under the Summer Time Act 1972;
- the determination of units of time such as minutes, hours, days, months and years and the calendar generally;
- the determination of bank holidays under the Banking and Financial Dealings Act 1971; and
- the determination of the date of Easter.

395 The computation of periods of time are excepted from this reservation. This would for example cover whether particular days are to be included when periods of time are calculated. Also, when legislating on a devolved matter, the Assembly will have competence to prescribe when obligations expire or become unenforceable for the purposes of that legislation.

### **Section N5 - Outer space**

396 This section reserves all matters connected with outer space. Under the Outer Space Act 1986 the Secretary of State is responsible for the granting of licenses to any UK body or person intending to engage in activities in outer space. This relates to the fact that the UK Government has potential liability under international law for damage caused through such activities. The licensing of such activities, and all other matters relating to the regulation of such activities is reserved.

397 The reservation extends to all matters related to the regulation of activities in outer space. In addition the negotiation of international agreements relating to outer space would fall within the reservation of foreign affairs under paragraph 8 of Schedule 7A.

398 Section 108A sets the parameters for Assembly competence and states that Assembly legislation cannot extend beyond England and Wales and cannot apply otherwise than in relation to Wales (except in limited circumstances set out in section 108A(3)). This is because Wales is part of a single legal jurisdiction. These reservations differ from those in the Scotland Act 1998 because Scotland has a separate jurisdiction, which means the Scottish Parliament can legislate for activities taking place outside that jurisdiction. The UK Parliament can do likewise for England and Wales. Thus, in relation to Wales, this reservation bites on activities that would take place in Wales relating to outer space. The same considerations apply to the reservation for Antarctica below.

### **Section N6 - Antarctica**

399 This section extends to all matters connected with Antarctica. The Antarctic Acts 1994 and 2013 give effect to obligations of the United Kingdom under the Antarctic Treaty and the Treaty's Environmental Protocol (the Protocol). Under the 1994 Act the Secretary of State is responsible for granting permits, which are required for all British expeditions to Antarctica, for British vessels and aircraft entering Antarctica and for certain activities in Antarctica by United

Kingdom nationals. The 2013 Act implements Annex VI to the Protocol, and requires Antarctic operators (governmental and non-governmental) to take preventative measures to reduced the risk of environmental emergencies in Antarctica, to establish contingency plans and to take prompt and effective response action to environmental emergencies arising from their activities. The negotiation of international agreements and formation of policy relating to Antarctica falls within the reservation for foreign affairs under paragraph 8 of Schedule 7A.

#### **Section N7 - Deep sea bed mining**

400 This section reserves activities for the purposes of deep sea bed mining operations. Part XI of the United Nations Convention on the Law of the Sea, as modified by an Agreement on the Implementation of Part XI adopted in 1994 (“the Convention”), makes provision for the regulation of mining on the deep sea bed. In broad terms, the system involves a contractor being sponsored by a State Party, which must in turn be able to exercise effective control over that contractor under its own law. A contractor must then enter into a contract with the International Seabed Authority before it can start exploring for or exploiting the mineral resources of the deep sea bed. The Deep Sea Mining Act 1981 (as amended by the Deep Sea Mining Act 2014) gives effect to the UK’s obligations under the Convention. It confers powers on the Secretary of State to grant exploration or exploitation licences allowing persons to exploit or explore mineral resources of a specified description in a specified area of the deep sea bed. The reservation extends to all matters for the purposes of deep sea mining operations. Negotiation of international agreements relating to the deep sea bed are covered by the reservation for foreign affairs under paragraph 8 of Schedule 7A.

#### **Section N8 - School teachers' pay and conditions**

401 This section reserves the determination of the remuneration of school teachers in maintained schools and other conditions of their employment which relate to their professional duties and working time.

### **PART 3 – GENERAL PROVISIONS**

402 Part 3 of the Schedule makes general provision about certain Wales public authorities, the reservation of particular authorities mentioned or described in Part 2 of the Schedule, Welsh language functions and the interpretation of the Schedule.

403 The effect of paragraph 195 is that the reservation of subject matters by Schedule 7A does not reserve the constitution of a Wales public authority if that authority has reserved functions. Nor does it reverse the functions specifically exercisable in relation to such an authority (such as appointments to the board) nor accounting or procurement functions of such an authority. Wales public authorities are listed in Schedule 3.

404 By virtue of paragraph 196 the reservation for the Crown does not apply to Wales public authorities which have no reserved functions. A current example of such an authority is HM Chief Inspector of Education and Training in Wales (Estyn).

405 Paragraph 197 extends paragraph 195 to cover devolved tribunals.

406 Paragraph 198 reserves the constitution of particular authorities and their functions. The particular authorities are those referred to in subparagraph (2). It is not considered that there would be any circumstances in which it would be appropriate for the Assembly to legislate in relation to the authorities concerned, notwithstanding that the body may have certain functions concerning a devolved subject, for example, the educational functions of the BBC. Therefore the Ministerial consent procedure in paragraphs 8 and 10 of Schedule 7B do not apply to the particular authorities. However, this paragraph is subject to paragraph 199.

407 Paragraph 199 is to be read in conjunction with paragraph 198. Paragraph 199 provides that Schedule 7A (and in particular paragraph 198) does not reserve the imposition of Welsh language functions on particular authorities (other than where they relate to a court). Although paragraph 199 provides that the imposition of Welsh language functions is not a reserved matter for the purposes of Schedule 7A, this provision must be read in conjunction with paragraphs 8(1)(a) and 11(1)(b) of Schedule 7B. These paragraphs impose a condition of the consent of the Secretary of State before the Assembly may impose functions exercisable in relation to the Welsh language. An example of this is the imposition of Welsh language standards under the Welsh Language Measure 2011. Essentially, paragraph 199 provides that particular authorities are to be treated as reserved authorities in relation to the Welsh language.

408 Paragraph 200 provides that, where a reservation in Schedule 7A is expressed in terms of the "subject-matter of" a particular Act, its subject-matter is to be determined as follows:

- a. on the principal appointed day (the date of which will be set out in regulations made under clause 55),
- b. (if repealed before the principal appointed day) as it existed immediately before its repeal, or
- c. (if not yet in force on the principal appointed day) as it exists on the principal appointed day i.e. treated as if it were in force on that day.

409 The intention is that amendments to Acts after commencement of the Wales Bill will not disturb the devolution settlement as set out in the Bill.

## Schedule 2: New Schedule 7B to the Government of Wales Act 2006

410 New section 108A(2)(d) (as inserted by clause 3(1) of the Bill) refers to Parts 1 and 2 of Schedule 7B in creating one of the tests of competence for Assembly legislation. Part 1 sets out the general restrictions on the Assembly's legislative competence and Part 2 sets out the exceptions to those restrictions. Clause 3(2) provides that this Schedule, together with Schedule 7A, replaces Schedule 7 to GoWA.

411 Schedule 7B is part of a separate legislative competence test from Schedule 7A. Schedule 7A lists the reserved matters and thus is part of the section 108A(2)(c) test by detailing the subjects that an Assembly Act provision can and cannot "relate to" (when applying the section 108A(6) purpose test). However, even where an Assembly Act provision satisfies that test in section 108A(2)(c), by not relating to a reserved matter set out in Schedule 7A, it may nevertheless be outside competence because of the section 108A(2)(d) test, by breaching the restrictions in Part 1 of Schedule 7B, which are themselves qualified by the exceptions in Part 2 of Schedule 7B.

412 Paragraph 1 of Schedule 7B prevents an Assembly Act provision from modifying the law on reserved matters. The law on reserved matters is defined in paragraph 1(2) essentially as any UK Parliament enactment or any rule of common law, the subject matter of which is a reserved matter. The reference to enactments is not limited to the enactments listed by name in Schedule 7A; it therefore includes all the law (enactments and common law) about a reserved matter.

413 Whilst Schedule 7A is intended to set the parameters of future Assembly Acts in terms of reserved matters about which it cannot legislate, the restrictions in paragraphs 1 and 2 of Schedule 7B are intended to provide a separate form of protection for the existing legislation and common law which has a reserved matter as its subject matter.

414 Whilst the purpose of an Assembly Act provision may not be reserved (meaning such provision does not fall foul of section 108A(2)(c) and Schedule 7A), it may nevertheless modify the law on reserved matters, for example to enforce or otherwise give effect to that provision.

415 Paragraph 2 incorporates an exception to paragraph 1, which is in very similar terms to the exception in new section 108A(3). Paragraph 2(1) provides that an Assembly Act provision can modify the law on reserved matters where such modification:

- a. is ancillary (as defined in new section 108A(7)) to a provision which does not relate to reserved matters, and
- b. has no greater effect on reserved matters than is necessary to give effect to the purpose of that provision.

416 In other words, the law on reserved matters can be modified in an ancillary way for a devolved purpose, provided such modification does not go further than it needs to, in order to achieve the devolved objective. The intention is to allow the Assembly sufficient latitude to modify the law on reserved matters for a purpose that does not relate to a reserved matter, provided the modification does not go beyond what is necessary to deliver the policy goal. The constraints created by the law on reserved matters provisions are intended to set out how far Parliament is content for the Assembly to go in modifying legislation that is the responsibility of the UK Parliament. Where modifications beyond the constraints of paragraphs 1 and 2 of Schedule 7B are required, and there is agreement between the administrations, an Order by the Secretary of State under section 150 of GoWA is the appropriate vehicle to achieve the required outcome.

417 To give an example, a Planning (Wales) Bill could seek to modify the Communications Act 2003 in order to give effect to a devolved planning policy. Such a provision could satisfy the section 108A(2)(c) test by applying the purpose test and concluding that it does not relate to the reserved matter of telecommunications in Section C9 of Schedule 7A, and instead relates to the devolved subject of planning. However, it could nevertheless fall foul of section 108A(2)(d) if, for example, although the modifications to the Communications Act 2003 were ancillary (thereby satisfying paragraph 2(1)(a) of Schedule 7B), they nevertheless had a greater effect than necessary to give effect to the devolved policy (thereby failing to satisfy paragraph 2(1)(b) of Schedule 7B). In other words, the same planning policy objective could be achieved but with a lesser impact on the Communications Act 2003.

418 Paragraph 2(2) clarifies that, in determining what is "necessary" for the purposes of paragraph 2(1)(b), it is not relevant that the UK Parliament could itself have enacted the provision.

419 Paragraph 3 provides that provisions within Acts of the Assembly cannot modify the private law.

420 The private law is defined as the law of contract, agency, bailment, tort, unjust enrichment and restitution, property, trusts and succession. Intellectual property rights relating to plant varieties or seeds are not covered by the restriction.

421 Paragraph 3(4) creates an exception to the restriction in paragraph 3(1), so that the Assembly can modify the private law for a purpose that does not relate to a reserved matter. However, the words "other than a modification of the private law" in paragraph 3(4) prevent the Assembly from modifying the private law for its own sake. In other words, the purpose of the provision cannot be to modify the private law; it must be for a non-reserved purpose.

422 Paragraph 4 prohibits the Assembly from legislating to modify or create an offence in the following listed categories of offences:

- a. treason and related offences;
- b. homicide offences (including offences relating to suicide) and other offences against the person (including offences involving violence or threats of violence) that are triable only on indictment. Indictable only offences against the person include, for example, kidnapping, false imprisonment, wounding with intent to do grievous bodily harm contrary to section 18 of the

Offences Against the Person Act 1861, and robbery. There is an element of overlap here as some indictable only offences are not only outside the Assembly's legislative competence under this paragraph, but are also outside competence by being reserved matters. For example, the possession of a firearm with intent to injure is an indictable only offence against the person under s.16 of the Firearms Act 1968 and is also a reserved matter under Section B13 of Schedule 7A;

- c. sexual offences (including offences relating to indecent or pornographic images);
- d. offences of a kind dealt with by the Perjury Act 1911.

423 The provision also prohibits the Assembly from modifying the law about:

- a. criminal responsibility and capacity,
- b. the meaning of intention, recklessness, dishonesty and other mental elements of offences,
- c. inchoate and secondary criminal liability, (by way of example, inchoate liability covers the subject-matter of Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime), attempt or conspiracy), or
- d. sentences and other orders and disposals in respect of defendants in criminal proceedings, or otherwise in respect of criminal conduct, and their effect and operation.

424 This means that whilst the Assembly can legislate for offences in relation to non-reserved matters, the Assembly is not able to modify offences falling within the listed categories of offences (including defences), nor create new offences that would fall within these categories. By way of example, the Assembly may specify the mental element which is to be an ingredient of an offence in a devolved area but paragraph 4(3)(b) would prevent the Assembly from giving a different meaning to mental element concepts such as "intention", "recklessness" or "dishonesty" than that which applies generally. Similarly, the Assembly can create new attempt offences in a non-reserved area but paragraph 4(3)(c) would preclude the Assembly from modifying the meaning of "attempt".

425 The aspects of the criminal law listed in paragraph 4(3) ensure that these fundamental elements of the criminal law that apply in England and Wales cannot be altered by the Assembly. However, the Assembly is able to apply these existing frameworks to offences it creates.

426 The reference to sentences in paragraph 4(3)(d) protects the suite of sentences, disposals and other orders available to the court, from an absolute discharge, to a hospital order under the Mental Health Act 1983, to ancillary orders such as a compensation order. The effect and operation of sentences covers when such sentences are available (for example, an Extended Determinate Sentence is only available for offences included in Schedule 15 to the Criminal Justice Act 2003), and the requirements available as part of the community order; the release arrangements for a custodial sentence, which may include release by the Parole Board; the ability to suspend custodial sentences; how consecutive and concurrent sentences operate; recall and re-release; and repatriation of offenders. The reference to "disposals... otherwise in respect of criminal conduct" also covers out of court disposals (such as cautions, warnings, and penalty notices).

427 Paragraph 4(5) confirms that protecting the specific categories of offence in paragraph 4 does not affect the reservation by virtue of Schedule 7A of the creation or modification of criminal offences in relation to reserved matters.

428 Paragraphs 5 and 6 provide that an Assembly Act provision cannot modify certain provisions of certain enactments ("protected enactments").

- 429 Paragraph 5 includes a table of protected enactments. These are enactments that an Assembly Act provision cannot modify, textually or non-textually, under any circumstances. Protected enactments have a different status from the enactments that are listed in Schedule 7A. Reserved matters may include the “subject matter of” an enactment which, subject to the section 108A(6) purpose test, reserves generally what that enactment is about, rather than its precise terms. Paragraphs 1 and 2 of Schedule 7B, for example, allow the law on reserved matters to be modified in minor ways. Protected enactments, on the other hand, whilst not reserved matters as such, do have their precise content entirely protected from modifications by paragraph 5. There are no exceptions to this prohibition.
- 430 Paragraph 6 provides that an Assembly Act provision cannot modify an Act of Parliament (other than GoWA) if it requires sums required for the repayment of amounts borrowed by the Welsh Ministers to be charged on the Welsh Consolidated Fund.
- 431 Paragraph 7 sets out which are the protected provisions of GoWA. Although paragraph 7(1) creates a general prohibition on an Assembly Act provision modifying GoWA, paragraph 7(2)-(7) qualifies that prohibition so that the Assembly is able to modify the provisions of GoWA that are related to the areas where the Assembly has legislative competence.
- 432 Paragraph 8 creates a general rule that an Assembly Act provision cannot, without the consent of the appropriate Minister, (a) confer functions on reserved authorities, (b) modify the constitution of reserved authorities, or (c) alter functions specifically exercisable in relation to reserved authorities. An example of a provision that would be caught by (c) is creating a power to appoint persons to a reserved authority. In other words, creating a function that relates to that authority; rather than creating a function *of* that authority.
- 433 Paragraph 8(3) defines "reserved authorities" for these purposes as:
- a Minister of the Crown or a UK government department;
  - any public authority (other than a Minister of the Crown or a UK government department) that is not a Wales public authority.
- 434 For the meaning of “Wales public authority” in this context, see the note on clause 4.
- 435 Paragraph 8(4) defines "public authority" for the purposes of paragraph 8(3), as a body, office or holder of an office that has functions of a public nature.
- 436 Paragraph 8(5) provides that the appropriate Minister for the purposes of paragraph 8(1) is the Secretary of State (in practice this is likely to be the Secretary of State for Wales), unless the relevant functions relate to HMRC in which case it will be the Treasury.
- 437 Paragraph 9 creates exceptions to the general rule stated in paragraph 8. It disapplies the Ministerial consent condition in the case of conferring functions on, or changing the constitution of, specified reserved authorities.
- 438 Paragraph 10 imposes a further condition of UK Ministerial consent for Assembly legislation. Unlike paragraph 8(1)(a) which relates to Assembly Act provisions conferring or imposing functions on reserved authorities, paragraph 10 relates to Assembly Act provisions that remove or modify functions of reserved authorities. The authorities to which this paragraph applies are essentially the same as those to which paragraph 8 applies, however Ministers of the Crown are excepted. This is because paragraph 11 makes specific provision about the removal or modification of Minister of the Crown functions. Paragraph 10 is subject to similar exceptions as exist under paragraph 8.

439 Paragraph 11 imposes a requirement to obtain the consent of the appropriate Minister before the Assembly may remove or modify specific functions of a Minister of the Crown. These functions are those classified as “qualified devolved functions” and those relating to the Welsh language, water in its broadest definition, marine management and financial assistance for railways. A qualified devolved function is a function that is:

- conferred or imposed on, or transferred to, the Welsh Ministers, the First Minister or the Counsel General by or under any Act; and
- to any extent exercisable concurrently or jointly with a Minister of the Crown or only with the consent or agreement of, or after consultation with, a Minister of the Crown (these functions are listed in Schedule 4 to the Bill).

440 Paragraph 11(2) requires Welsh Ministers to consult a Minister of the Crown before an Assembly Act provision can modify any existing devolved function of a Minister of the Crown (other than those that already require consent under paragraph 11(1)). Many functions conferred by Parliamentary legislation on Ministers of the Crown before the devolution settlement took effect have already been transferred to Welsh Ministers by transfer of functions orders made using the powers in section 58 of GoWA and other powers. Part 2 of Schedule 7 to GoWA required the Secretary of State’s consent before a Minister of the Crown function could be modified. This provision will be repealed by this Bill when Schedule 7 is replaced by Schedule 7A and 7B. Remaining devolved Minister of the Crown functions will be transferred by a transfer of functions order after this Bill is enacted using the expanded powers of section 58, as amended. In case any such powers have not been identified and transferred in the transfer of functions order, paragraph 11(2) will require the Welsh Government to consult the UK Government before an Assembly Act provision can modify such a function.

441 Paragraph 12(1) provides that references to the legislative competence of the Assembly that appear throughout the statute book should be read without applying the Minister of the Crown consent mechanisms in paragraphs 8-11 of Schedule 7B (or elsewhere, for example paragraph 7(5)(b) of Schedule 7B). This is because such consent mechanisms are only relevant to the legislative competence of Assembly Acts. They are therefore not relevant when considering the Assembly’s legislative competence in the context of UK Parliament legislation because Minister of the Crown consent would never be required for such legislation.

442 However, paragraph 12(2) provides that the consultation requirement in paragraph 11(2) should be included when interpreting such references.

443 Part 2 of Schedule 7B sets out the general exceptions from Part 1 of that Schedule. 444

Paragraph 13 provides that the restrictions in Part 1 of Schedule 7B do not prevent an Assembly Act provision restating the existing law or repealing or revoking spent enactments. Paragraph 13(2) clarifies that the law on reserved matters restriction in paragraph 1 of Schedule 7B includes any restatement of the law on reserved matters if the subject matter of the restatement is a reserved matter. This ensures that Parliament is able to consolidate or codify the law.

445 Paragraph 14 ensures that the restrictions in Part 1 do not unduly limit the Assembly’s competence to legislate about its own subordinate legislation procedure.

#### Clause 4: Wales public authorities

446 Clause 4 defines the expression “Wales public authority” for the purposes of GoWA. The expression is used in various provisions of that Act, including those creating exceptions to the

Ministerial consent condition for Assembly Acts relating to functions of public authorities (see the note on Schedule 2 to the Bill). "Wales public authority" includes a public authority whose functions are:-

- exercisable only in relation to Wales; and
- wholly or mainly functions that do not relate to reserved matters.

447 When determining whether the first limb of this test is met, no account is taken of any function that could be conferred or imposed by provision falling within the Assembly's legislative competence by virtue of section 108A(3). The purpose of this is to allow authorities like local authorities to be classified as Wales public authorities, notwithstanding that they may have certain devolved functions exercisable in areas close to the English/Welsh border.

448 Authorities will also be Wales public authorities by virtue of being named in new Schedule 9A inserted into GoWA by Schedule 3. It is intended that the list in Schedule 9A should perform a partly confirmatory role so as to increase legal transparency. Therefore the fact that a body is named on the list should not be taken as meaning that it does not also meet the conditions in new section 157A(2). Provision is made for new Schedule 9A to be amended by an Order in Council approved by Parliament and the Assembly. However, section 157A(1)(a) is included in the Bill to allow the Assembly to establish new Wales public authorities.

## Chapter 4: Elections

### Clause 5: Power to make provision about elections

449 Subsection (1) of Clause 5 substitutes a new section 13 into GoWA.

450 Subsection (1) of new section 13 gives the Welsh Ministers an order-making power to make provision about the conduct of Assembly elections, the questioning of such elections and the return of an Assembly member otherwise than at an election.

451 Subsection (2) of new section 13 clarifies the scope of the Welsh Ministers' power to make provision about the conduct of Assembly elections and makes clear that it enables provision to be made:.

- 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,
- e. to modify the operation of sections 6 and 8(2) of GoWA, which provide for the return of constituency members to be determined before the process of allocating regional members can proceed, where a poll at a constituency election is abandoned (or notice of it is countermanded) so that special provision can be made enabling the regional members to be returned even though not all of the constituency members have been returned; and
- f. to modify the effect of section 9(7) of GoWA to ensure that the correct number of seats are allocated.

452 Subsection (3) of new section 13 makes clear that the Welsh Ministers' power to make provision about the return of an Assembly member otherwise than at an election, will include modifying sections 11(3) to (5) of GoWA, which concern the procedure to be followed when a regional Assembly seat is vacant.

- 453 Subsections (4) and (5) of new section 13 supplement and elaborate on the scope of subsection (1) and give the Welsh Ministers powers relating to the application and modification of electoral law.
- 454 Subsection (6) of new section 13 provides that the return of an Assembly member may only be questioned under Part 3 (legal proceedings) of the Representation of the People Act 1983, as applied or incorporated in an order under this section.
- 455 Subsection (7) of new section 13 provides that any order made under this section is subject to the affirmative resolution procedure of the Assembly.
- 456 Subsection (1) of Clause 5 also inserts a new section 13A into GoWA.
- 457 Subsections (1) to (4) of new section 13A give the Secretary of State a regulation-making power to make provision to combine the polls at certain Assembly selections with the polls at certain UK Parliamentary and European Parliamentary elections. The Secretary of State must obtain the agreement of the Welsh Ministers before making any such regulations.
- 458 Subsections (5) and (6) of new section 13A supplement and elaborate on the regulation-making power and give the Secretary of State powers relating to the application and modification of electoral law as well as a power to amend forms contained in, or in regulations or rules made under, the Representation of the People Acts.
- 459 Subsection (2) of the clause inserts a new subsection (5D) into section 15 of the Representation of the People Act 1985, requiring the Secretary of State to consult the Welsh Ministers before making combination rules under section 15(5), where one of the elections is a local government election in Wales.

## Clause 6: Timing of elections

- 460 Clause 6 concerns the timing of Assembly and local government elections in Wales. Subsections (1) to (3) amend section 3 of GoWA by providing that section 3(1) is subject to a new subsection (1A). Subsection (1A) prevents the poll at an Assembly ordinary general elections being held on the same day as the poll at an ordinary general election to the UK Parliament or, a general election to the European Parliament. Subsection (2) also amends section 3(1) following the amendments to section 4 of GoWA made by subsection (7) of clause 6. As a result the date of the poll at an ordinary general election to the Assembly may also be varied by a proclamation under section 4 of GoWA.
- 461 Subsection (3) also inserts a new subsection (1B) that gives the Welsh Ministers a power to move the date of the poll of an Assembly ordinary general elections if, otherwise, it would be held on the same date as the poll of a UK Parliamentary ordinary general election or a European Parliamentary general election, unless the day of the poll is determined by a proclamation under section 4 of GoWA, as amended by subsection (7). Subsection (5) provides that an order made using that power is subject to the affirmative resolution procedure of the Assembly.
- 462 Subsection (4) amends section 3(2) of GoWA in order that the Assembly will be dissolved automatically at the beginning of the “minimum period”, which ends, if the poll is to be held on the first Thursday in May, on that date and, otherwise, on the day specified by the Welsh Ministers by order under subsection (1B).
- 463 Subsections (6) to (14)] make amendments to sections 4 and 5 of GoWA to transfer the powers of the Secretary of State to vary the date of a poll at an Assembly general election under that section to Her Majesty following a proposal by the Presiding Officer. The Presiding Officer can propose a new day for the poll, however, this cannot be the same date as the poll of a UK Parliamentary general election or a European Parliamentary general election.

464 Subsection (7) amends section 4 to provide that where the Presiding Officer proposes a day for the poll at an Assembly ordinary general election, Her Majesty may then, by proclamation under the Welsh Seal, dissolve the Assembly, require the poll at the election to be held on the day proposed, and require the Assembly to meet within the period of seven days beginning immediately after the date of the poll.

465 Subsection (7) also makes provision that where Welsh Ministers make an order under section 3(1B) of GoWA specifying an election date, and the Presiding Officer proposes a new date for the election under section 4(1) of that Act, the election will be held on the date proposed under section 4(1).

466 Subsections (9) to (11) amend section 4(4) and (6) and remove section 4(5) to provide that the Welsh Ministers may by order make provision for specified election enactments to have effect with such modifications or exceptions, as they consider appropriate in connection with the alteration of the day of the poll by the Presiding Officer. Such an order is to be made subject to the negative procedure in the Assembly.

467 Subsections (12) to (14) make amendments to section 5 of GoWA to transfer the power of the Secretary of State to propose the date of a poll at an Assembly extraordinary general election under that section to the Presiding Officer.

468 The effect of the amendments is that in the event that the Presiding Officer proposes such a date, Her Majesty may then, by proclamation under the Welsh Seal, dissolve the Assembly, require the poll at the election to be held on the day proposed, and require the Assembly to meet within the period of seven days beginning immediately after the date of the poll.

469 Subsections (15) to (17) amend section 37 of the Representation of the People Act 1983 and insert a new section 37ZA into the Representation of the People Act 1983. New section 37ZA provides that the poll for an ordinary local government election in Wales cannot take place on the same day as the poll for an Assembly ordinary general election and gives the Welsh Ministers a power to move the date of the poll for an ordinary local government election in Wales where that would otherwise be the case.

470 Subsections (18) to (20) amend section 37B of the Representation of the People Act 1983 so that the Welsh Ministers' power to change the date of a poll for an ordinary local government election in Wales to the same date as a poll at a European Parliamentary general election, does not apply if the date of the European Parliamentary general election is the same date as an Assembly ordinary general election.

## Clause 7: Electoral registration: the Digital Service

471 Subsections (1) to (4) amend section 10ZC of the Representation of the People Act 1983 ("the 1983 Act"), which concerns the procedure for applications to the register of electors, to provide for certain functions of the Secretary of State relating to the Digital Service, to be exercisable by the Welsh Ministers concurrently with a Minister of the Crown. The functions are exercisable by the Welsh Ministers: (a) in respect of elections to the Assembly or local government elections; (b) only with the agreement of a Minister of the Crown, and (c) subject to the same provisions as the Welsh Ministers' power to make other regulations under this section, except that they are subject to annulment in pursuance of a resolution of the Assembly.

472 Subsections (5) to (8) amend section 10ZD of the 1983 Act, which concerns the alteration of the name or address of a person on the register, to provide for certain functions of the Secretary of State relating to the Digital Service to be exercisable by the Welsh Ministers concurrently with a Minister of the Crown. These functions are subject to the same provisions as apply to subsections (2) to (5).



473 Subsections (9) to (12) amend section 53 of the 1983 Act, which concerns the power to make regulations as to registration, to provide for certain functions of the Secretary of State relating to the Digital Service to be exercisable by the Welsh Ministers concurrently with a Minister of the Crown. These functions are subject to the same provisions as apply to subsections (1) to (4) and (5) to (8).

474 Those functions transferred to Welsh Ministers which are exercisable concurrently with Ministers of the Crown are in addition to those which are listed in Schedule 3A as inserted by Schedule 4 to the Bill and which have been transferred by transfer of functions orders made under section 58 of GoWA.

## Clause 8: Elections of police and crime commissions

475 Subsections (2) to (4) amend section 50 of the Police Reform and Social Responsibility Act 2011 (“the PRSRA 2011”), which concerns ordinary elections of Police and Crime Commissioners (PCCs), to provide that the timing of ordinary elections of PCCs in England and Wales ceases to follow the timing of ordinary local elections in England and Wales. Instead, the amendments provide for ordinary elections of PCCs to be held on the first Thursday in May in the year of an election, rather than on the day of ordinary local elections.

476 Currently, ordinary local elections in England and Wales are held on the first Thursday in May, and the amendments will therefore not change the scheduled date for elections of PCCs. The amendments ensure that the timing of elections of PCCs, which are reserved under the Bill, remains a matter to be determined by the UK Parliament.

477 Subsection (5) amends section 51 of the PRSRA 2011 which concerns the holding of elections to fill a vacancy in the office of a PCC. Under section 51, the date of such an election must not be more than 35 days after the “relevant event” which is defined as being where the High Court or the appropriate officer has declared the office to be vacant and, in any other case the giving of the notice of vacancy to the appropriate officer by two or more relevant electors. Subsection (5) adds a new definition of “relevant elector” in Wales in consequence of the provisions on the entitlement to vote in elections of PCCs in Wales inserted by subsection (8).

478 Subsections (6) to (8) amend section 52 of the PRSRA 2011, which concerns the franchise for PCC elections, to provide that the franchise for PCC elections in Wales will cease to correspond directly to the franchise for local government elections in Wales.

479 Subsection (8) inserts a new subsection (1B) that provides that the PCC franchise in Wales will instead correspond to the parliamentary franchise, with the exclusion of overseas electors. Subsection (8) also inserts a new subsection (1C) that provides that the PCC franchise in Wales will additionally include peers and EU citizens over the age of 18 who are entitled to vote in local government elections in Wales.

480 Subsections (9) to (11) amend section 64 of the PRSRA 2011, which concerns disqualification from election as a PCC. Section 64 provides that a person is ineligible to stand as a PCC in Wales unless they are 18 years old when nominated as a candidate, and on the date on which the person is nominated and on the date of the poll are registered in the register of local government electors in respect of an address within the police area where the person is standing as a candidate. The amendments amend the references to the electoral register which a candidate in Wales must be registered in, as a consequence of the new provisions on the entitlement to vote in elections of PCCs in Wales inserted by subsection (8).

## Chapter 5: Other provisions about legislation by the Assembly

### Clause 9: Super-majority requirement for certain legislation

- 481 Clause 9 inserts new sections 111A and 111B into GoWA to require certain types of electoral legislation to be passed by a two-thirds majority of the Assembly.
- 482 Subsection (2) of new section 111A sets out when a provision of a Bill relates to a protected subject-matter for the purpose of the clause. This is when a provision would modify the law relating to the following specified matters, or enable the law relating to the following matters to be changed by subordinate legislation unless a provision is incidental to or consequential on any other provision of the Bill. These specified matters are, in relation to elections to the Assembly: the franchise for those elections, the system by which Assembly members are returned, the specification or number of constituencies and regions or other such areas and the numbers of members to be returned in each constituency or region or other such areas. In addition, a provision changing the name of the Assembly would also relate to a protected subject-matter and require a two-thirds majority before it could be passed.
- 483 Subsection (3) requires the Presiding Officer to decide before the final stage at which an Assembly Bill can be voted on whether, in her view, the provisions of the Bill relate to a protected subject-matter. The Presiding Officer must make a statement to this effect. Subsection (4) provides that a Bill which the Presiding Officer has decided relates to a protected subject-matter can only be passed if, at its final stage, the number of members voting for it comprises at least two-thirds of the total number of Assembly seats.
- 484 New section 111B provides for the reference to the Supreme Court by the Attorney General or the Counsel General of, the question of whether any provision of a Bill, relates to a protected subject-matter.
- 485 Subsection (2) of new section 111B provides that any such reference must be made in certain circumstances within 4 weeks of the passing or rejection of a Bill at its final stage, or within 4 weeks of the approval of a Bill following reconsideration after a Supreme Court decision.
- 486 Subsection (3) provides that a reference to the Supreme Court cannot be made by the Counsel General if he has previously notified the Presiding Officer that he will not be making a reference or by the Attorney General if he has previously notified the Presiding Officer that he will not be making a reference. Subsection (4) of section 111B ensures this restriction does not apply if after such a notification, the Bill has been approved or rejected by the Assembly following reconsideration after a Supreme Court decision.

### Clause 10: Super-majority requirement: amendments relating to procedure etc.

- 487 Clause 10 amends sections 111 and 112 of GoWA to reflect the new processes required as a result of a reference to the Supreme Court.
- 488 Subsection (2) inserts new paragraph (za) into subsection (6) of section 111 to require the standing orders to provide for a Bill that has been passed to be reconsidered if the Supreme Court decides that any provision of it relates to a protected subject-matter (after the Presiding Officer certified that no provision relates to a protected subject-matter).
- 489 Subsection (3) inserts a new subsection (6A) into section 111 to require the standing orders to provide for a Bill to be reconsidered if it has been rejected by the Assembly, and the Supreme Court has decided that no provision in the Bill relates to a protected subject-matter (following a decision of the Presiding Officer that the Bill does relate to a protected subject-matter).
- 490 Subsection (4) replaces subsection (7) in section 111 with a new subsection that requires the standing orders to ensure that any Bill reconsidered following a protected subject-matter reference is subject to a final approval stage in the Assembly.
- 491 Subsection (5) amends section 111 to ensure subsection (8) reflects the new reconsideration processes.

*These Explanatory Notes relate to the Wales Bill as brought from the House of Commons on 13 September 2016 (HL Bill 63).*

492 Subsection (6) amends section 112 to make it clear that the section only relates to references to the Supreme Court of questions of legislative competence (thus distinguishing it from the new section on references to the Supreme Court on protected subject-matter). It also provides for a reference to be made on a question of competence after reconsideration of an Assembly Bill.

493 Subsection (7) amends section 114 of GoWA to allow the Secretary of State to intervene after the reconsideration of an Assembly Bill.

494 Subsection (8) amends section 115 of GoWA to prevent the Presiding Officer from submitting a Bill for Royal Assent if the Supreme Court is still to make a decision on a protected subject-matter reference or if the Bill has not yet been approved after reconsideration by the Assembly once the Supreme Court has decided on such a reference

### Clause 11: Introduction of Bills: justice impact assessment

495 This clause inserts section 110A into GoWA to provide for justice impact assessments to be made in relation to Assembly Bills. It does that by requiring the Assembly's standing orders to include provision requiring the person in charge of an Assembly Bill to make a written statement setting out the potential impact of the Bill's provisions on the justice system in England and Wales. The "justice system" for these purposes includes the impact on prosecutors such as the Crown Prosecution Service and Serious Fraud Office, courts and prisons. The standing orders must prescribe the form and manner in which the assessment is to be made and the assessment must be published.

### Clause 12: Submission of Bills for Royal Assent: role of Presiding Officer

496 This clause amends section 115 of GoWA to provide that the Presiding Officer, rather than the Clerk of the Assembly, should submit Assembly legislation for Royal Assent. It also provides that the Presiding Officer rather than the Clerk of the Assembly should be notified where a Bill is the subject of a Supreme Court reference and where the Attorney General or Counsel General do not intend to make a reference. This reflects the process in the Scottish Parliament.

## Chapter 6: Other provision about the Assembly

### Clause 13 Financial control, accounts and audit

497 This clause provides that provision shall be made by or under an Act of the Assembly ("Welsh legislation") in relation to financial control, accounts and audit. This replaces previous arrangements for financial controls in the GoWA.

498 Subsection (1) removes the requirement for the Secretary of State for Wales to make an annual written statement to the UK parliament and the Welsh Assembly concerning grants made to Wales and other expenditure.

499 Subsection (2) inserts provision in section 124 of GoWA equivalent to section 65(3) of the Scotland Act 1998, so that a sum paid out of the Welsh Consolidated Fund may not be applied for any purpose other than that for which it was charged or paid out.

500 Subsection (3) inserts a new section 130A into GoWA. Under subsections (1) and (2) of this section,, Welsh legislation must provide for:

- preparation of accounts by the Welsh Ministers and others to whom sums are paid out of the Welsh Consolidated Fund of their expenditure and receipts;
- preparation by the Welsh Ministers of an account of the Welsh Consolidated Fund;
- arrangements for audit and value for money studies by, or under the supervision of the Auditor General for Wales (as further described in subsection (2) of this provision)

- access by auditors to such documents as may reasonably be required for the purposes of audit;
- designated members of the staff of the Welsh Administration to be answerable to the Assembly (Accounting Officers); and
- the publication of accounts and reports on them in pursuance of the rules and for the laying of such accounts and reports before the Assembly.

501 Subsection (3) of new section 130A provides that the Standing Orders of the Assembly must include consideration of Assembly Accounts and Reports.

502 Subsection (4) of new section 130A ensures the independence of persons exercising functions under subsection (2) or other like functions.

503 Subsection (5) of new section 130A ensures that the Auditor General for Wales is not responsible for examining, certifying or reporting on his own accounts.

504 Subsection (6) of new section 130A provides that Welsh legislation cannot require reserved authorities to provide accounts where legislation already requires it.

505 Subsection (7) of new section 130A defines terms used in that new section.

506 Subsection (4) of Clause 13 removes from the Comptroller and Auditor General the power to carry out examinations regarding payments into and out of the Welsh Consolidated Fund and the power to carry out value for money studies in relation to Wales public authorities (as to which, see clause 4).

507 Subsection (5) ensures that the Comptroller and Auditor General's power to conduct value for money examinations does not apply to Wales public authorities when he no longer has audit responsibilities for them.

#### Clause 14: Composition of Assembly committees

508 Clause 14 repeals section 29 of GoWA to remove the restrictions on the composition of committees and allows for them to be amended by changes to Assembly standing orders.

#### Clause 15: Assembly proceedings: participation by UK Ministers etc

509 Clause 15 repeals sections 32 and 33 of GoWA. The repeal of section 32 removes the entitlement of the Secretary of State for Wales to participate in Assembly proceedings (this power has never been exercised). The repeal of section 33 removes the requirement for the Secretary of State to attend the Assembly as part of the process of consultation on the UK Government's legislative programme.

510 These provisions were included in GoWA when the Assembly was still finding its feet, and the distinction between the Assembly's legislative role and the Welsh (Assembly) Government's executive functions of the Welsh Assembly Government (as it was), had yet to be implemented. The Assembly is now well established, with clear lines of engagement between it and the UK Government. These provisions are no longer needed in that context.

#### Clause 16: Change of the name of the Assembly etc: translation of references

511 Clause 16 inserts a new section 150A into GoWA to ensure that references in other legislation to the Assembly and other bodies are automatically amended if the Assembly exercises its power to change its name (or the name of the Assembly Commission or the name of Acts of the Assembly). Such name changes are made possible by paragraph 7(2)(a)(i) and (xii) and paragraph 7(2)(c)(i) of new Schedule 7B inserted into GoWA by Schedule 2 to the Bill, which mean that the restriction on the Assembly on amending GoWA itself does not include amending

those names as provided for by sections 1(1), 27(1) and 107(1) respectively. Subsection (2) of new s.150A ensures that any references to the Assembly, the Assembly Commission or an Act of the Assembly in other legislation will reflect the new name if it is changed.

512 Subsection (2) of clause 16 ensures that the definition of enactment in new section 150A includes Acts of the Scottish Parliament ("ASPs") or instruments made under ASPs, so if the Assembly changes its name, references to it in ASPs will also be automatically updated.

## **Chapter 7: Welsh rates of income tax: removal of referendum requirement**

### **Clause 17: Welsh rates of income tax: removal of referendum requirement**

513 Clause 17 amends the Wales Act 2014 to remove the requirement for there to be a referendum in advance of the devolution of a portion of income tax.

514 Subsection (2) removes sections 12 and 13 and Schedule 1 from the Wales Act 2014. Section 12 makes provision about the Order in Council that would cause the referendum to be held. Section 13 provides for how a proposed referendum can be triggered by the First Minister or a Welsh Minister, approved by Assembly resolution, and implemented by Order in Council. Schedule 1 provides the detail on how the referendum would be conducted. As the Welsh rate of income tax is now to be devolved to Wales without the need for a referendum, all of these provisions can be repealed.

515 Subsection (3) removes section 14(1) of the Wales Act 2014 and amends the heading of section 14. Section 14 of the Wales Act 2014 provides for the commencement of the income tax provisions by Treasury order. As a referendum is no longer required before a portion of income tax can be devolved in Wales, the references to the referendum in section 14(1) and in the heading of section 14 can be removed.

516 Subsection (4) removes section 23(8) from the Wales Act 2014. Section 23 requires an annual report by the Secretary of State and Welsh Ministers on the implementation and operation of the finance measures in Part 2 of the Wales Act 2014. Section 23(8) provides that the report need not contain information on the implementation of the income tax provisions until a majority has voted in favour of these provisions in a referendum. Given this clause removes the referendum requirement, section 23(8) is no longer required. Future reports under section 23 will therefore need to contain information on steps taken, or proposed to be taken, toward the implementation of the Welsh rates of income tax.

517 Subsection (5) amends the commencement provisions in section 29 of the Wales Act 2014 to remove other references to the referendum that are now no longer required.

## **Chapter 8: Executive competence**

### **Clause 18: Functions of Welsh Ministers**

518 Clause 18 (1) inserts a new section 58A into GoWA which confers common law type powers on Welsh Ministers; these powers are described as executive ministerial functions and they will be exercisable both in relation to devolved functions and ancillary to executive functions conferred on Welsh Ministers in reserved areas. Subsection (5) defines what is meant by an executive function; this does not include any prerogative functions.

519 Subsection (3) provides that these powers are to be exercised by Welsh Ministers alone unless the type of functions is listed in subsection (4) when it will be exercisable concurrently by both the Welsh Ministers and Ministers of the Crown. The types of function listed in subsection (4) are:

- a. those ancillary to any function of Welsh Ministers which is expressed to be exercisable concurrently or jointly (whether within or outside devolved legislative competence) (see section 59A and Schedule 3A as inserted by Schedule 4 to the Bill, for a list of such functions)
- b. those ancillary to the exercise by a Minister of the Crown of a function within devolved competence,
- c. those which are free-standing in that they are not ancillary to any other function
- d. those relating to observing or implementing EU law.

520 The term "ancillary" is defined in subsection (6).

521 "Devolved competence" is defined in subsections (7)-(8).

522 Subsection (7) provides that it is outside devolved competence to make, confirm or approve subordinate legislation which would be outside legislative competence. In other words, a provision that section 108A would prohibit from appearing in an Assembly Act is similarly prohibited by this section from appearing in subordinate legislation.

523 Subsection (8) applies to functions other than those relating to making, confirming or approving subordinate legislation. It provides that it is outside devolved competence to exercise such functions if an Assembly Act provision conferring those functions would be outside the Assembly's legislative competence.

524 Subsection (5) states that executive ministerial powers includes functions involving expenditure or other financial matters and so section 70 of GoWA, which currently enables Welsh Ministers to give financial assistance to persons engaged in activities which help the Ministers attain the exercise of their functions, is amended by subsection (2) so that it applies only to the First Minister and the Counsel General. The well-being powers in section 60 of GoWA also overlap with the common law type powers conferred by section 58A and this has been added to the list of provisions in GoWA which the Assembly can modify or repeal (see paragraph 7 of Schedule 7B).

525 Clause 18(3) also removes the Welsh Ministers' powers under section 71 of GoWA, which enables them to do anything conducive or incidental to the exercise of their powers, as such powers are no longer required; however this provision still applies to the First Minister acting in his capacity as First Minister and the Counsel General.

## Clause 19: Implementation of EU law

526 Clause 19 gives Welsh Ministers an automatic right to make regulations under section 2(2) of the European Communities Act 1972 implementing EU law. This right applies to matters that are within the legislative competence of the Assembly. Such exercise of the powers by Welsh Ministers will no longer be conditional on prior designation in an Order in Council prepared by the UK Government. Designation will continue to be necessary if Welsh Ministers are to make regulations under section 2(2) in relation to matters that are outside the legislative competence of the Assembly. The reserve powers of a designated UK Minister to make regulations under section 2(2) remain unaffected, so, for example, Welsh Ministers may consent to EU legislation being implemented by the UK Government in respect of Wales.

## Clause 20: Transfer of Ministerial Functions

527 Functions conferred by UK legislation in devolved areas can be transferred to Welsh Ministers by an Order made under section 58 of GoWA. Several such orders have been made since the Assembly was established in 1999. Subsection (1) modifies section 58 by enabling an order to

specify that a function may also be exercised jointly, as well as concurrently, by a Minister of the Crown and Welsh Ministers. Subsection (2) modifies provision in Schedule 3 to GoWA by removing the reference to cross-border bodies and English border areas so that transfer of functions orders can also specify that functions exercisable by Welsh Ministers may require agreement of, or consultation with, a Minister of the Crown.

528 Subsection (3) and (4) insert a new section 59A and Schedule 3A into GoWA. Schedule 3A lists all those powers which are exercised concurrently or jointly by Ministers of the Crown and Welsh Ministers. These powers have already been transferred by transfer of functions orders (TFOs) made under section 58 of GoWA. This schedule will be added to by subsequent transfer of function orders, if they include shared powers so that a comprehensive list of such powers is easily accessible. As qualified devolved powers, these functions can only be modified with the consent of a Minister of the Crown (see paragraph 11(1)(a) and 11(3) of Schedule 7B).

#### Clause 21: Transferred Ministerial functions.

529 This clause makes further modifications to the power at section 58 of GoWA to make Transfer of Function Orders ("TFOs"). Subsection (2A)(a) provides that such an order can also be made in relation to functions previously transferred by TFO and (b) enables previously transferred functions to be expanded or reduced on a geographical basis or otherwise. Future orders will also be able to remove conditions attached to the exercise of such functions or modify the requirement for concurrent or joint exercise.

#### Clause 22: Consultation about cross-border bodies

530 This clause repeals section 63 of GoWA (consultation about cross-border bodies). The section places a duty on Ministers of the Crown to consult Welsh Ministers before exercising certain functions in relation to cross-border bodies. The expression 'cross-border body' is not used in the reserved powers model introduced by the Bill. Public authorities with functions exercisable in England as well as Wales will generally be 'reserved authorities' under the new structure.

## Part 2: Legislative and executive competence: further provision

### Chapter 9: Onshore petroleum

#### Clause 23: Onshore petroleum licensing

531 Clause 23 amends section 8A (interpretation of Part 1) of the Petroleum Act 1998 (which is inserted by the Scotland Act 2016 to transfer to Welsh Ministers certain executive functions exercised currently by the Secretary of State relating to onshore petroleum licensing in the Welsh onshore area.

532 Subsection (2) inserts new paragraph (aa) into subsection (1A) to provide that, for Part 1 of the Petroleum Act 1998, the "appropriate authority" shall be Welsh Ministers for the Welsh onshore area.

533 Subsection (3) inserts new paragraph (aa) into subsection (2) to provide that, for Part 1 of the Petroleum Act 1998, the "appropriate Minister" shall be Welsh Ministers for the Welsh onshore area.

534 Subsection (4) inserts new subsections (5), (6) and (7) into section 8A of the Petroleum Act 1998. Inserted subsection (5) defines the "Welsh onshore area" as the area of Wales (including the territorial sea adjacent to Wales) within the baselines set out by any Order in Council under section 1(1)(b) of the Territorial Sea Act 1987 (extension of territorial sea).

535 Inserted subsection (6) provides that ‘Wales’ has the same meaning as in GoWA for the purposes of interpreting new subsection (5).

536 Inserted subsection (7) defines the “English onshore area” as the area of England and the territorial waters adjacent to England that is within the baselines set out by any Order in Council under section 1(1)(b) of the Territorial Sea Act 1987 (extension of territorial sea).

#### Clause 24: Onshore petroleum: existing licences

537 Clause 24 provides the Secretary of State with powers to make amendments to the provisions and model clauses of licences that were in existence before the commencement of devolved oil and gas licensing powers. This additional power is limited to those licences already in existence in onshore Wales.

538 Subsection (1) provides the Secretary of State with the power to make amendments to the provisions of an existing licence and to the model clauses that are incorporated or have the effect as if incorporated into such an existing licence.

539 Subsection (2) specifies that the power to make amendments, conferred on the Secretary of State by subsection (1), is to be exercised only where it is deemed necessary or expedient in consequence of either the devolution of legislative competence over onshore oil and gas licensing (as mentioned in the exceptions in section D2 of Part 2 of Schedule 7A to GoWA) or in consequence of the devolution of executive functions.

540 Subsection (3) provides the Secretary of State with the power to direct that, where a licence was only partially in onshore Wales at the time of granting, this licence may have effect as one licence in onshore Wales and as a separate licence in the area outside of onshore Wales. The power of the Secretary of State to make necessary amendments to existing licences and to the model clauses incorporated therein or having the effect as if incorporated therein is extended to such licences.

541 Subsection (4) specifies that the power to make amendments to the model clauses, provided by subsection (1)(a) is to be exercised by regulations made by statutory instrument. (The power to make amendments to other provisions of existing licences, provided by subsection (1)(b), does not need to be exercised by regulations.)

542 Subsection (5) specifies that any such statutory instruments, containing regulations to make amendments to existing licences, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

543 Subsection (6) defines “existing licences” as those licences granted under section 3 of the Petroleum Act 1998 or under section 2 of the Petroleum (Production) Act 1934 before the commencement of the devolution of licensing powers to Welsh Ministers for the “Welsh onshore area”, as defined by section D2 of Part 2 of Schedule 7A to GoWA.

#### Clause 25 Onshore petroleum: right to use deep-level land in Wales

544 Clause 25 and paragraphs 25 to 29 of Schedule 5 amend the Infrastructure Act 2015 (“IA 2015”) consequent upon the devolution to the Assembly of legislative powers relating to access to land for the purpose of searching or boring for or getting petroleum within the “Welsh onshore area” (see the exception to the reservation in section D2 (oil and gas) of new Schedule 7A to GoWA).

(A) Right to use deep-level land

545 Section 43 of IA 2015 provides for a right to use deep-level land (i.e., land at depths of 300 metres and below) for the purposes of exploiting petroleum and deep geothermal energy in “landward areas” in England and Wales. Sections 45 and 46 of IA 2015 give the Secretary of

State the power to make regulations containing “payment schemes” and “notice schemes” requiring “relevant energy undertakings” to make payments to landowners and others in respect of the right to use deep-level land and to give notice in respect of the exercise of the right to use deep-level land. The intention is that these regulation-making powers will be exercised only if the voluntary commitments made by the industry to notify local communities and make payments in connection with the right to use deep-level land are not satisfactory.

- 546 Subsection (2) of clause 25 and paragraph 25 of Schedule 5 amend section 45 of IA 2015 to confer the power to make “payment schemes” in respect of the exercise of the right to use deep-level land in Wales for the purposes of exploiting petroleum on the Welsh Ministers in place of the Secretary of State. (The Secretary of State retains the power to make “payment schemes” in respect of the exercise of the right to use (a) deep-level land in England for the purposes of exploiting petroleum and (b) deep-level land in England and in Wales for the purposes of exploiting deep geothermal energy.) Regulations made by the Welsh Ministers may require relevant energy undertakings to provide the Welsh Ministers or any other specified person with specified information about the exercise of the right to use deep-level land and the making of payments. The Welsh Ministers must consult such persons as they consider appropriate before making any regulations.
- 547 Subsection (3) of clause 25 and paragraph 26 of Schedule 5 amend section 46 of IA 2015 to confer the power to make “notice schemes” in respect of the exercise of the right to use deep-level land in Wales for the purposes of exploiting petroleum on the Welsh Ministers in place of the Secretary of State. (The Secretary of State retains the power to make “notice schemes” in respect of the exercise of the right to use (a) deep-level land in England for the purposes of exploiting petroleum; and (b) deep-level land in England and in Wales for the purposes of exploiting deep geothermal energy.) Regulations made by the Welsh Ministers may require relevant energy undertakings to provide the Welsh Ministers or any other specified person with specified information about the exercise of the right to use deep-level land and notifications made by the undertaking. The Welsh Ministers must consult such persons as they consider appropriate before making any regulations.
- 548 Paragraph 27 of Schedule 5 amends section 47 of IA 2015 to provide for regulations made by the Welsh Ministers under sections 45 or 46 of IA 2015 (i.e., payment schemes and notice schemes) to confer a function on the Welsh Ministers or on any other person, apart from a Minister of the Crown. The amendments also provide that the Secretary of State’s duties (1) to review sections 45 and 46 within 5 years of commencement (see section 47(5) of IA 2015) and (2) to repeal sections 45 and 46 if the “relevant conditions” are met (see section 47(6) and (7) of IA 2015) apply only to the Secretary of State’s regulation-making powers under those sections (and not to those of the Welsh Ministers).
- 549 Paragraph 28 of Schedule 5 amends section 48 of IA 2015 to confer on the Secretary of State a power to make regulations setting out the definition of “landward area” as it applies in relation to the right to use deep-level land in England for the purposes of exploiting petroleum and the right to use deep-level land in England and Wales for the purposes of exploiting deep geothermal energy. The Welsh Ministers are also given a power to make regulations setting out that definition as it applies in relation to the right to use deep-level land in Wales for the purposes of exploiting petroleum within the Welsh onshore area. The current definition of “landward area” in the Petroleum Licensing (Exploitation and Production) (Landward Areas) Regulations 2014 will remain in place until such regulations are made. The amendments also provide various definitions for the purpose of the amendments made by the Bill.
- 550 Paragraph 29 of Schedule 5 amends section 55 of IA 2015 to provide that regulations made by the Secretary of State under section 48 of IA 2015, and by the Welsh Ministers under sections 45, 46 and 48 of IA 2015, are subject to the affirmative procedure.

(B) Advice on likely impact of onshore petroleum on the carbon budget

551 Section 49 of IA 2015 requires the Secretary of State from time to time to seek advice from the Committee on Climate Change on the impact which the combustion of, and the fugitive emissions from, petroleum got through onshore activity in England and Wales is likely to have on meeting the UK carbon budget obligations.

552 Subsection (4) of clause 25 amends section 49 of the IA 2015 to provide that the Secretary of State's duty relates to petroleum got through onshore activity in England only.

## Chapter 10: Road transport

### Clause 26: Roads: speed limits, pedestrian crossings and traffic signs

553 This clause amends the following provisions of the Road Traffic Regulations Act 1984 ("RTRA 1984"):

- Section 17 (traffic regulation on special roads), to enable Welsh Ministers to make regulations with respect to a particular special road in Wales, and to regulate the speed of vehicles on special roads in Wales.
- Section 25(1) (Secretary of State to make pedestrian crossing regulations), to enable the relevant authority to exercise the power to make regulations in respect of pedestrian crossings. Relevant authority in this provision means Scottish or Welsh Ministers (if it is within their devolved competence) or otherwise the Secretary of State.
- Section 64 (general provisions as to traffic signs), to enable the relevant authority to exercise the power to make regulations in respect of traffic signs, and relevant authority is defined in the same way as section 25.
- Section 86 (speed limits for particular classes of vehicles) to define the relevant authority, as respects the driving of vehicles on roads in Wales, as the Welsh Ministers.
- Section 87 (exemptions for emergency vehicles from speed limits) (as amended by section 19 of the Road Safety Act 2006), to enable the national authority to exercise the power to make regulations which prescribe the purposes and circumstances in which speed limits do not apply to vehicles other than those used by the emergency services; and defines the relevant authority as (so far as they have competence) Scottish Ministers; and otherwise, the Secretary of State.
- Section 88 (temporary speed limits) to define the relevant authority, in relation to roads in Wales, as the Welsh Ministers.
- Section 142(1) (general interpretation) to define 'national authority', in relation to Wales, as the Welsh Ministers.

### Clause 27: Bus service registration and Traffic Commissioners

554 This clause transfers the executive competence for the functions contained in section 6(9)(g), (i) and (j) and section 7(6)(d), (9) and (11) of the Transport Act 1985 to the Welsh Ministers (in so far as those functions are exercised in relation to Wales). These section 6 and 7 functions are the same as those transferred to Scottish Ministers in the Scotland Act 1998 (Cross Border Public Authorities) (Traffic Commissioner for the Scottish Traffic Area) Order 2007 (S.I. 2007/2139).

555 In consequence of the devolution of bus route registration this clause also amends section 4C of the Public Passenger Vehicles Act 1981 so that the senior traffic commissioner's power to give guidance or general directions to other traffic commissioners does not apply in relation to devolved Welsh matters. This reflects the situation already existing in Scotland where the senior traffic commissioner cannot give guidance or directions in relation to devolved Scottish matters.

## Clause 28: Taxis: transfer of certain functions to Welsh Ministers

556 In consequence of the devolution to the Assembly of powers to legislate for taxi and private hire vehicle licensing, taxis and private hire vehicle driver licensing and private hire vehicle operator licensing, this clause transfers the Secretary of State's functions in section 10 of the Transport Act 1985 (the immediate hiring of taxis at separate fares), to Welsh Ministers.

## Chapter 11: Harbours

### Clause 29: Transfer of executive functions in relation to Welsh harbours

557 This clause transfers to the Welsh Ministers a number of functions relating to harbours that are wholly in Wales, other than reserved trust ports as defined in clause 32. The functions transferred are functions of a Minister of the Crown under legislation concerning harbours, harbour authorities and pilotage and they are specified in subsection (2). 'Wales' is defined in subsection (7) as having the same meaning as in GoWA; it includes the sea adjacent to Wales up to the seaward boundary of the territorial sea, with the boundary of the sea adjacent to Wales in the Dee and Severn estuaries being determined by order (see GoWA, sections 158(1) and (3) and paragraph 27(3) of Schedule 11, and the National Assembly for Wales (Transfer of Functions) Order 1999, S.I.1999/672, article 6 and Schedule 3).

558 Functions under the Harbours Act 1964 that have been delegated by the Secretary of State using powers in section 42A of that Act are included in the functions transferred (subsection (3)). By the Harbours Act 1964 (Delegation of Functions) Order 2010, S.I. 2010/674, certain functions were delegated to the Marine Management Organisation (MMO).

559 Where any function transferred relates to two or more harbours, the function is transferred only if both, or all, the harbours are wholly in Wales and are not reserved trust ports (subsection (4)).

560 A function specified is not transferred to the extent that it can be exercised to create a cross-border harbour (subsection (5)). A cross-border harbour is a harbour that is partly in England and partly in Wales (subsection (7) and clause 32(5)).

### Clause 30: Transfer of executive functions: amendments of the Harbours Act 1964

561 This clause amends the Harbours Act 1964 to transfer functions relating to harbours wholly in Wales (other than reserved trust ports) from a Minister of the Crown to the Welsh Ministers. The functions relate to harbour orders, harbour closure orders and orders designating harbour authorities as authorised to give directions to ships. Subsection (3) inserts a new paragraph (1A) into section 17E of the Harbours Act which requires the Welsh Ministers to obtain the consent of the Secretary of State before making a harbour closure order that transfers functions to the harbour authority for a harbour which is wholly or partly in England or for a reserved trust port.

### Clause 31: Transfer of harbour functions: application of general provisions

562 This clause applies certain provisions of Schedules 3 and 4 to GoWA to the functions transferred by clauses 28 and 29, as if those functions were transferred by an Order in Council made under section 58 of that Act. The provisions relate to the exercise of transferred functions, the continued validity of things done by a Minister of the Crown before the transfer and the transfer of property, rights and liabilities.

563 The provisions are applied to the transfer of functions under the Harbours Act 1964 that are exercisable by a delegate by virtue of an order made under section 42A of that Act (subsection



(2)). (The Harbours Act 1964 (Delegation of Functions) Order 2010, S.I. 2010/674, delegated certain Minister of the Crown functions under the Harbours Act to the Marine Management Organisation (MMO)).

564 The Secretary of State may make regulations setting out contrary arrangements regarding aspects of the transfer of property, rights and liabilities (subsection (3)) and the regulations may make different provision for different purposes, including different provision for different harbours or descriptions of harbours (subsection (4)). The regulations are to be made by statutory instrument subject to the negative procedure (subsection (5) and (6)).

### Clause 32: Welsh harbours: reserved trust ports

565 Reserved trust ports are defined by this clause. A reserved trust port is a harbour, dock, pier or boatslip that, on the date on which clause 3(1) comes into force, is owned or managed by a harbour authority that is a relevant port authority within the meaning of the Ports Act 1991 and that meets the annual turnover requirement set out in section 11 of that Act. The annual turnover requirement has to be met in two of the previous three accounting years for which the harbour authority's accounts have been submitted as required by section 42 of the Harbours Act 1964 (subsection (3), which applies section 11(1) of the Ports Act with consequential modifications).

### Clause 33: Development consent

566 This clause amends section 24 of the Planning Act 2008. It excludes from the development consent regime under that Act applicable to nationally significant infrastructure projects, the construction or alteration of harbour facilities that are wholly in Wales or in waters adjacent to Wales, except harbour facilities that comprise or form part of a reserved trust port.

### Clause 34: Cross-border harbours

567 Cross-border harbours are defined by this clause as harbours that are partly in England and partly in Wales (subsection (5)).

568 Where a Minister of the Crown proposes to exercise a relevant function in respect of a cross-border harbour and the exercise would, in the opinion of the Minister, be likely to have a material effect in Wales, the Minister must consult the Welsh Ministers before exercising the function (subsection (1)). Relevant functions are specified in subsection (4) and include order, regulation and decision making, direction giving, consenting and approving functions under the Harbours Act 1964, the Docks and Harbours Act 1966, the Ports (Finance) Act 1985 and the Ports Act 1991.

569 A Minister of the Crown must also consult the Welsh Ministers before exercising a function under the Harbours Act 1964 that would create a new cross-border harbour (subsection (2)).

570 Where a relevant function has been delegated under section 42A of the Harbours Act 1964, the delegate is subject to the duties imposed by this clause (subsection (3)). (The Harbours Act 1964 (Delegation of Functions) Order 2010, S.I. 2010/674, delegated certain Minister of the Crown functions under the Harbours Act to the Marine Management Organisation (MMO)).

### Clause 35: Cross-border exercise of pilotage functions

571 This clause contains consultation and consent requirements applicable to the Secretary of State or the Welsh Ministers when exercising relevant pilotage functions with a cross-border application. Relevant pilotage functions are set out in subsection (4).

572 Where the Secretary of State proposes to exercise a relevant pilotage function in relation to waters in Wales, the Secretary of State must first consult the Welsh Ministers (subsection (1)).

573 Where the Welsh Ministers propose to exercise a relevant pilotage function (transferred by clause 29) that is in relation to waters in England, the Welsh Ministers must first obtain the consent of the Secretary of State (subsection (2)). Clause 29 transfers to the Welsh Ministers pilotage functions in relation to harbours wholly in Wales, including where the pilotage jurisdiction extends into waters adjacent to England. There is an exception to the requirement for consent where the Welsh Ministers propose to make a decision on an appeal relating to pilotage charges or to the authorisation of EEA pilots, in which case the Welsh Ministers must first consult the Secretary of State (subsection (3)).

### Clause 36: Sections 34 and 35: supplementary

574 This clause provides that the duties to consult before exercising a function that are imposed on the Secretary of State and the Welsh Ministers by clauses 34 and 35 do not apply if it is not reasonably practicable to comply (subsection (1)). If compliance is not reasonably practicable, the Secretary of State or the Welsh Ministers (as the case may be) must as soon as is reasonably practicable inform the other of the exercise of the function and the reasons for exercising it (subsections (2) and (3)). Subsection (4) provides that a failure to comply with a duty to consult does not affect the validity of the exercise of the function.

575 This clause also enables the Secretary of State to make regulations modifying the application of the provisions concerning cross-border harbours and cross-border pilotage which are contained in clauses 34, 35 and 36 in relation to specified harbours or descriptions of harbours (subsection (5)). Before making regulations, the Secretary of State must consult the Welsh Ministers (subsection (6)).

576 Subsection (7) provides that the regulations may in particular disapply the requirements for a Minister of the Crown to consult or the Welsh Ministers to consult or obtain consent before exercising a function, may change a requirement to consult to a requirement to obtain consent (and vice versa) and may introduce new requirements for a Minister of the Crown to consult or obtain consent before exercising a function not mentioned in clause 34 or 35 or for the Welsh Ministers to consult or obtain consent before exercising a function not mentioned in clause 35.

577 The regulations may make different provision for different purposes or cases and consequential, incidental, supplementary, transitional and saving provision (subsection (8)).

578 The regulations must be made by statutory instrument subject to the negative procedure (subsections (9) and (10)).

## Chapter 12: Planning for electricity generating stations

### Clause 37: Planning consent for generating stations with 350MW capacity or less

579 Clause 37 gives effect to the policy intention to devolve to Wales the responsibility for energy planning development consents for projects up to and including 350MW onshore and in Welsh territorial waters.

580 Subsections (1)-(6) - The combined effect of these subsections is to dis-apply the Secretary of State's power under the Planning Act 2008 ("the 2008 Act") to grant development consent for all electricity generating stations in Wales and in Welsh territorial waters insofar as such projects (not including onshore wind powered generating stations) do not exceed a capacity of 350MW, and for all onshore wind powered generating stations.

581 Subsections (7)-(13) - The disapplication in subsections (1) - (6) would otherwise leave consenting for electricity generating stations to be determined in accordance with section 36 of the Electricity Act 1989. The combined effect of subsections (7) - (13) is to remove the requirements of section 36 of the Electricity Act 1989 in so far as they relate to electricity

generating stations up to and including 350MW in Wales, such that Welsh Ministers can consent such projects under the dedicated process for developments of national significance put into the Town and Country Planning Act 1990, as it applies in Wales, by the Planning (Wales) Act 2015. As the regime under the Town and Country Planning Act 1990 does not apply offshore, section 36 is devolved to Welsh Ministers for the determination of projects not exceeding 350MW in Welsh territorial waters and in the Welsh Zone.

### Clause 38: Generating stations and public rights of navigation

582 Clause 38 transfers certain functions under sections 36A and section 36B of the Electricity Act 1989 to Welsh Ministers for offshore generating station consents not exceeding 350MW. Clause 36 will amend section 36A of the Electricity Act 1989, such that Welsh Ministers will in the future be able to make declarations extinguishing public rights of navigation, so as to ensure safety, out to the seaward limits of the territorial sea, in relation to generating stations up to 350MW.

583 Section 36B of the Electricity Act 1989 will be amended to allow for the imposition of navigation duties by Welsh Ministers in relation to generating station consents up to 350MW in waters adjacent to Wales out to the seaward extent of the "Welsh zone", as defined in section 158(1) of GoWA.

### Clause 39: Safety zones around renewable energy installations

584 This section amends the Energy Act 2004 ("the 2004 Act") to enable the Welsh Ministers to exercise functions in relation to declaring safety zones around, and the decommissioning of, offshore renewable energy developments wholly in waters adjacent to Wales out to the seaward limits of the Welsh Zone

585 The section amends section 95 of the 2004 Act (safety zones around renewable energy installations) to provide the Welsh Ministers with a discretionary power to issue a notice to declare safety zones around a renewable energy installation in Welsh waters and to determine which activities are permitted within a safety zone, and which vessels may enter or remain within a safety zone. Where such an installation is proposed to be, or is, extended outside Welsh waters, the Secretary of State will exercise the functions in relation to declaring safety zones in respect of that part of the installation, unless the Welsh Ministers and the Secretary of State agree that the Welsh Ministers should do so.

586 Paragraph 44 of Schedule 5 amends the Electricity Act 1989 to create a power for Welsh Ministers to make regulations governing the application process for consent under section 36 of the Electricity Act 1989 to construct and operate a generating station up to 350MW in waters adjacent to Wales.

587 Paragraph 46 of Schedule 5 amends Schedule 8 to the Electricity Act 1989 such that it does not apply to applications made to Welsh Ministers.

588 Paragraph 54 of Schedule 5 amends the Energy Act 2004 that where Welsh Ministers make regulations governing applications for safety zones that these will be subject to the negative procedure in the Welsh Assembly.

589 Paragraphs 65 and 67 make provision for the deeming of marine licences under section 149A of the Planning Act 2008, to allow for changes to the authority that would otherwise grant those licences and enforce them from the Secretary of State to Welsh Ministers.

### Clause 40: Associated development of overhead lines

590 This clause allows Welsh Ministers or local planning authorities to grant associated development with generating stations that they can consent (those no greater than 350MW),

provided that such overhead electric lines (subject to a limit of 132kV nominal voltage) are necessarily associated with generating stations that can be consented by Welsh Ministers or local planning authorities in Wales as development under the Town and Country Planning Act 1990.

## Clause 41: Alignment of associated development consent

- 591 Clause 41 implements the recommendation of the Silk Commission, taken forward in the St David's Day Agreement, that the responsibility for granting consent for associated development for energy projects should be aligned with the responsibility for granting consent for the main project.
- 592 Planning consents for energy generation projects above 50 MW are currently granted through a Development Consent Order made by the Secretary of State under the regime for nationally significant infrastructure set out in the Planning Act 2008 ("the 2008 Act"). The Secretary of State may grant consent under the 2008 Act for an energy generation project for which development consent is required.
- 593 Large energy generation projects are also likely to require consent for development which is associated with the principal project and necessary for the project to be developed ('associated development') and the Secretary of State can also grant consent for this under the 2008 Act.
- 594 In Wales, the power of the Secretary of State to consent associated development is restricted to surface works, boreholes or pipes that are associated with a project comprising of underground gas storage facilities. There is therefore currently no provision in the 2008 Act for the Secretary of State to grant development consent for associated development for an energy generation project in Wales.
- 595 The effect of this is that for an energy generation project above 50 MW in Wales, development consent can only be granted by the Secretary of State for the infrastructure project itself. Any consents for associated development must be sought from the appropriate consenting body in Wales (in the case of any planning consent for associated development, this will normally be from the relevant local planning authority).
- 596 Clause 37 devolves consents for energy generation projects up to, and including, 350 megawatts to Wales. For these projects, there will be no change to how consent is granted for associated development.
- 597 Energy projects above 350MW in Wales will continue to be determined by the Secretary of State under the provisions of the 2008 Act. In order for the recommendation on aligning associated development consents to be implemented, the 2008 Act needs to be amended so the Secretary of State can grant consent for associated development linked to these projects. This will be achieved by the amendment to section 115(4) of the 2008 Act (which currently restricts the Secretary of States powers to grant consent for associated development in Wales). This amendment will also extend to associated development consents linked to the consenting of electric lines in Wales to the extent that they fall within section 14(1)(b) and section 16 of the 2008 Act.

## Chapter 13: Equal opportunities

### Clause 42: Equal opportunities: public sector equality duty

- 598 Clause 42 amends section 152(2) of the Equalities Act 2010 ("the 2010 Act"). The relevant part of this section sets out the process Welsh Ministers must follow when exercising a power to amend the list of Welsh public authorities, set out in Part 2 of Schedule 19 of the 2010 Act, which are subject to the public sector equality duty. Welsh Ministers will no longer have to

obtain the consent of a Minister of the Crown before making an order amending the list, but instead must inform such a Minister after any amendment to Schedule 19.

599 The public sector equality duty in section 149 imposes a duty on the public bodies listed in Schedule 19 to have regard to three specified equality matters when exercising their functions

### Clause 43: Public sector duty regarding socio-economic inequalities

600 This clause amends the arrangements for the commencement of Part 1 of the 2010 Act in Wales (socio-economic inequalities). It also amends the powers of the Welsh Ministers where they wish to amend section 1 of the 2010 Act. Part 1, which enables the Welsh Ministers to impose the socio-economic duty on public bodies exercising devolved or mainly devolved functions, is already devolved, but there had not until now been an available mechanism for the Welsh Ministers to commence the provision as it relates to those bodies.

601 Subsection (2) amends section 1 of the 2010 Act by providing that public authorities exercising a duty relating to devolved Welsh functions must take into account guidance issued by Welsh Ministers when deciding how to fulfil that duty. Where the function concerned is not devolved, the authority must follow guidance issued by a Minister of the Crown.

602 Subsection (3) amends section 2 of the 2010 Act by removing the requirement that Welsh Ministers consult a Minister of the Crown prior to making regulations under Part 1 of the 2010 Act.

603 In relation to commencement, subsections (4)-(6) amends section 216 of the 2010 Act (commencement) to ensure that the Welsh Ministers may commence Part 1, which will be by order, at a time of their choosing.

604 Section 1 of the 2010 Act requires specified public bodies, when making strategic decisions to consider how their decisions might help to reduce the inequalities associated with socio-economic disadvantage. Section 2 of the 2010 Act enables the Welsh Ministers, in the case of Welsh bodies, to make regulations amending the list of public bodies which are subject to the duty.

## Chapter 14: Marine licensing and conservation

### Clause 44: Marine licensing in the Welsh offshore region

605 This clause implements the recommendation of the Silk Commission, taken forward in the St David's Day Agreement, that the existing executive responsibilities for marine licensing in the Welsh inshore region should be extended to the Welsh offshore region. The amendments made by clause 4 provide for Welsh Ministers to exercise functions relating to marine licensing in the Welsh offshore region. Part 4 of the Marine and Coastal Access Act 2009 ("the 2009 Act") regulates the licensing of certain activities which take place in UK waters, other than the Scottish inshore region (defined in section 322(1) of the 2009 Act). The Welsh offshore region is defined in section 322(1) to mean so much of the Welsh zone as lies beyond the seaward limits of the territorial sea. Welsh zone takes its meaning from section 158(1) and (3) of GoWA.

606 Section 113 of the 2009 Act contains the rules for determining which body is the appropriate licensing authority for any area. This varies depending on both the area and the nature of the activity. Subsection (2) amends section 113(4) so that Welsh Ministers are the appropriate licensing authority for Wales, the Welsh inshore region and the Welsh offshore region, unless the activity to be licensed falls within section 113(5) of the 2009 Act. In respect of those "reserved activities" the Secretary of State is the licensing authority.

607 Subsection (2)(b) amends the list of those "reserved activities" in section 113(5) so as to additionally reserve, in relation to the Welsh offshore region only, any activity falling within

the subject matter of Part 6 of the Merchant Shipping Act 1995 (pollution etc.) (MSA). This type of activity is licensable by the Secretary of State in relation to the Welsh offshore region.

- 608 Marine enforcement officers (MEOs) may be appointed under section 235 of the 2009 Act to carry out enforcement functions in relation to the marine licensing regime. Section 236 of the 2009 Act sets out the areas in which and the vessels and installations in relation to which a MEO may exercise enforcement powers. Subsection (3) of clause 44 amends section 236(2) of the 2009 Act so as to extend the activities in relation to which a MEO cannot exercise its enforcement powers to include: (i) an activity in the Welsh offshore region concerning or arising from the exploration for, or production of, petroleum; and (ii) any activity in the Welsh offshore region falling within the subject matter of Part 6 of the MSA.
- 609 Under section 240 of the 2009 Act, the Secretary of State is able to appoint persons to enforce the marine licensing regime in Part 4 of that Act, to the extent that it relates to the licensing of those “reserved activities”. Subsection (4) amends subsection 240(1)(b) of the 2009 Act so that the Secretary of State is able to appoint persons for enforcement purposes relating to any activity in Wales, the Welsh inshore region or the Welsh offshore region concerning the exploration for, or production of, petroleum.
- 610 Subsection (5) makes consequential amendments to section 241 of the 2009 Act so that enforcement officers appointed under that section do not have any powers to enforce Part 4 of the 2009 Act so far as relating to: (i) any activity concerning petroleum production or exploration in Wales, the Welsh inshore region or the Welsh offshore region; and (ii) any activity in the Welsh offshore region falling within the subject matter of Part 6 of the MSA.
- 611 Subsections (6) to (9) of this clause make consequential amendments to the Marine Licensing (Exempted Activities) (Wales) Order 2011 (“the 2011 Order”). The 2011 Order specifies activities which do not need a marine licence, or do not need a marine licence if conditions specified in the Order are satisfied. By virtue of Article 2 of the 2011 Order and subsection (2)(a) of clause 44, the 2011 Order applies in relation to any licensable marine activity carried on in Wales, the Welsh inshore region and the Welsh offshore region for which the Welsh Ministers are the appropriate licensing authority.

#### Clause 45: Marine conservation zones

- 612 This clause appoints the Welsh Ministers as appropriate authority in the Welsh offshore region allowing them to designate areas as marine conservation zones (MCZ) in that region pursuant to Part 5 (Nature Conservation) of the Marine and Coastal Access Act 2009 (the 2009 Act).
- 613 The Welsh offshore region is defined in section 322(1) of the 2009 Act.
- 614 Subsection (2)(b) states that the Welsh Ministers may not designate an MCZ that includes any part of the Welsh offshore region without agreement from the Secretary of State.
- 615 While both these clauses extend the exercise of Welsh Ministerial functions from Wales (which includes the territorial sea) to the Welsh offshore zone, exceptionally, paragraph 2 of Schedule 3A (as inserted by Schedule 4 to the Bill) extends functions exercisable in relation to Welsh fishing boats beyond the seaward limit of the Welsh zone.

### Chapter 15: Miscellaneous

#### Clause 46: Intervention in case of serious adverse impact on sewerage services etc

- 616 Legislative competence for sewerage was not previously conferred on the Assembly, and will be devolved as set out in reservation C15 of Schedule 7A or inserted by Schedule 1 to the Bill. This clause amends section 114 of GoWA by adding a new intervention power over the competence of the Assembly to pass an Act of the Assembly relating to sewerage. This

intervention power enables the Secretary of State to make an order prohibiting the Presiding Officer from submitting a Bill for Royal Assent where the Secretary of State has reasonable grounds to believe that the Bill, if it became an Act of the Assembly in that form, might have a serious adverse impact on sewerage services in England or sewerage systems in England. This intervention power is similar to one already held by the Secretary of State in relation to the devolution of matters relating to water.

617 This clause amends section 152 of GoWA by adding a new intervention power over executive functions. This intervention power enables the Secretary of State to intervene over any function exercisable by the Welsh Ministers, the First Minister or the Counsel General or any function conferred by an Assembly Measure or an Act of the Assembly, where it appears to the Secretary of State that the exercise of a relevant function (or the failure to exercise a relevant function) might have a serious adverse impact on sewerage services in England or sewerage systems in England. In such a case the person who had the power to exercise the function may not exercise that function, and the Secretary of State may exercise the function in their stead. This intervention power is similar to one already held by the Secretary of State in relation to the devolution of matters relating to water.

#### Clause 47: Transfer of functions in relation to excepted energy buildings

618 The regulation of buildings and building work is a reserved matter (see Section M4 of new Schedule 7A to GoWA). However functions under the Building Act 1984 to make building regulations and associated matters have been transferred to the Welsh Ministers by an order in 2009 that came into force in 2011. An exclusion from the transfer was made in relation to “excepted energy buildings”; that is buildings forming part of energy infrastructure. This clause removes this exclusion by making the necessary provision for the transfer of functions under the Building Act 1984 for that category of buildings.

#### Clause 48: Renewable energy incentive schemes: consultation

619 This clause creates a duty for the Secretary of State to consult Welsh Ministers before establishing or amending a renewable energy incentive scheme. A renewable energy incentive scheme is defined and includes the Renewable Heat Incentive, Renewables Obligation, Feed-in Tariff and Contracts for Difference. The duty to consult will not apply where amendments of a minor or technical nature are being made. Nor is there a duty to consult in relation to the creation of a levy to fund an incentive scheme.

### Part 3: Miscellaneous

#### Clause 49: Provision of information to the Office for Budget Responsibility

620 This clause inserts a new section 66A into GoWA to enable the Office of Budget Responsibility to obtain such Welsh information as it may reasonably require to fulfil its statutory duty. This information will be used to produce forecasts and analysis of the economy and the public finances.

621 Inserted subsection (1) provides that the Office has a right of access to such Welsh information as may reasonably be required for it to report on the sustainability of the public finances. This includes information which may reasonably be required to produce fiscal and economic forecasts, and to assess the likely or actual achievement of the fiscal mandate. The Office’s right of access to this information can be exercised at any reasonable time. The Office also has a right to assistance and explanation in relation to this information, set out in subsection (2).

622 Inserted subsection (4) specifies that the Office will receive information in compliance with any statutory provision (such as the Data Protection Act 1998) or common law rules (such as duties of confidentiality). The Office will not have access to confidential information relating to

taxpayers and any information that is received will comply with data protection principles. The Office has not required access to such information in exercising its current forecasting functions.

### Clause 50: Gas and Electricity Markets Authority

623 Subsection (1) of this clause amends section 37 of GoWA, which gives the Welsh Assembly power to require persons to attend its proceedings to give evidence or to produce documents. A new subsection (6A) is inserted in section 37 to give the Assembly power to impose such requirements in connection with the discharge of the functions of the Gas and Electricity Markets Authority (“the Authority”) in relation to Wales.

624 Subsections (2) and (3) amend sections 5 and 5XA of the Utilities Act 2000 (“the 2000 Act”).

625 Section 5 of the 2000 Act, as amended by the Scotland Act 2016, requires the Authority to send its annual report to the Secretary of State, and imposes a duty on the Secretary of State to lay that report before both Houses of Parliament and send a copy to the Scottish Ministers. Subsection (2) amends that section to require the Secretary of State to send the annual report to the Welsh Ministers (as well as the Scottish Ministers), and to require the Welsh Ministers to lay a copy of each report before the Assembly.

626 Section 5XA of the 2000 Act, as inserted by the Scotland Act 2016, requires the Authority to send a copy of its certified accounts and report to the Scottish Ministers each year. Subsection (3) amends that section to require the Authority to send its certified accounts and report to the Welsh Ministers (as well as the Scottish Ministers), and to require the Welsh Ministers to lay copies of those documents before the Assembly

### Clause 51: Licensing of coal-mining operations: approval by Welsh Ministers

627 This clause provides that where a coal operator wants to mine in Wales, it must seek the approval of the Welsh Ministers as part of its application for a licence to do so.

### Clause 52: Office of Communications

628 Ofcom is the UK-wide independent communications regulator overseeing television, radio, telecoms, mobiles, postal services and the airwaves. It was established by the Office of the Communications Act 2002 (“the 2002 Act”).

629 Section 1 of the 2002 Act provides that the Secretary of State appoints the chairman and other members of Ofcom. Subsections (2) and (3) of this clause amend section 1 of the 2002 Act to provide that the Welsh Ministers shall appoint one member of Ofcom and, before doing so, they must consult the Secretary of State. Subsection (4) also amends section 1(5) to ensure that the member appointed by the Welsh Ministers is involved in the appointment of any executive members of Ofcom.

630 The Schedule to the 2002 Act makes further provision about Ofcom including qualification for membership, tenure of office, accounts & audit and annual reports. Subsection (5) of this clause amends the application of the Schedule in relation to the member of Ofcom appointed by the Welsh Ministers. The functions relating to ensuring that a person being appointed to Ofcom does not have any conflict of interest and the functions relating to a member’s resignation or removal for office are conferred on the Welsh Ministers. The member may only be removed from office by the Welsh Ministers following consultation with the Secretary of State.

631 Subsection (7) of this clause amends the Schedule to the 2002 Act to require the Comptroller and Auditor General to send a copy of Ofcom’s statement of accounts and his report to the Welsh Ministers and for the Welsh Ministers to lay those documents before the Assembly. Similarly, subsection (8) amends the Schedule to the 2002 Act to require Ofcom to send its

annual report to the Welsh Ministers and for the Welsh Ministers to lay the report before the Assembly.

## Part 4: General

### Clause 53: Consequential provision

632 Subsection (1) incorporates Schedule 5, which makes minor and consequential amendments.

633 Subsections (2)-(5) create a power for the Secretary of State to make regulations amending primary or secondary legislation, which the Secretary of State consider appropriate in consequence of any provision in the Bill.

634 Subsection (6) requires regulations made under subsection (2) to be made by affirmative resolution procedure in both Houses of Parliament, if the regulations amend primary legislation.

635 Subsection (7) requires regulations made under subsection (2) to be made by negative resolution procedure in Parliament, if the regulations do not amend primary legislation.

636 Subsection (8) clarifies that "primary legislation", for the purposes of this section, includes Measures and Acts of the Assembly, as well as Acts of Parliament.

### Schedule 5: Minor and consequential amendments

637 This Schedule contains further amendments to existing legislation in consequence of the Bill.

#### **Part 1: Amendments of the Government of Wales Act 2006**

638 Part 1 of Schedule 5 contains minor and consequential amendments to GoWA relating to Part 1 of the Bill. The changes are primarily a consequence of the conferred powers model being replaced by a reserved powers model.

639 Paragraph 2 omits sections 103-106A which dealt with the commencement of the Assembly Act provisions. As the Assembly Act provisions were already commenced on 5 May 2011 and have now also been replaced by the legislative competence provisions in this Bill, these sections are redundant.

640 Paragraph 3 updates section 109 of GoWA so that it includes the correct references to the new reserved powers model, for example Schedules 7A and 7B instead of Schedule 7.

641 Paragraph 3(3) omits the requirement provision in section 109(4)(b) which states that the first ever Order in Council under section 109 does not require Assembly approval. The first section 109 Order has already been made so this provision is now redundant.

642 Paragraph 3(4) replaces section 109(5) to ensure that future alterations to Schedules 7A or 7B do not affect the validity of Assembly Acts already passed unless the enactment making the alteration provides otherwise.

643 Paragraph 4 updates section 114 of GoWA so that it refers to reserved matters under Schedule 7A instead of matters not listed (or excepted) under Schedule 7.

644 Paragraph 5 amends section 116 of GoWA which concerns the Welsh Seal and Letters Patent. These amendments allow Her Majesty by Order in Council to make provision as to the form, content and publication of royal proclamations under sections 4(2) and 5(4) of GoWA as amended by clause 6.

645 Paragraph 6 updates section 116B of GoWA so that it refers to the new legislative competence tests under section 108A(2)(b) and (c) instead of the old tests under section 108(4) and (5).

- 646 Paragraph 7 amends section 157 of GoWA to include references to regulations as well as orders, which may be made by Ministers of the Crown and Welsh Ministers under GoWA.
- 647 Paragraph 8 updates section 159 of GoWA so that it includes the definitions that are relevant to the new reserved powers model.
- 648 Paragraph 9 omits a (now redundant) reference to the Assembly Act provisions in section 161(7) of GoWA. See the explanation above in relation to paragraph 2 of this Schedule.
- 649 Paragraph 10 omits Schedule 6 to GoWA, which dealt with the 2011 referendum in Wales because these are no longer operative.
- 650 Paragraph 11 omits (now redundant) amendments to the National Audit Act 1983 that were made in Schedule 10 to GoWA.

## **Part 2: Amendments relating to onshore petroleum**

- 651 Part 2 makes a number of consequential amendments relating to onshore petroleum licensing.
- 652 Paragraph 12 amends section 4 (licences: further provisions) of the Petroleum Act 1998.
- 653 Subsection (2) amends subsections (1A), (1B) and (1C) (which are also inserted into the Petroleum Act by the Scotland Act 2016). The amendments to these subsections have the effect of reserving, for the Secretary of State, regulatory powers to make model clauses in relation to the consideration payable for a licence granted by Welsh Ministers as well as: (a) the measurement and facilitation of measurement of petroleum obtained from the licensed areas and (b) the keeping of accounts. The powers of the Welsh Ministers do not, therefore, extend to the drafting of model clauses on the above matters or to the modification or exclusion of such clauses.
- 654 Sub-paragraph (3) inserts a new subsection (3B) into section 4 of the Petroleum Act 1998 to establish that any regulations under section 4 made by the Welsh Ministers shall be made as statutory instruments subject to the annulment in pursuance of a resolution of the Assembly.
- 655 Sub-paragraph (4) inserts a new subsection (4B) into section 4 of the Petroleum Act 1998 which requires Welsh Ministers to publish notices of licenses granted by them for the Welsh onshore area in such a manner as they think appropriate.
- 656 Paragraph 13 amends section 4A of the Petroleum Act 1998, to transfer functions from the Secretary of State in relation to hydraulic fracturing consents to the Welsh Ministers as regards wells in the Welsh onshore area. These functions include the conditions regulating the issuance of such consent by the Secretary of State or the Welsh Ministers.
- 657 Paragraph 14 amends section 4B of the Petroleum Act 1998, which contains further provision about the issue of hydraulic fracturing consents. Sub-paragraph (2) and (3) amend subsections (4)(a), (4)(b) and (7) of section 4B to limit to the English onshore area (which is defined in a new subsection (7) inserted in section 8A by clause 22 (4) as England including waters inside of the “baseline” by which the extent of territorial sea is established) the Secretary of State’s power to make regulations by means of statutory instrument with regard to the descriptions of areas which are “protected groundwater source areas” and with regard to those which are “other protected areas”. The subsections, as amended, require the Secretary of State to consult the Environment Agency.
- 658 Sub-paragraph (4) inserts new subsections (7A), (7B) and (7C) into section 4B into the Petroleum Act 1998 to provide Welsh Ministers with the power to make regulations by means of statutory instrument on the descriptions of areas which are “protected groundwater source areas” and “other protected areas” insofar as these apply to the Welsh onshore area. Any draft

instrument must be laid before and approved by a resolution of the Assembly before such a statutory instrument can be made. The Welsh Ministers are required to consult the Natural Resources Body for Wales before making such regulations.

- 659 Sub-paragraph (5) amends subsection (8) to specify that the Environment Agency is the relevant environmental regulator for wells in the English onshore area and that the Natural Resources Body for Wales is the relevant environmental regulator for wells in the Welsh onshore area. The subsection also aligns the definition of a well consent to reflect the devolution of such consents to “the appropriate Minister”.
- 660 Sub-paragraph (6) restricts the power of the Secretary of State in subsection (9) of section 4B to amend the definition of “onshore licence for England and Wales” in consequence of regulations made under section 4. So, if the amendment is made, the Secretary of State will only be able to amend the definition as it applies in the English onshore area, and the Secretary of State will only be able to exercise the power in consequence of his own exercise of the power in section 4 of the Petroleum Act (and not in consequence of the exercise of the same power by the Welsh Ministers).
- 661 Sub-paragraph (7) inserts subsection (9A) into section 4B to provide an equivalent power to that in subsection (9) (as amended by paragraph (e)) to the Welsh Ministers.
- 662 Sub-paragraph (8) amends subsection 4B(10) to limit to the English onshore area the power of the Secretary of State to make amendments in relation to the requirements to be fulfilled before issuing a hydraulic fracturing consent set out in Column 2 of the table in section 4A.
- 663 Sub-paragraph (9) inserts subsection (12) and (13) into section 4B. Subsection (12) provides Welsh Ministers with the power to amend by regulations the requirements set out in Column 2 of the table in section 4A so far as related to the Welsh onshore area. A draft instrument must be laid before and approved by a resolution of the National Assembly for Wales before such a statutory instrument can be made (see new subsection (13)).
- 664 Paragraph 15 amends section 14B(7)(2)(d) of the Petroleum Act 1998, which determines the effects of the Mines (Working Facilities and Support) Act 1966 when applied to licensing under the Petroleum Act 1998, by specifying that, within section 4 of that Act, “the Minister” shall refer to Welsh Ministers for licences granted in the Welsh onshore area.
- 665 Paragraph 16 amends section 12 (interpretation of Part 1) of the Oil Taxation Act 1975. To put Welsh Ministers in the same position as the Oil and Gas Authority, including that the revocation of a licence be Welsh Ministers to the list of cessation events by which a person ceases to be a licensee in relation to oil fields.
- 666 Paragraph 17 amends paragraph 1(2) of Schedule 1 to the Oil Taxation Act 1975 by inserting new paragraphs (ac) and (ad) after paragraphs (aa) and (ab) (which are inserted by the Scotland Act 2016). These new paragraphs limit the powers of the Secretary of State for determining oil fields to those areas that are such that the granting of a licence within them, under Part 1 of the Petroleum Act 1998, would fall exclusively to the Secretary of State. Where areas are such that the granting of a licence within them would fall exclusively to the Welsh Ministers, they become the appropriate authority for determining oil fields. Where areas are such that the granting of licences partially fall to the Secretary of State and partially fall to the Welsh Ministers, these shall act jointly for the purposes of determining oil fields.
- 667 Paragraphs 18 to 20 amend provisions in the Taxation of Chargeable Gains Act 1992, the Finance Act 1993 and Capital Allowances Act 2001 to reflect that in future the Welsh Ministers will be the licensing authority for the Welsh Onshore Area.
- 668 Paragraph 21 inserts a new subsection (13) into section 188 of the Energy Act 2004 to attribute, to Welsh Ministers, powers to make provisions that require the payment of charges to them in

respect of their carrying out their relevant energy functions under Part 1 of the Petroleum Act 1998. The sums received under such charges must be paid by the Welsh Ministers into the Welsh Consolidated Fund. The provisions to require payment of such charges are to be set out by means of statutory instruments, subject to annulment in pursuance of a resolution of the Assembly.

669 Paragraphs 22 to 24 amend provisions in the Corporation Tax Act 2010 to reflect that in future the Welsh Ministers will be the licensing authority for the Welsh Onshore Area.

670 Paragraphs 25 to 29 make minor and consequential amendments to the Infrastructure Act 2015 to take account of the devolution to the Assembly of powers in relation to the use of deep-level land for the purposes of exploiting petroleum and deep geothermal energy.

### **Part 3: Amendments of other Acts**

671 Part 3 of Schedule 5 contains minor amendments to various Acts of Parliament (other than GoWA) that are required in consequence of the Bill. However, this Part 3 does not include amendments in consequence of the onshore petroleum provisions in the Bill (as to which, see Part 2 of Schedule 5).

672 Clause 13 of this Bill repeals Section 136 of GoWA, which removes from the Comptroller and Auditor General the power to audit payments into and out of the Wales consolidated fund and Wales public authorities. Consequently, paragraphs 30 to 32 amend the National Audit Act 1983 to remove the Comptroller and Auditor General's power to carry out value for money studies on Welsh public bodies.

673 Paragraphs 33-40 of Schedule 5 amends the following provisions of the Road Traffic Regulation Act 1984:

674 Paragraph 33 amends section 17 (traffic regulation on special roads), in relation to special roads in Wales to provide that the power of the Secretary of State can only be exercised after consultation with Welsh Ministers; and that before regulating, Welsh Ministers must consult the National Park authority for any National Park affected.

675 Paragraph 34 amends section 65 (Powers and duties of traffic authorities as to placing of traffic signs), to enable the relevant authority to give general directions under section 65(1). Relevant authority is defined in the same way as section 25. This section is also amended to ensure that Welsh Ministers, when exercising their power to give general directions, do so by statutory instrument.

676 Paragraph 35 amends section 72 (powers exercisable by parish or community councils) to provide that nothing in this section should prejudice the exercise of the section 69 powers by the highways authority, Welsh Ministers or Secretary of State.

677 Paragraph 36 amends section 81 (general speed limit for restricted roads) to: enable the national authority to exercise the power by order to increase or reduce the speed limit for motor vehicles on restricted roads; provide that any such order made by Welsh Ministers is subject to the affirmative procedure; and require the Welsh Ministers or the Scottish Ministers and the Secretary of State to consult each other before making any such order.

678 Paragraph 37 amends section 83 (provisions as to directions by a traffic authority under section 82(2)), to provide that the power of Welsh Ministers to make a direction that a road should be, or cease to be, a restricted road, is exercisable by statutory instrument.

679 Paragraph 38 amends section 85 (traffic signs for indicating speed restrictions), to provide that the power of the Welsh Ministers to give general directions is to be exercisable by statutory

instrument; and to require the Welsh Ministers or the Scottish Ministers and the Secretary of State to consult each other before exercising their powers to give general directions.

680 Paragraph 39 amends section 88 (temporary speed limits), to provide that the first order made by Welsh Ministers imposing a temporary speed limit should not be made until a draft has been approved by a resolution of the Assembly; and that the power of Welsh Ministers to make an Order is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the Assembly.

681 Paragraph 40 amends section 134 (regulations), to:

- a. require the Secretary of State to consult with Welsh Ministers before making regulations under section 25 or 64,
- b. ensure that any regulations made by Welsh Ministers are made by statutory instrument,
- c. require Welsh Ministers to consult with representative organisations before making regulations under any provision of the Act (except in relation to sections 103(1), 108 to 110, Schedule 4, Schedule 8 and Schedule 12),
- d. provide that a statutory instrument containing regulations made by Welsh Ministers is to be subject to the negative procedure (except in relation to section 86),
- e. make Welsh Ministers' regulations under section 86 subject to the affirmative procedure in the Assembly, and
- f. require Welsh Ministers to consult the Secretary of State before making regulations under section 25 or 64.

682 Paragraph 41 amends section 134 of the Transport Act 1985 (regulations, rules and orders) to specify the types of provisions that the Welsh Ministers can make using their new powers under that Act.

683 Paragraph 42 amends section 135 of the Transport Act 1985 (procedure for making regulations, rules and orders) to provide that the Welsh Ministers' new powers under that Act are exercisable by statutory instrument, are subject to negative resolution procedure in the Assembly, and that Welsh Ministers must consult such representative organisations as they think fit before making the regulations.

684 Paragraph 43 amends section 36 of the Road Traffic Act 1988 (offence of failing to comply with traffic sign). This amendment replaces references to "national authority" in section 36(1)(b) and (3)(a) with references to the new definition of "relevant authority". Section 36(6) is amended to require the Secretary of State to consult Welsh Ministers before making regulations under section 36(5). Similarly, section 36(7) is amended so that Welsh Ministers must consult the Secretary of State before making regulations under that subsection.

685 Paragraph 44 amends section 36 of the Electricity Act 1989 (consents required for construction etc. of generating stations) to give Welsh Ministers the power to determine the process applicable to those applications for consent which are made to them under either section 36 or 37 of that Act.

686 Paragraph 45 amends section 106 of the Electricity Act 1989 (regulations and orders) to provide that the Welsh Ministers' new powers under sections 36 and 36C of, and paragraph 1(4) of Schedule 9 to, that Act, are exercisable by statutory instrument and are subject to negative resolution procedure in the Assembly.

687 Paragraph 46 amends Schedule 8 to the Electricity Act 1989, which is consequential on the amendment above to section 36 of that Act.

- 688 Paragraph 47 amends paragraph 1 of Schedule 9 to the Electricity Act 1989 (preservation of amenity and fisheries) so that it refers to the new definition of “appropriate authority”, which includes the Welsh Ministers (see clause 36(11) of the Bill).
- 689 Paragraph 48 updates section 45A(4) of the Human Fertilisation and Embryology Act 1990 to remove redundant references to Assembly Measures and to the transitional period from Assembly Measures to Assembly Acts.
- 690 Paragraph 30 of this Schedule removes from the Comptroller and Auditor General the power to carry out value for money studies on Welsh public bodies. Consequently, paragraphs 49 and 50 amend the Government of Wales Act 1998 to reflect that the Comptroller and Auditor General no longer have this power in relation to certain Wales public authorities; and paragraph 51 amends the Care Standards Act 2000 to make the same change in relation to the Children’s Commissioner for Wales.
- 691 Paragraph 52 updates section 7(9) of the Local Government Act 2000 to replace a reference to section 108 of GoWA with a reference to section 108A.
- 692 Paragraph 53 updates section 5C(4)(a) and (5) of the Female Genital Mutilation Act 2003 to refer to the new definition of Wales public authority, as created by new section 157A of GoWA (inserted by clause 4 of the Bill).
- 693 Paragraph 54 and 55 amend the Energy Act 2004 to make provision to the effect that where Welsh Ministers make Regulations under that Act, those Regulations are subject to the negative resolution procedure.
- 694 Paragraph 30 of this Schedule removes from the Comptroller and Auditor General the power to carry out value for money studies on Welsh public bodies. Consequently, paragraph 56 and 57 amends the Public Services Ombudsman (Wales) Act 2005 and the Commissioner for Older People (Wales) Act 2006 to reflect that the Comptroller and Auditor General no longer have this power in relation to the ombudsman and the commissioner.
- 695 Paragraphs 58 and 59 update sections 24 and 27 of the Legislative and Regulatory Reform Act 2006 to accurately refer to the new reserved powers model as set out in section 108A of GoWA.
- 696 Paragraph 60 updates section 66(3) of the Statistics and Registration Service Act 2007 to refer to the new definition of Wales public authority, as created by new section 157A of GoWA (inserted by clause 4 of the Bill).
- 697 Paragraph 61 updates section 37(5) of the Consumers, Estate Agents and Redress Act 2007 to remove redundant references to Assembly Measures and to the transitional period from Assembly Measures to Assembly Acts.
- 698 Paragraph 62 updates section 74 of the Regulatory Enforcement and Sanctions Act 2008 to replace a reference to section 108 of GoWA with a reference to section 108A.
- 699 Paragraph 63 updates section 64(6) of the Human Fertilisation and Embryology Act 2008 to remove redundant references to Assembly Measures and to the transitional period from Assembly Measures to Assembly Acts.
- 700 Paragraph 64 updates section 70(4)(b) and (6)(b) of the Climate Change Act 2008 to accurately refer to the new model of devolution created by the Bill.
- 701 Paragraphs 65 to 67 amend the Planning Act 2008 so that section 202 is repealed as well as making consequential amendment due to the fact that the Welsh Ministers will be able to issue marine licences in Welsh waters beyond the territorial sea.
- 702 Paragraph 68 amends section 12 of the Marine and Coastal Access Act 2009 (certain consents under section 36 of the Electricity Act 1989) (the 2009 Act) to exclude any area of the Welsh

inshore region and Welsh offshore region from the waters in respect of which the Marine Management Organisation (MMO) exercises the consent functions under section 12.

703 Paragraph 69 amends section 13 of the 2009 Act (safety zones: functions under section 95 of the Energy Act 2004) to exclude any area of the Welsh inshore region and Welsh offshore region from the waters in respect of which the MMO exercises the consent functions under section 13.

704 Paragraph 70 updates section 60(4)(c) of the Marine and Coastal Access Act 2009 to accurately refer to the new model of devolution created by the Bill.

705 Paragraph 71 amends section 78 of the 2009 Act. This section provides for a special procedure in cases where a marine licence is required and an application for a harbour order (for example in respect of certain harbour works) has been, or is likely to be, made. Paragraph 71 amends section 78 to allow Welsh Ministers to make provision in regulations about the procedure for determining applications where this section applies and where the Welsh Ministers are both the marine licence authority and the harbour order authority. By way of example, Welsh Ministers can make provision within section 78(7) for cases where they are both the marine licence authority and the harbour order authority and where they have decided (in accordance with section 78(3) or (5)) that the two applications are to be considered together and have given notice of that decision to the applicant.

706 Paragraph 72 amends section 79 of the 2009 Act. This section provides for a special procedure in cases where both a marine licence and consent under section 36 of the Electricity Act 1989 are required. Paragraph 72 amends section 79 to allow Welsh Ministers to make provision in regulations about the procedure for determining applications where this section applies and where the Welsh Ministers are both the marine licence authority and the generating station authority. Paragraph 72 also amends the definition of generating station authority to include Welsh Ministers where they are responsible for determining the application for consent under section 36 of the Electricity Act 1989.

707 Paragraph 73 updates section 45(2)(c) of the Welfare Reform Act 2009 to remove redundant references to Assembly Measures and to the transitional period from Assembly Measures to Assembly Acts.

708 Paragraphs 74 and 75 update sections 2 and 157 of the Equality Act 2010 to make use of the new definition of Wales public authority, as created by new section 157A of GoWA (inserted by clause 4 of the Bill) and to accurately refer to the new model of devolution created by the Bill.

709 Paragraph 76 updates section 28(3)(a) of the Flood and Water Management Act 2010 to accurately refer to the new model of devolution created by the Bill.

710 Paragraphs 77 and 78 update Schedules 5 and 6 to the Budget Responsibility and National Audit Act 2011 to remove redundant references to consequential amendments that have already been made.

711 Paragraph 79 updates Schedule 16 to the Police Reform and Social Responsibility Act 2011 to remove a redundant reference to a consequential amendment that has already been made.

712 Paragraphs 80 and 81 update sections 51 and 61 of the Localism Act 2011 to replace a reference to section 108 of GoWA with a reference to section 108A.

713 Paragraph 82 updates Schedule 13 to the Localism Act 2011 to remove a redundant reference to a consequential amendment that has already been made.

714 Paragraph 83 updates Schedule 3 to the Protection of Freedoms Act 2012 to accurately refer to the new model of devolution created by the Bill.

- 715 Paragraph 84 updates Schedule 12 to the Energy Act 2013 to remove a redundant reference to a consequential amendment that has already been made.
- 716 Paragraph 85 updates Schedule 4 to the Public Audit (Wales) Act 2013 to remove a redundant reference to a consequential amendment that has already been made.
- 717 Paragraph 86 updates Schedule 11 to the Anti-social Behaviour, Crime and Policing Act 2014 to remove a redundant reference to a consequential amendment that has already been made
- 718 Paragraph 87 omits paragraph 135 from Schedule 7 to the Water Act 2014 because it makes a consequential amendment to Schedule 7 to GoWA. The paragraph 135 amendment has not yet been commenced and, as Schedule 7 to GoWA is being replaced by new Schedule 7A, paragraph 135 will become otiose following the principal appointed day and the commencement of the reserved powers model.
- 719 Paragraphs 88, 89 and 90 update the Wales Act 2014 to remove redundant references to a consequential amendments that have already been made.
- 720 Paragraphs 91, 92 and 93 update sections 29, 30 and 35 of the Counter-Terrorism and Security Act 2015 respectively to refer to the new definition of Wales public authority, as created by new section 157A of GoWA (inserted by clause 4 of the Bill) and to accurately refer to the new model of devolution created by the Bill.
- 721 Paragraph 94 updates section 109 of the Deregulation Act 2015 to accurately refer to the new model of devolution created by the Bill.
- 722 Paragraphs 95-99 update various provisions in the Small Business, Enterprise and Regulatory Reform Act 2015 to refer to the new definition of Wales public authority, as created by new section 157A of GoWA (inserted by clause 4 of the Bill), to accurately refer to the new model of devolution created by the Bill, and to refer to section 108A of GoWA instead of section 108.
- 723 Paragraph 100 and 101 update sections 207 and 208 of the Housing and Planning Act 2016 to refer to the new definition of Wales public authority, as created by new section 157A of GoWA (inserted by clause 4 of the Bill).
- 724 Paragraph 102 updates section 78 of the Immigration Act 2016 to accurately refer to the new model of devolution created by the Bill.

#### Clause 54: Transitional provision and savings

- 725 Subsection (1) incorporates Schedule 6, which makes transitional and savings provisions that are required in relation to the Bill's provisions.
- 726 Subsection (2) creates a regulation making power for the Secretary of State to make additional transitional or savings provisions which appear appropriate in relation to the Bill.
- 727 Subsection (3) clarifies that the subsection (2) power includes the ability to make savings resulting from any amendment, repeal or revocation made by the Bill.
- 728 Subsection (5) provides that Schedule 6 does not limit the subsection (2) power and, indeed, that Schedule can itself be modified by the subsection (2) power.
- 729 Subsection (6) provides that neither Schedule 6, nor regulations made under subsection (2) affect section 16 or 17 of the Interpretation Act 1978. This is necessary, in particular, to ensure that section 17(2)(a) of the 1978 Act applies. That section provides that where an Act repeals and re-enacts a previous enactment (unless the contrary intention appears) any reference to the repealed enactment elsewhere on the statute book is to be read as referring to the re-enacted provision. Similarly, secondary legislation and other things done under the repealed enactment, are to be read as if made or done under the re-enacted provision.

730 Subsection (7) requires regulations under subsection (2) to be made by statutory instrument.

731 Subsection (8) provides for regulations under subsection (2) to be subject to negative resolution procedure in Parliament.

## Schedule 6: Transitional provisions

732 This Schedule contains transitional provisions.

733 Paragraph 1 ensures that none of the Bill's provisions do anything to affect the validity (and continuing operation and effect) of any Assembly Act or Measure that has been passed before the amendments in the Bill take effect.

734 Paragraph 2 provides that the new legislative competence tests (as inserted by clause 3 and Schedules 1 and 2) only apply to an Assembly Act if the relevant Bill passed Stage 1 on or after the principal appointed day. Passing Stage 1 means the Assembly has voted in favour of the Assembly Bill's general principles. The principal appointed day is to be set out in regulations made by the Secretary of State under clause 55(3).

735 Paragraph 3 has the effect that in the period beginning the date two months after Royal Assent and ending on the date of the principal appointed day, the Assembly will have the legislative competence to amend the sections of GoWA that provide for the name of the Assembly, the name of the Assembly Commission and what Acts of the Assembly are to be called. This is to allow the Assembly to effect a name change before the principal appointed day if it so wishes.

736 Paragraph 4 provides that the Bill's repeal of section 105 of GoWA does not affect the continuing operation of an amendment to an enactment made by an order under section 105(2). However, that is subject to an amendment or repeal of such an enactment made by this Bill.

737 Paragraph 5 clarifies that the Bill's repeal of section 106(2) of GoWA does not affect the continuing operation of the saving section 106(2) makes in relation to the continuing effect of Assembly Measures.

738 Paragraph 6 contains transitional provisions which apply generally where functions are devolved to Welsh Ministers by other provisions of the Bill. The validity of pre-commencement actions is preserved and anything that is in the process of being done on commencement may be continued by Welsh Ministers. The paragraph does not apply where alternative transitional provision is made on the face of the Bill in connection with the devolution of functions to Welsh Ministers. Transitional provisions may also be made in regulations under the powers conferred by clause 54(2).

739 Paragraph 7 makes transitional provision regarding licensed water suppliers and water supply licensees (as defined in the Water Industry Act 1991). Until all the relevant reforms made by the Water Act 2014 come into force and, thereby, completely replace licensed water suppliers with water supply licensees, the reservation in the Bill for water and sewerage (Section C15 of new Schedule 7A) will continue to refer to both types of water supplier.

740 Paragraph 8 makes transitional provision relating to the amendments made by clauses 37 and 40. Applications accepted by the consenting authority before the reserved powers model is brought into force will continue to be decided by that authority to which the application was made under the Planning Act 2008 or Electricity Act 1989.

741 Paragraph 9 makes transitional provision so that:

(a) marine licences issued by the Secretary of State or the Marine Management Organisation (MMO) in relation to the Welsh offshore region prior to the commencement date continue to be valid (sub-paragraph (1)). Sub-paragraph (5) applies the powers available to Welsh Ministers under section 72 of the 2009 Act (variation, suspension, revocation, transfer) to such licences.

(b) any application for a marine licence under Part 4 of the 2009 Act which is made before the commencement date continues to be determined by the appropriate licensing authority who was responsible for the application at the date it was made (sub-paragraph (2)). For example, an application made prior to the commencement date for which the MMO is responsible (under powers delegated by the Marine Licensing (Delegation of Functions) Order 2011 as amended) will proceed to be determined by the MMO; and

(c) any appeal against:

(i) a marine licence decision under section 71 of the 2009 Act; or

(ii) the issue of any enforcement notice, stop notice and emergency safety notice issued under sections 72, 90, 91, 102, or 104 of that Act respectively, which is made before the commencement date continues to be governed by the appeals regime which applied at the time the appeal was made (sub-paragraph (4)).

742 The commencement date is defined in sub-paragraph (6) as the date on which section 44 takes effect).

743 Paragraphs 10 and 11 provide that the amendments made by Clause 39 of the Bill do not apply to applications made under section 95(3)(a) of the Energy Act 2004 before that clause comes into effect.

## Clause 55: Commencement

744 Clause 55 details the commencement arrangements for the Bill.

745 Subsection (1) provides that the consequential provisions in clause 53(2)-(8), the transitional provisions in clause 54 and Schedule 6, the commencement provisions in clause 55 and the short title provision in clause 56 all commence on Royal Assent.

746 Subsection (2) provides that clauses 1, 2, 14, 15, 16 and 17 all commence two months after Royal Assent. The same provision is made for clauses 9 and 10, but only so far as they relate to a provision of an Assembly Bill that would change the name of the Assembly (or confer power to do so). In other words, the super-majority provisions in clauses 9 and 10 only commence two months after Royal Assent to the extent required for the commencement of clause 16 on that date.

747 Subsection (3) states that clause 3, Schedule 1 and Schedule 2 (which add section 108A, Schedule 7A and Schedule 7B respectively to GoWA) will commence on the “principal appointed day” which is to be set out in regulations made under this subsection. The Welsh Ministers and the Assembly’s Presiding Officer must be consulted by the Secretary of State before such regulations are made.

748 Subsection (4) allows the Secretary of State to commence the remaining provisions of the Bill by regulations, either on the principal appointed day or another date. The commencement of the remaining provisions of the Bill is not subject to the consultation requirement of subsection (3).

749 Subsection (5) provides that the power to make regulations under this clause is exercisable by statutory instrument.

750 Subsection (6) requires a four month period between the regulations under subsections (3) or

(4) being laid, and the “principal appointed day” under subsection (3) or other commencement day under subsection (4).

751 Subsection (7) allows regulations under this clause to appoint different days for different purposes. However, this does not apply to the commencement of the reserved powers model (clause 3 and Schedules 1 and 2).

## Clause 56: Short title

752 Clause 56 states that the Act may be cited as the Wales Act 2016.

## Commencement

753 Commencement of the provisions of the Bill is specified in Clause 56.

## Financial implications of the Bill

754 The Wales Bill is a piece of constitutional, enabling legislation which itself does not trigger immediate financial implication. It will be for the Assembly to determine how they will use the devolved powers, and assess the financial impact of their policy choices.

## Compatibility with the European Convention on Human Rights

755 The Parliamentary Under Secretary of State for Wales has made a statement under section 19(1)(a) of the Human Rights Act 1998 that, in his view, the provisions of the Wales Bill are compatible with the Convention rights, on introduction of the Bill in the Lords.

756 Provisions of the Wales Bill will not engage any ECHR rights. Although the Bill changes the basis of the Assembly’s legislative competence, no change is being made to the restriction which currently applies on the Assembly making legislation that is incompatible with the Convention rights. The restriction contained in section 108(6)(c) of GoWA is being re-enacted in new section 108A(2)(e) of that Act.

757 The Bill will transfer to Welsh Ministers certain powers to make delegated legislation. However, no modification is proposed to section 81 of GoWA which provides that the Welsh Ministers have no power to make any subordinate legislation or do any other act so far as the legislation or act is incompatible with any of the Convention rights.

## Related documents

758 The following documents are relevant to the Bill and can be read at the stated locations:

- Powers for a Purpose: Towards a lasting devolution settlement for Wales 2015:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/408587/47683\\_CM9020\\_ENGLISH.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408587/47683_CM9020_ENGLISH.pdf)
- Empowerment and Responsibility: Legislative Powers to Strengthen Wales 2014:  
<http://webarchive.nationalarchives.gov.uk/20140605075122/http://commissionon>

[devolutioninwales.independent.gov.uk/files/2014/03/Empowerment-Responsibility-Legislative-Powers-to-strengthen-Wales.pdf](http://devolutioninwales.independent.gov.uk/files/2014/03/Empowerment-Responsibility-Legislative-Powers-to-strengthen-Wales.pdf)

- Wales Act 2014: <http://www.legislation.gov.uk/ukpga/2014/29>
- Empowerment and Responsibility: Financial Powers to Strengthen Wales 2012: <http://webarchive.nationalarchives.gov.uk/20140605075122/http://commissionondevolutioninwales.independent.gov.uk/files/2013/01/English-WEB-main-report1.pdf>

## Annex A - Territorial extent and application

759 The table below sets out the position at Introduction and is subject to change.<sup>1</sup>

760 All of the clauses in the Bill extend to the whole of the UK. The Bill resets the devolution boundary in Wales, whilst also devolving further powers to the Welsh Assembly and the Welsh Ministers. As such, the Bill is of constitutional significance to the whole of the UK.

761 The UK Government's (UKG) view is that, because of the importance of the Bill to the UK's constitution, the majority of the clauses have more than a minor or consequential effect on Scotland and Northern Ireland; they go to the heart of where the power to legislate rests in the UK.

762 Clauses 1-8, 17-45 and 47-56 are all considered to be in the same category of sufficient constitutional significance to have UK-wide application.

763 Clauses 9-16 only have application to Wales as they relate to the Welsh Assembly's internal procedures and arrangements. They therefore do not have any more than minor or consequential application to England, Scotland and/or Northern Ireland.

764 Clause 46 is the anomaly. It creates a power for the Secretary of State to intervene where there is a serious adverse impact on sewerage services in England, caused by Assembly legislation or by Welsh Ministers. This applies only to England and Wales, but an equivalent Secretary of State intervention power would not be within the competence of the Scottish Parliament or Northern Ireland Assembly.

Provision	Extends to E & W and applies to England ?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the Assembly?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
1 Constitutional arrangements Clauses 1-8	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (W)
1 Constitutional arrangements Clauses 9-16	No	Yes	No	No	N/A	N/A	N/A	Yes (W)
1 Constitutional arrangements Clauses 17-22	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (W)

<sup>1</sup> References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the Assembly or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Provision	Extends to E & W and applies to England ?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the Assembly?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
2 Legislative and executive competence: further provision Clauses 23-45	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (W)
2 Legislative and executive competence: further provision Clause 46	Yes	Yes	No	No	N/A	No	No	No
2 Legislative and executive competence: further provision Clauses 47-48	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (W)
3 Misc Clauses 49-52	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (W)
4 General Clauses 53-56	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (W)

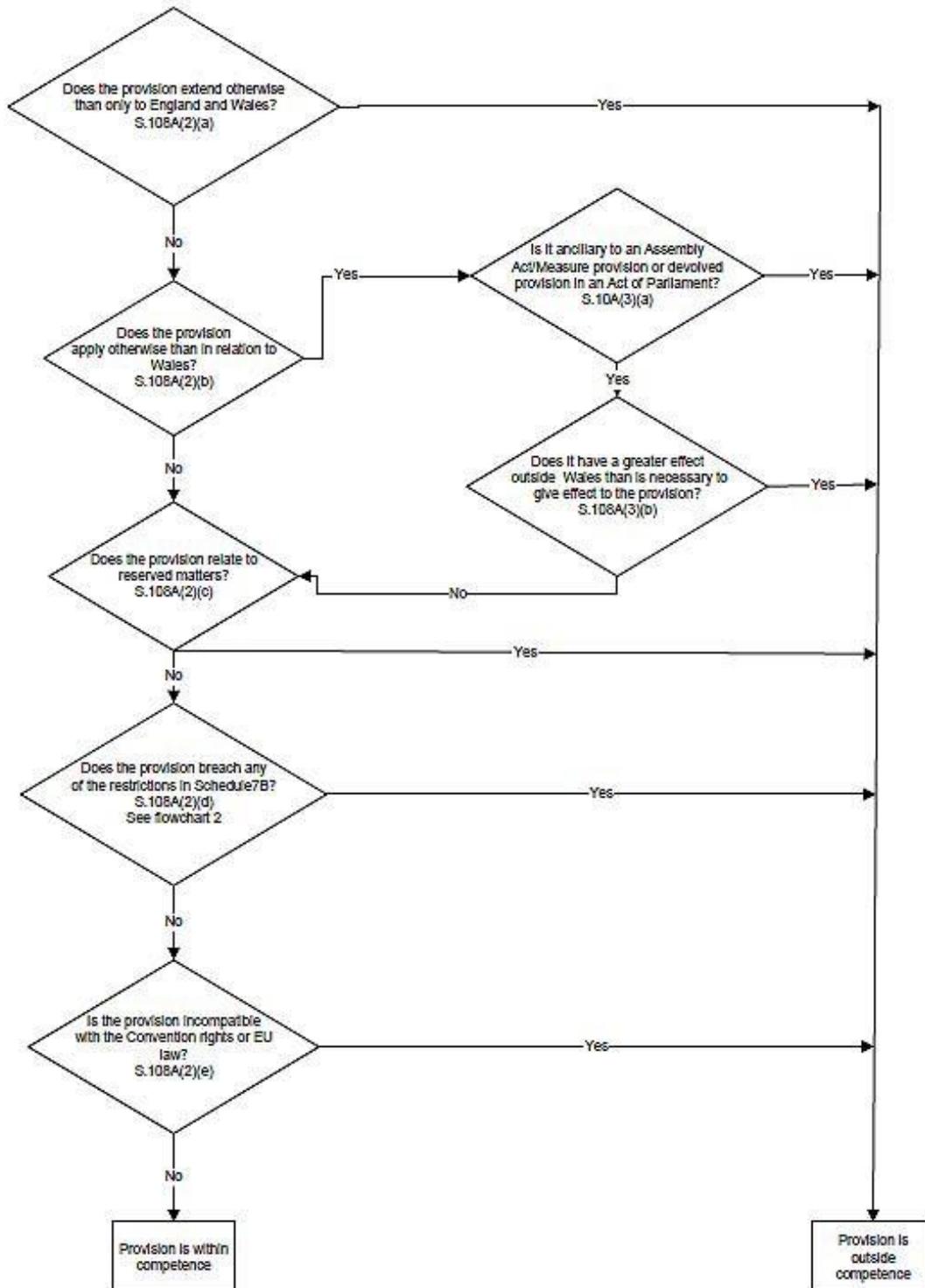
## Minor or consequential effects

In the view of the UKG, none of the Bill's provisions are considered to apply only to England with only minor or consequential beyond England.

# Annex B - The legislative competence tests

Annex B

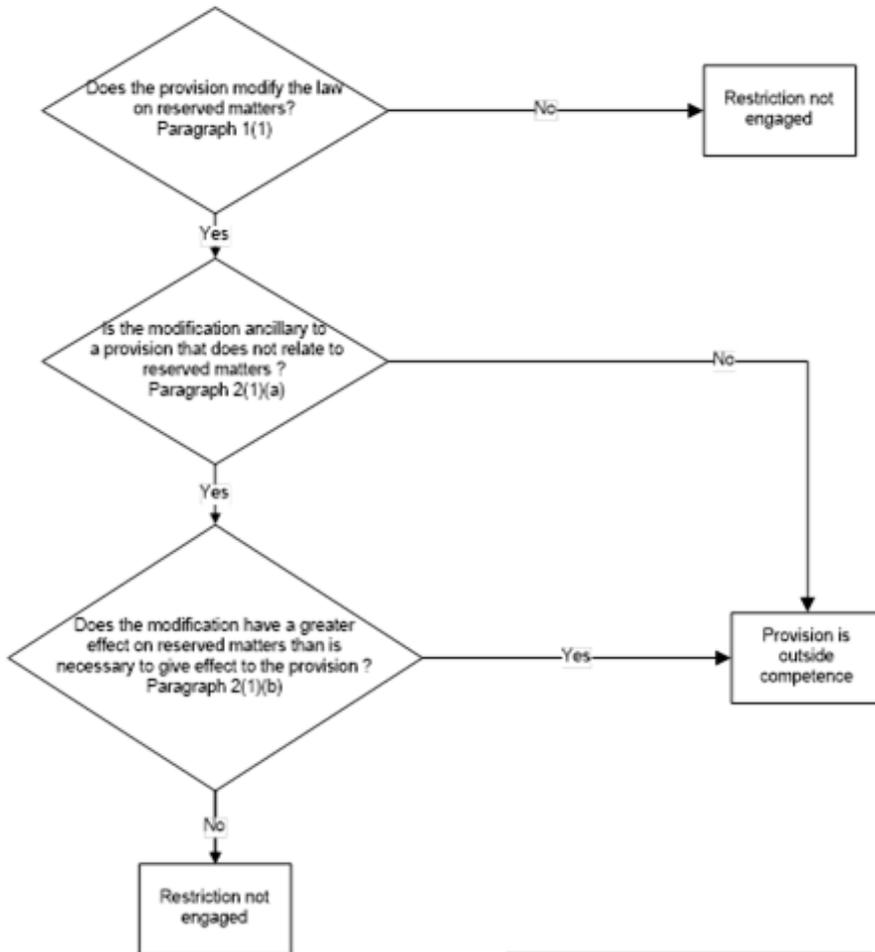
The legislative competence tests:  
Flowchart 1



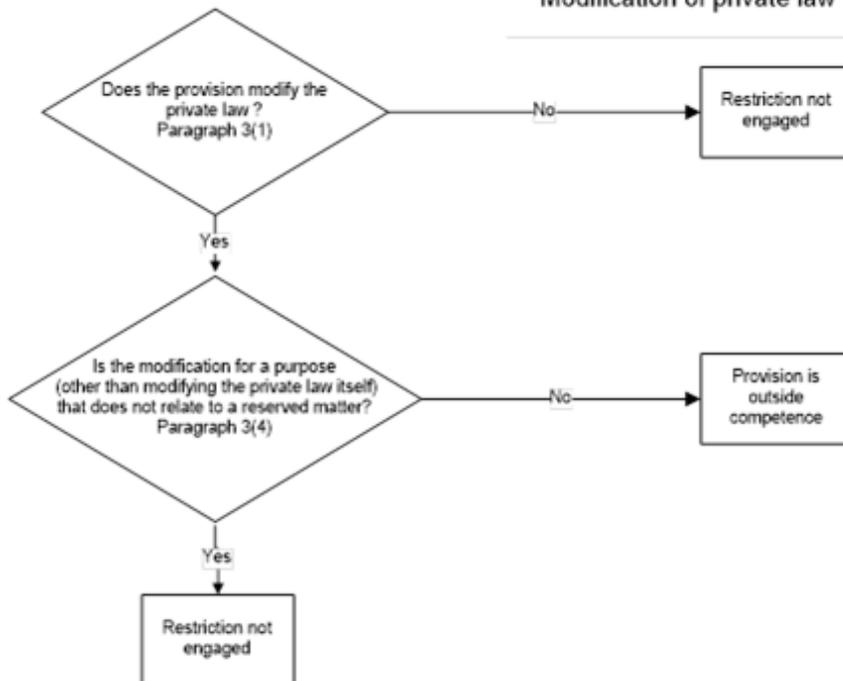
These Explanatory Notes relate to the Wales Bill as brought from the House of Commons on 13 September 2016 (HL Bill 63).

Law on reserved matters

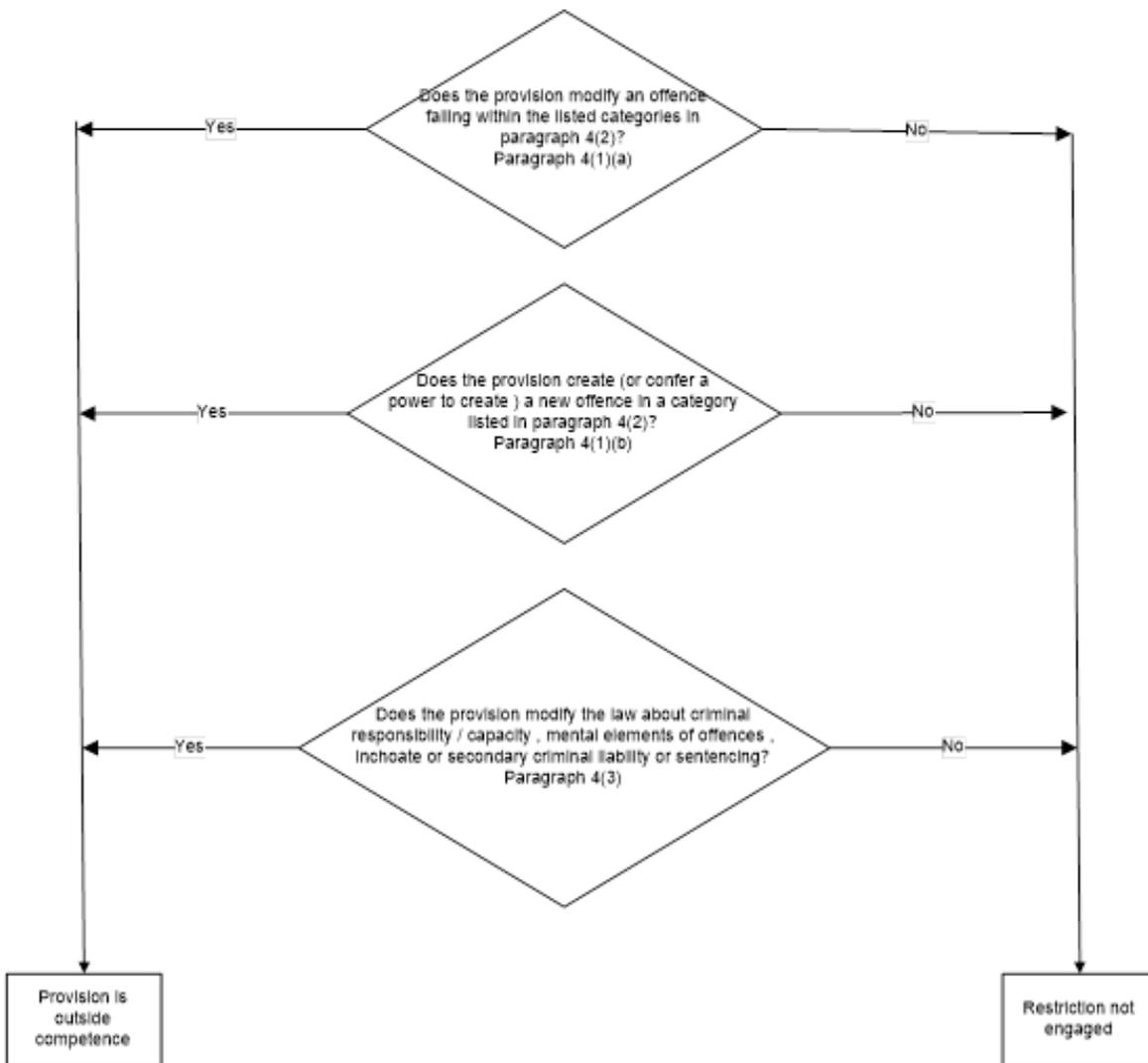
The legislative competence tests:  
Flowchart 2 - the Schedule 7B restrictions



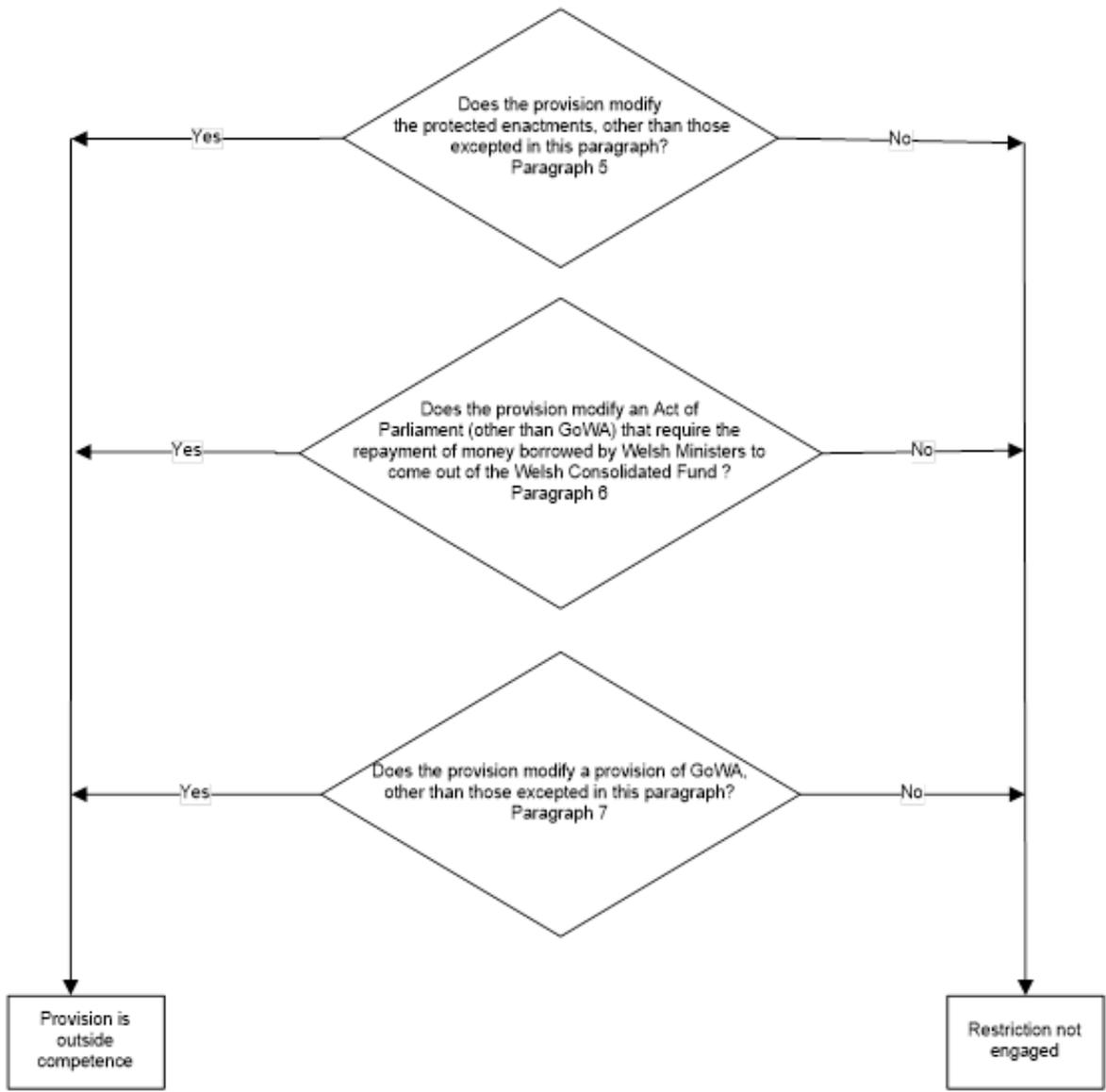
Modification of private law



Modification of criminal law



Protected enactments





## **Defined terms in Flowcharts 1 and 2**

"**ancillary**" is defined in s108A(7). A provision is ancillary to another if it: "*(a) provides for the enforcement of the other provision or is otherwise appropriate for making that provision effective, or (b) is otherwise incidental to, or consequential on, that provision*",

"**appropriate Minister**" is defined in paragraph 8(5) of Schedule 7B as the Secretary of State or, in the case of HMRC, the Treasury,

"**confer**" includes "*impose*", "*modify*" and "*remove*",

"**GoWA**" means the Government of Wales Act 2006,

"**listed category**" means those categories of offences listed in paragraph 4(2) of Schedule 7B,

"**modify**" includes conferring a power to modify. "*Modifications*" is defined in s.158 of GoWA to include "*amendments, repeals and revocations*",

"**private law**" is defined in paragraph 3(2) of Schedule 7B as "*the law of contract, agency, bailment, tort, unjust enrichment and restitution, property, trusts and succession*",

"**protected enactments**" are listed in paragraph 5(1) of Schedule 7B as the European Communities Act 1972, certain sections of the Government of Wales Act 1998, the Human Rights Act 1998, the Civil Contingencies Act 2004 and certain sections of the Public Audit (Wales) Act 2013,

"**public authority**" is defined in paragraph 8(4) of Schedule 7B,

"**reserved authority**" is defined in paragraph 8(3) of Schedule 7B as a Minister of the Crown, a UK Government department, and any other public authority that is not a Welsh public authority,

"**reserved matters**" are listed in Schedule 7A,

"**the law on reserved matters**" is defined in paragraph 1(2) of Schedule 7B as both legislation and the common law, the subject matter of which is a reserved matter, and

"**Wales public authority**" is defined in new section 157A of GoWA, as inserted by clause 4 of the Bill.

# WALES BILL

## EXPLANATORY NOTES

These Explanatory Notes relate to the Wales Bill as brought from the House of Commons on 13 September 2016

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