

# Devolution Guidance Note: Parliamentary and Assembly Primary Legislation Affecting Wales

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## INTRODUCTION

1. This guidance note for UK government departments explains the main features of the Welsh devolution settlement. The settlement is set out in Part 4 of the Government of Wales Act 2006 (“GoWA”) as amended by the Wales Act 2017. This note explains the legislative competence of the National Assembly for Wales (“the Assembly”) and the executive competence of Welsh Ministers, as well as the effects of the Welsh devolution settlement on UK government policy development and legislation in the UK Parliament. It also explains how the legislative competence of the Assembly and the executive competence of Welsh Ministers can be modified in future. **Annex 1** sets out the terminology and acronyms used in this guidance.
2. The new reserved powers model of Welsh devolution comes into force on 1 April 2018. This guidance is therefore written in accordance with the devolution settlement as it will be on that date. It does not reflect changes that will be made as a result of the UK exiting the European Union. This guidance will be updated closer to the date of exit to reflect those changes.
3. GoWA creates the devolved institutions in Wales: the Assembly and the Welsh Government. The Welsh Government comprises the First Minister, Welsh Ministers appointed by the First Minister under section 48 of GoWA, the Counsel General and Deputy Welsh Ministers. Since the formation of the current Welsh Government in 2016, in practice, Welsh Ministers are called Cabinet Secretaries and Deputy Ministers are Ministers. This has no effect on the meaning of the statutory terms in GoWA of “Welsh Government” and the “Welsh Ministers”.
4. Effective communication between the UK government and the Welsh Government is crucial to ensure that the Welsh devolution settlement operates well. UK government departments (“departments”) should maintain collaborative working relationships with the Welsh Government wherever possible and ensure that reciprocal arrangements are in place to share information in a timely way. The Wales Office is responsible for oversight of the Welsh devolution settlement and ensuring UK Government policy and legislation works effectively in Wales. Departments should therefore inform the relevant Wales Office contact listed at the end of this guidance if any problems arise in establishing or maintaining this relationship.

## PART 1: ASSEMBLY BILLS

5. In order for departments to reflect the Welsh devolution settlement in UK Parliamentary legislation, it is necessary to understand the parameters of the Assembly’s legislative competence to make primary legislation in the form of Assembly Bills.
6. The First Minister makes an annual oral statement on the Welsh Government’s legislative programme, usually in June or July, setting out the legislation that it intends to bring forward in the Assembly in the following twelve months.
7. The Assembly is able to make primary legislation, known as Acts of the Assembly, in accordance with Part 4 of GoWA. Section 108A of that Part sets out the parameters of the Assembly’s legislative competence to make Acts, which can be broken down into five tests.

## ***The Five Tests of legislative competence***

8. An Act of the Assembly is not law so far as any of its provisions is outside the legislative competence of the Assembly as set out in s.108A. Subsection (2) specifies five tests to determine whether an Assembly Act provision is within competence. These are five separate and independent tests and an Assembly Act provision must satisfy each of them in order to be within competence. *If a provision fails any one of the five tests, it is outside the Assembly's legislative competence and therefore not law.*

### **Test 1 (section 108A(2)(a))**

9. **An Assembly Act provision cannot form part of a legal jurisdiction other than that of England and Wales.**

### **Test 2 (section 108A(2)(b))**

10. **An Assembly Act provision cannot apply otherwise than in relation to Wales.** This includes activities carried on in Wales that may relate to other geographical areas. However, s.108A(3) establishes an exception to this prohibition: an Assembly Act provision *can* apply beyond Wales where it is ancillary<sup>1</sup> to another provision that is within competence and there is no greater effect beyond Wales than is necessary to give effect to that provision.
11. For example, the Assembly would be able to legislate for the Higher Education Funding Council for Wales being given powers that are exercisable in relation to Welsh universities' campuses located in England (provided such powers satisfied the test in s.108A(3)).

### **Test 3 (section 108A(2)(c)) – ‘the purpose test’**

12. **An Assembly Act provision must not relate to a reserved matter.** Schedule 7A to GoWA lists the subjects that are reserved to the UK Parliament. 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:** The UK Parliament is sovereign and may legislate on any matter, however it does not normally legislate on non-reserved matters without seeking consent of the Assembly (see sections on LCM process below). 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 a UK Parliamentary Act) in relation to Wales. Any subject not reserved, is devolved to the Assembly (but, see ‘carve out’ below).<sup>2</sup> Some reservations are set out in fairly broad terms and, as a result, may include some matters that are intended to be devolved. Such matters are therefore listed as an exception.

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<sup>1</sup> Section 108A(7) of GoWA defines “ancillary” provision as one that provides for the enforcement of another provision, is otherwise appropriate for making it effective, or is otherwise incidental/consequential to that provision.

<sup>2</sup> There are some exceptions to this. For example, public procurement is not listed as a reserved matter because it is considered an activity rather than a subject. Responsibility for public procurement therefore follows the devolution boundary defined by the list of reservations. In other words, only procurement in relation to reserved matters is reserved.

- 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 14 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 reserved to the UK Parliament by being carved out of the exception.
13. The question of whether an Assembly Act provision relates to a reserved matter is to be interpreted by reference to the *purpose test*.
  14. Section 108A(6) of GoWA sets out a purpose test to decide whether a proposal to legislate relates to a reserved matter i.e. a matter that is outside the Assembly's legislative competence. It specifies that the question of whether a provision of an Act of the Assembly relates to a reserved matter should be determined by reference to the purpose of the provision, having regard (amongst other things) to its effect in all the circumstances.
  15. The starting point is that whether a provision in an Assembly Bill "relates to" a reserved matter is dependent on its purpose. The Supreme Court has held that the expression 'relates to' indicates "*more than a loose or consequential connection*".<sup>3</sup> It is important to remember that the application of the purpose test in a reserved powers model should be interpreted as meaning that a provision that merely refers to a reserved matter, or has an incidental or consequential effect on a reserved matter, will not 'relate to' that reserved matter. In other words, to fail the "relates to" test, an Assembly Act provision must have a reserved matter as its purpose.
  16. However, where provisions in a Bill may be interpreted as having two 'purposes' that are difficult to disaggregate, it is worth noting Lord Hope's observation in the *Imperial Tobacco* case that "*the fact that one of [the Bill's] purposes relates to a reserved matter will mean that the provision is outside competence, unless the [reserved] purpose can be regarded as consequential and thus of no real significance when regard is had to what the provision overall seeks to achieve.*"<sup>4</sup>
  17. The purpose of a provision must be established by having regard to its legal, practical and policy effects in all the circumstances<sup>5</sup>. In preparing a provision, it is not sufficient simply to *assert* its purpose. The purpose must be assessed by considering how the provision has been drafted, what it actually does and the situation it is intended to address and its wider context (including other provisions in the Bill) and whether the objective of the individual provision is distinct from the overall purpose of the Bill or merely consequential upon or incidental to the overall purpose.<sup>6</sup>

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<sup>3</sup> *Martin v Most* [2010] UKSC 10 at paragraph 49.

<sup>4</sup> *Imperial Tobacco Limited (Appellant) v The Lord Advocate (Respondent) (Scotland)* [2012] UKSC 61 at paragraph 43.

<sup>5</sup> In establishing the purpose of a provision it is necessary to look not merely at what can be discerned from an objective consideration of the effect of its terms. The clearest indication of its purpose may be found in documents that gave rise to the legislation such as a Green or White Papers

<sup>6</sup> *Christian Institute and others (Appellants) v The Lord Advocate (Respondent) (Scotland)* [2016] UKSC 51 at paragraph 64.

18. To demonstrate how the purpose test ought to be applied in practice, some examples are given below. However, it is important to bear in mind in each of these hypothetical examples that each Assembly Bill is to be taken on a case-by-case basis, and whether a provision is within legislative competence will depend on how the provision is drafted and what it actually does. It is also important to remember that the purpose test requires assessment of the effect of the provisions including all the circumstances in the round.

#### **Hypothetical examples of how the purpose test might be applied**

- An Assembly Bill which required tenants to insure their residence could relate to the devolved subject of housing and not to the insurance limb of the financial services reservation in Section A3 of Schedule 7A. Rather than aiming to amend the law of insurance, the argument would be that the provision's purpose is to ensure the quality of housing stock in Wales.
- An Assembly Bill provision creating competitive tendering requirements for local authorities would be to improve their efficiency and cost-effectiveness, and would therefore not relate to the competition reservation in Section C3.
- The jurisdiction of the Agricultural Land Tribunal for Wales ("the Tribunal") is set out in the Agricultural Holdings Act 1986. This Act also specifically excludes certain matters from the jurisdiction of the Tribunal, for example, disputes between landlords and tenants of agricultural land. An Assembly Bill may seek to alter this position by bringing such disputes within the jurisdiction of the Tribunal and no longer subjecting them to arbitration. This would not engage the arbitration reservation in Section L4 because the purpose of the provision would be to facilitate the smooth and economic operation of the agricultural sector by providing a practical, accessible and cost-effective way of settling disputes about agricultural land. The effect on arbitration would be incidental to, or consequential on, that purpose.
- An Assembly Bill provision requiring information-sharing between schools and/or Estyn, which supported more general provisions aimed at improving the operation of the education sector in Wales would not relate to the reservation for the protection of personal data in Section L6.

#### **Test 4 (section 108A(2)(d))**

19. **An Assembly Act provision must not breach any of the restrictions in Schedule 7B to GoWA.** These Schedule 7B restrictions include constraints on an Assembly Act provision modifying the law on reserved matters (see paragraphs 1 and 2 of Schedule 7B), the private law (see paragraph 3 of Schedule 7B), the criminal law (see paragraph 4 of Schedule 7B) and/or the functions of reserved authorities (see paragraphs 8-11 of Schedule 7B).

### **The law on reserved matters (paragraphs 1 and 2 of Schedule 7B)**

20. Whilst Test 3 will be satisfied if a provision does not relate to a reserved matter, by reference to the purpose test, the provision may nevertheless fail Test 4 if it modifies the “law on reserved matters”<sup>7</sup> in a way that is not permitted by paragraph 2 of Schedule 7B.
21. Paragraph 2 allows the law on reserved matters to be modified if the modification is:
- a. ancillary<sup>8</sup> to a provision that does not relate to a reserved matter (i.e. ancillary to a provision that satisfies s.108A(2)(c)); and
  - b. has no greater effect on reserved matters than is necessary to give effect to the purpose of that provision.
22. Therefore the law on reserved matters can be modified in order to enforce or make effective another provision of an Assembly Bill which has a devolved purpose, or where it is incidental or consequential on such a provision. In addition, the modification must go no further than is necessary in order to give effect to the provision with a devolved purpose. In other words, whilst Test 3 is about reserving the *subject areas* in Schedule 7A in relation to future Assembly Bills, the paragraphs 1 and 2 of Schedule 7B restriction in Test 4 is about protecting the existing law on reserved matters from being modified further than is necessary to give effect to a provision of an Assembly Bill.

### **Private Law and Criminal Law (paragraphs 3 and 4 of Schedule 7B)**

23. The restrictions relating to the private law (paragraph 3) and the criminal law (paragraph 4) preserve the key aspects of the unified legal system of England and Wales whilst enabling the Assembly to enforce its legislation. The protected areas of private law include core subjects like the law of contract and property. However, the Assembly can modify the private law where the purpose of doing so does not relate to a reserved matter.
24. For criminal law, the serious offences protected from modification by the Assembly include treason, homicide offences, sexual offences and serious offences against the person. This is to ensure that these serious offences remain consistent across England and Wales. In addition, the law that governs the framework elements of the criminal law (such as capacity to commit crimes, mens rea and the types of sentence available to the courts) cannot be modified by Assembly legislation. However, this does not prevent the Assembly applying the existing framework to its own enforcement provisions and thus creating new offences or modifying existing offences within this framework. Nor does it prevent the Assembly changing the severity of an existing sentence, or applying a different type of sentence to an existing offence.

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<sup>7</sup> Note that paragraph 1(2) of Schedule 7B provides that the “law on reserved matters” includes enactments as well as the common law. Also, 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.

<sup>8</sup> As defined in s.108A(7).

## **Reserved authorities and Devolved Welsh Authorities (paragraphs 8-11 of Schedule 7B)**

25. Paragraphs 8-11 of Schedule 7B create an important delineation between “Devolved Welsh Authorities” (“DWAs”) and “reserved authorities”. DWAs are public authorities that report either to Welsh Ministers or the Assembly, and higher education institutions (such as universities) who carry on activities wholly or principally in Wales. Public authorities must meet the conditions in s.157A(2) of, or be listed in Schedule 9A to, GoWA to be a DWA. Any authority that does not meet these conditions (including Ministers of the Crown and UK government departments) is a reserved authority.
26. It is important to remember that reserved authorities can exercise devolved functions and DWAs can exercise reserved functions. When legislating about public bodies in relation to Wales it is important therefore to determine whether the relevant functions are exercisable in reserved or devolved competence and whether the body exercising them is a reserved authority or a DWA.

## **Consent requirements for reserved authorities and Devolved Welsh Authorities**

27. Generally, the consent of the Secretary of State<sup>9</sup> is required for an Assembly Act provision to:
- confer or impose a function on a reserved authority, or modify or remove a reserved authority’s functions;
  - modify the constitution of a reserved authority; or
  - confer, modify or remove a function specifically exercisable in relation to reserved authorities (a function that relates to an authority, rather than a function of an authority).
28. Consent is not usually required if an Act of the Assembly confers, modifies or removes a function of a DWA (but for reserved functions of a DWA see paragraph 34).
29. There are exceptions to this general rule. The Assembly can, without the consent of Secretary of State, confer, impose, modify and remove the devolved functions of some reserved authorities that exercise both devolved and reserved functions. These authorities include the Electoral Commission, the Food Standards Agency, the Water Services Regulation Authority (Ofwat), the Open University and some authorities carrying out NHS functions in England and Wales. The detailed consenting regime in relation to these bodies is set out in paragraphs 9 and 10 of Schedule 7B to GoWA. Those paragraphs also deal with the consenting regime for certain other bodies or types of body.
30. If an Assembly Bill includes provision in relation to a reserved authority that requires consent from the Secretary of State, that consent should be obtained before the Bill is introduced into the Assembly. This is so that the person in charge of the Bill and the Presiding Officer can state whether or not they consider the Bill as introduced would be within the Assembly’s legislative competence.<sup>10</sup>

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<sup>9</sup> Sub-paragraph 8(3) of Schedule 7B to GoWA specifies that the “appropriate minister” to consent is the Secretary of State (likely in practice to be the Secretary of State for Wales) or, in the case of HMRC, the Treasury.

<sup>10</sup> See section 110 of GoWA.

31. Where the Welsh Government considers a Bill may contain provisions which would require consent, the normal practice is for the Welsh Minister responsible for the Bill to write to the Secretary of State for Wales to request such consent. Where Treasury consent is specifically required for an Assembly Bill provision (such as when amending HMRC functions), the Welsh Minister responsible for the Bill writes to Treasury Ministers because the Secretary of State for Wales cannot give that consent. The UK government has committed to respond to any requests for consent in a timely manner and must do so within 60 working days providing reasons if consent is being refused. The Welsh Government has undertaken to allow sufficient time for the UK government to decide if it agrees to the change, and in practice should engage with the relevant department(s) and the Wales Office as part of its policy development process if it is likely to want to include such provision in an Assembly Bill. When it does, departments, including the Wales Office, should reach a unified UK government view before responding.
32. The above arrangements are about preparing Bill provisions for introduction, but they apply equally to amendments to Bills during their passage through the Assembly, whether Welsh Government or non-government amendments. Prompt and effective engagement between Governments is essential, as the timescales set out in the Assembly's Standing Orders for amending stages are short, and consents need to be in place ahead of the final vote in the Assembly to pass the Bill. The UK government should endeavour to respond to requests for consent arising from amendments in a timely manner to enable the Bill to adhere to its scrutiny timetable
33. An Assembly Bill can also be brought forward by the Assembly Commission, an Assembly Committee or a backbench Assembly Member (should they win a ballot). Where such a Bill requires consent, the Welsh Government will liaise with the UK government as set out above where possible. Departments should however be mindful that such Bills may be brought forward without Welsh Government support. In such circumstances the Welsh Government may not be aware of the detailed content of the Bill before it is introduced. Departments should obtain advice from their legal advisers, and from the Wales Office, before seeking the views of Ministers.

#### Consent Requirement for Devolved Welsh Authorities

34. A provision of a UK Parliament Bill may not confer or impose a reserved function on a DWA, or modify a reserved function exercisable by a DWA, without the consent of the Assembly. Assembly consent is not required to remove a reserved function exercised by a DWA, but departments should inform the Wales Office and the Welsh Government as early as possible if intending to legislate in this respect.

#### Examples of When Consent is Not Required?

35. It is important to consider the purpose of a provision in deciding whether consent is required; a provision with a reserved purpose in a UK Parliament Bill could apply generally to reserved authorities and DWAs without the consent of the Assembly being required and a provision in an Assembly Bill could also apply to both DWAs and reserved authorities in Wales without need for the consent of the Secretary of State.

36. For example:

- a. the Assembly would not need the Secretary of State's consent for a ban on smoking in workplaces (a provision with a devolved purpose) just because its application includes the Driver and Vehicle Licensing Agency in Swansea (a reserved authority), or

- b. the LCM Convention would not be engaged by a UK Parliament Bill about registering title to land (a provision with a reserved purpose) just because it applied to a DWA that had purchased land.

37. Assembly consent is not needed when applying incidental or consequential modifications to DWA functions. A UK Parliament Bill provision that gives Welsh Ministers (or another DWA) a right to be consulted does not, in itself, trigger the LCM Convention.

### **Test 5 (section 108A(2)(e))**

38. **An Assembly Act provision must comply with Convention Rights and with EU law.**

### ***UK government departments' role in relation to Assembly Bills***

39. The UK government expects the principles of early engagement and information sharing to apply as much to Assembly Bills as to UK Parliament Bills. Departments should work with the Wales Office to respond in a timely way when contacted by Welsh Government colleagues about provisions in Assembly Bills. Discussions on forthcoming legislation are conducted on a confidential basis.

### **The intervention powers under s.112 and s.114 of GoWA**

40. The Wales Office, in conjunction with the Attorney General's Office, monitors the progress of all Assembly Bills in relation to the statutory intervention powers of the Attorney General (under s.112 of GoWA) and the Secretary of State (under s.114 of GoWA).

41. Under s.112 of GoWA, the Counsel General or the Attorney General may refer the question of whether any provision in an Assembly Bill would be within the legislative competence of the Assembly to the Supreme Court for a decision.

42. Section 114 of GoWA enables the Secretary of State to make an order prohibiting the Presiding Officer of the Assembly from submitting an Assembly Bill for Royal Assent. The order is subject to annulment in either House of Parliament.

43. Specifically, an order may be made under s.114 if the Secretary of State has reasonable grounds to believe that an Assembly Bill contains provisions which:

- a) would have an adverse effect on any reserved matter;
- b) would have an adverse effect on the operation of the law as it applies in England; or
- c) would be incompatible with any international obligation or the interests of defence or national security.

### **The timing and process for interventions under s.112 and s.114 of GoWA**

44. A reference to the Supreme Court under s.112 of GoWA or an order preventing an Assembly Bill from being enacted under s.114 of GoWA, must be made within four weeks of the Assembly passing the Bill. When the Assembly passes a Bill, the Presiding Officer of the Assembly writes to the Secretary of State for Wales and to the Attorney General, to advise that the four-week so-called "intimation period" has started.

45. The Wales Office writes at official level to UK government departments when a Bill is introduced in the Assembly, and again once the Assembly passes a Bill, to seek views on

whether the Secretary of State should exercise his powers of intervention, and to ask on behalf of the Attorney General whether the Bill raises issues of legislative competence. Departments are given around ten working days to respond, and should consult departmental legal advisers and, if necessary, their policy and devolution Ministers, if in doubt about whether any provision in the Assembly Bill raises legislative competence issues or meets the s.114 criteria for intervention.

46. Departments should raise any concern with the Wales Office so that discussion can be facilitated between officials in the UK government and the Welsh Government to seek to resolve it. The issue may be escalated to UK government ministers and the Welsh Ministers if it remains unresolved.
47. The UK government expects any concerns which could risk triggering the intervention powers to be resolved in practice during the passage of the Assembly Bill. It is therefore important that departments respond to Wales Office write-rounds, informing the Wales Office in the first instance if any concerns arise that need to be raised with the Welsh Government.

## **PART 2: UK PARLIAMENT BILLS APPLYING IN RELATION TO WALES**

48. The doctrine of the sovereignty of Parliament provides that the UK Parliament retains the right to legislate on any area of law for Wales. This is set out expressly in s.107(5) of GoWA: “*This Part [Part 4 dealing with Acts of the Assembly] does not affect the power of the Parliament of the United Kingdom to make laws for Wales.*”
49. There are therefore two legislatures making provisions applying in relation to Wales: the UK Parliament and the Assembly. It is this potential for legislative overlap (whereby the UK Parliament can also make devolved provision<sup>11</sup>), and the UK government’s political commitment to respect the devolution settlement, that give rise to the LCM Convention which is dealt with later in this Part.

### ***Including non-devolved provision in a UK Parliament Bill***

50. Given Assembly Acts cannot make non-devolved provision<sup>12</sup>, it is essential that UK Parliament Bills in non-devolved areas apply in relation to Wales. If a UK Parliament Bill makes non-devolved provision but does not apply it to Wales, then a legislative gap would be created whereby Parliament has chosen not to legislate yet the Assembly cannot legislate.
51. The LCM process is not triggered when including non-devolved provision in UK Parliament Bills. Departments should consult the Wales Office for advice before introducing Bills with non-devolved provisions that could impact directly on devolved areas

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<sup>11</sup> The term “devolved provision” is used throughout this guidance to mean a UK Parliamentary Bill or SI provision that would be within the legislative competence of the Assembly if it were included in an Act of the Assembly (ignoring any requirement for consent or consultation imposed under paragraph 8, 10 or 11 of Schedule 7B or otherwise). See s.108A(4) of GoWA.

<sup>12</sup> In this guidance, the term “non-devolved provision” is used to refer to a provision that would fall foul of *any* of the five tests of legislative competence as set out in s.108A(2). In contrast, a “reserved provision” is used only when referring to Test 3, as set out in s.108A(2)(c) i.e. a provision that relates to a reserved matter by reference to the purpose test.

or devolved competence, and contact the Welsh Government for any views it may have on whether provisions have such an effect.

52. It may be necessary for departments to seek clearance in relation to sensitive policy areas before information can be shared with the Welsh Government. Departments should consult the Wales Office in these circumstances before engaging with the Welsh Government.

### ***Including devolved provision in a UK Parliament Bill***

53. As early as possible in policy development, UK government departmental Bill teams should contact the Wales Office to seek initial advice before engaging with the Welsh Government on any Welsh devolution issues relating to a Bill. Departmental Bill teams should develop close working relationships with the Welsh Government on any specific areas of devolved policy relating to those Bills, and ensure timely sharing of information from an early stage in the legislative process. The Wales Office advises and supports departments in doing this.
54. In addition, policy teams may wish to establish contact with the Welsh Government *before* a Bill team is set up, and as policy is being developed. Such contact should be considered especially if the policy:
  - a. overlaps the boundary between what is within the legislative competence of the Assembly and what is not;
  - b. is likely to impact on devolved competence;
  - c. might otherwise impact on devolved areas (for example, if it is likely to affect the resources of DWAs); or
  - d. is likely to prove controversial in terms of relations between the UK government and the Welsh Government.

Departments should consult the Wales Office if they think such contact is necessary.

### **The criteria for including devolved provision in a UK Parliament Bill**

55. The Welsh Government would ordinarily bring forward its own legislation in the Assembly in areas within the Assembly's legislative competence. However, the Welsh Government may prefer the UK government to include devolved provision in a UK Parliament Bill rather than promote a separate Assembly Bill on the same subject. This may be particularly the case if the devolved provision is merely a small part of a UK Parliament Bill and so would not warrant bringing forward a separate Assembly Bill.
56. Departments should normally include devolved provision in a UK Parliament Bill only at the request of the Welsh Government or because the policy would be unworkable unless there is provision for Wales.
57. Where the Welsh Government requests that devolved provision be included in a UK Parliament Bill, the UK government is content in principle to do so if the provisions:
  - a. could not be made in any suitable Assembly Bill in the Welsh Government's current legislative programme;
  - b. fall within scope of the Bill;

- c. would not adversely affect the handling or timing of the Bill; and
- d. will be supported by the Welsh Government in relation to the work needed to prepare the provisions and in securing an LCM in the Assembly.

58. A clear purpose of devolution is to enable policies to be pursued in ways that reflect the different needs of the constituent parts of the UK. Departments should therefore not normally refuse to include provision sought by the Welsh Government in Parliamentary Bills (providing the provisions meet the criteria in the previous paragraph) because it differs from policy in England. Welsh Government policy can, and does, diverge from UK government policy.

59. If the UK government and the Welsh Government cannot agree on the inclusion of devolved provision in a UK Parliament Bill, departments should discuss with the Wales Office other ways of achieving their aims (for example by making a TFO under s.58 of GoWA to transfer Minister of the Crown functions to Welsh Ministers). These discussions could then form the basis for further engagement with the Welsh Government.

### **The process for including devolved provision in a UK Parliament Bill**

60. Where officials in the lead department, Wales Office and Welsh Government have agreed to include devolved provision in a UK Parliamentary Bill, this should be confirmed 'in principle' by an exchange of Ministerial letters between the UK government and the Welsh Government (and copied to the Secretary of State for Wales).

61. This 'in principle' agreement is then subject to UK government collective agreement to include the relevant provisions in the Bill. Consent is obtained via either the Bill Minister or the Secretary of State for Wales writing to the relevant Cabinet Committee to seek clearance. UK government departments should discuss with the Wales Office which Minister is best placed to write. It would be helpful if, by this stage, departments have agreed with the Welsh Ministers that they will promote an LCM in the Assembly.

62. Devolution issues form an important part of the memorandum presented to Parliamentary Business and Legislation (PBL) Committee to inform its consideration of whether a Bill is ready to be introduced in Parliament. Devolution issues are also relevant to the territorial extent and application of a Bill described in the accompanying Explanatory Notes. Departments are free to set out the UK government's position in Explanatory Notes, but should allow sufficient time for Welsh Ministers to agree any text setting out the Welsh Government's position (including whether it will promote an LCM). Informal Welsh Government views should not be included in any Bill documents. Devolution issues should be substantively resolved by the time the Committee considers whether a Bill should be introduced, including any necessary agreement with the Welsh Ministers about supporting an LCM for the Bill in the Assembly if the UK government considers the LCM Convention to be engaged.

63. The Bill memorandum presented to PBL Committee should describe succinctly any devolution issues that the Bill has raised, and include a clear statement that they have been substantively resolved. The Wales Office can assist Bill teams in preparing the memorandum, which should summarise:

- a. the effect of the Bill in Wales and whether it includes any devolved provision; and
- b. any consultation which has taken place with the Welsh Government, the Assembly or other devolved institutions and bodies in Wales, and any agreements reached with them.

## **Working with the Welsh Government**

64. There should be close working between officials and legal advisers in UK government departments, the Wales Office and the Welsh Government when preparing instructions to the Office of Parliamentary Counsel (OPC) where these relate to devolved provision. Deadlines for finalising instructions are often very tight, and establishing an effective tripartite relationship is crucial in order to agree instructions and deliver them on time.
65. Departments should be mindful that the Welsh Government's procedures differ from those of the UK government, and the Welsh Government may find it difficult to meet deadlines that are not previously agreed, for example if a deadline falls during an Assembly recess period (which are often not aligned with Westminster recesses). Whilst deadlines for a Bill must be met, the Welsh Government should be given as much time as possible to obtain the necessary Ministerial clearances. UK government departmental Bill teams should seek to agree timescales and deadlines with the Wales Office and Welsh Government as early as possible in the Bill process.
66. If provisions are to be included in a UK Parliament Bill at the request of the Welsh Government, an arrangement that has proved effective is for Welsh Government legal advisers to draft instructions for the lead UK government department and Wales Office colleagues to agree before they are sent to OPC. Alternatively, lead departments can draft instructions for comment by the Welsh Government and the Wales Office. It is important that all three parties agree a procedure before starting to draft instructions, and agree the instructions themselves before sending them to OPC.

## **Legislative Consent Motions (LCMs)**

67. The LCM Convention (also known as the Sewel Convention) is that Parliament will not normally legislate with regard to devolved matters in Wales without the consent of the Assembly. The LCM Convention is also set out in s.107(6) of GoWA but that does not alter its status as a convention, nor does it affect the sovereignty of the UK Parliament to make laws for Wales.
68. The LCM Convention's status as a political convention is made clear by the Memorandum of Understanding that the UK government and the Devolved Administrations entered into in 2013. The memorandum sets out the UK government's commitment to the LCM Convention but stated at paragraph 2 that "*This Memorandum is a statement of political intent, and should not be interpreted as a binding agreement. It does not create legal obligations between the parties. It is intended to be binding in honour only.*" The Supreme Court in the Miller case<sup>13</sup> upheld the UK government's submission that the LCM Convention is not converted into a justiciable matter simply because it has been placed on a statutory footing.

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<sup>13</sup> *R (on application of Miller and another) v Secretary of State for Exiting the European Union* [2017] UKSC 5 at paragraph 148: "*the UK Parliament is not seeking to convert the Sewel Convention into a rule which can be interpreted, let alone enforced, by the courts; rather, it is recognising the convention for what it is, namely a political convention, and is effectively declaring that it is a permanent feature of the relevant devolution settlement. That follows from the nature of the content, and is acknowledged by the words ("it is recognised" and "will not normally"), of the relevant subsection. We would have expected UK Parliament to have used other words if it were seeking to convert a convention into a legal rule justiciable by the courts.*"

## **The provisions that are relevant to the LCM Convention**

69. The UK government will normally seek an LCM where Parliament is legislating on devolved matters. The UK government will also normally seek an LCM where Parliament is altering devolved competence. This means that UK government departments will seek the consent of the Assembly through an LCM for a Parliamentary Bill provision which applies in relation to Wales and:

- a. includes devolved provision i.e. a provision which would be within the Assembly's legislative competence under s.108A of GoWA, if it were contained in an Act of the Assembly (ignoring any requirement for consent or consultation imposed under paragraphs 8, 10 or 11 of Schedule 7B to GoWA), or
- b. alters devolved competence i.e. modifies the Assembly's legislative competence or the WMs' executive competence.

70. However, provision falling within (a) or (b) above but which is only supplementary, consequential, incidental, transitional or saving in relation to provisions that do not fall within (a) or (b) above, does not trigger the LCM Convention. It is nevertheless expected that UK government departments will engage in meaningful consultation with the Welsh Government in relation to such provisions. For example, a UK Parliament Bill provision that:

- a. merely 'has an effect on' a non-reserved matter, or simply 'applies to' devolved bodies, is not sufficient to constitute 'relating to' a reserved matter under the purpose test as part of s.108A(2)(c); and
- b. modifies an Assembly Act will not amount to a devolved provision if the modification is only consequential on a non-devolved provision. This is similar to the Assembly's equivalent power to make consequential change to non-devolved provision through its ability to modify "the law on reserved matters" (see paragraphs 1 and 2 of Schedule 7B to GoWA, as discussed at paragraphs 20-22). Any consequential or incidental modifications the UK government makes to Assembly legislation must be done bilingually<sup>14</sup> where the Assembly legislation is bilingual, or the legislation cannot be considered to have been modified. UK government departments are responsible for arranging their own translations into the Welsh language, but should agree these with the Welsh Government.

71. Before contacting the Welsh Government, departments should consult the Wales Office in the first instance for a view on whether provisions trigger the LCM Convention or not.

## **When to seek an LCM**

72. If the UK government considers that the LCM Convention is triggered, it should seek agreement from the Welsh Government that the Welsh Ministers will promote an LCM in the Assembly. Agreement in principle from the Welsh Ministers should be reached before PBL Committee approves the Bill for introduction in Parliament, and should include a commitment from the Welsh Government that it will lay an LCM in the Assembly as soon as practicable after the Bill is introduced.

73. UK government departments should engage with the Wales Office and Welsh Government as early as possible on LCMs because there are a number of factors that could affect the timing of an LCM being approved:

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<sup>14</sup> In the English language and the Welsh language.

- a. the Assembly's sitting/recess dates are not always the same as Parliament's,
  - b. the Assembly's Business Committee will normally refer a legislative consent memorandum to another committee or committees of the Assembly for consideration, in which case the Assembly cannot debate the LCM until the committee has reported; and
  - c. the LCM debate needs to be scheduled to fit with the Assembly's other business, and will not necessarily take priority.
74. The Assembly's Standing Orders<sup>15</sup> require the Welsh Government to lay a legislative consent memorandum in the Assembly normally no later than two weeks after a Bill is introduced in Parliament. Consent should ideally have been obtained before the Bill reaches its final amending stage in the House of introduction (allowing time for Assembly Committee scrutiny means that the LCM is more likely to be debated during the Bill's latter stages in the first House). The absolute deadline is the last opportunity for the clauses to be amended while the Bill is still before Parliament. This is to reflect the principle that the Bill should still be capable of amendment so that the UK government has the option of tabling amendments to take account of the Assembly's decision on an LCM if need be. In practice, the last opportunity for amendment is at Third Reading in the Lords and at Report Stage in the Commons.
75. To help meet these deadlines, departments should be mindful that information needs to be shared with the Welsh Government on the relevant Bill provisions at the earliest opportunity.
76. The UK government and the Welsh Government may not necessarily agree that a Bill provision includes devolved provision or alters devolved competence, and therefore triggers the LCM Convention. The boundary between reserved matters and devolved matters, for example, is not always clear-cut. Departments should speak to the Wales Office in the first instance if in any doubt as to whether a Bill provision means the UK government should seek an LCM.

### **LCM not agreed by the Assembly**

77. If the UK government seeks an LCM but the Assembly votes against it, UK government departments should discuss next steps with the Wales Office and the Welsh Government. Parliament remains sovereign, but it is open to the UK government, subject to collective agreement, to amend the relevant provisions so that either:
- a. the Assembly is able to support them, or
  - b. they no longer apply in relation to Wales, meaning that an LCM no longer has to be sought.
78. UK government departments should seek to resolve any issues well before the last amending stage in the second House. That is particularly the case if pursuing option (a) above, so that the Assembly has time for a subsequent debate and vote on an LCM for the provisions as amended.

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<sup>15</sup> Standing Order 29 of the National Assembly for Wales dated October 2017.

79. Departments should contact the Wales Office if any other scenario seems likely to occur, for example if the Welsh Government brings forward an LCM which the UK government has not requested.

### ***Amendments during the passage of a UK Parliament Bill***

80. The above arrangements are about preparing Bill provisions for introduction, but they apply equally to amendments to Bills during their Parliamentary passage. Prompt and effective engagement with the Welsh Government is essential in relation to Bill amendments that include devolved provision.

81. Where the UK government considers that a Bill amendment triggers the LCM Convention, departments should seek the 'in principle' agreement of the Welsh Ministers to promote a supplementary LCM in the Assembly before the amendment is tabled in Parliament. Departments should consult the Wales Office for advice as soon as they become aware of such amendments. Timing is crucial if departments are asking the Welsh Government to decide if an amendment should apply in Wales (and if it should, to promote an LCM in relation to the amendment). Providing best estimates for timing on the remaining stages of the Bill, where possible, will help the Welsh Government to seek a late LCM, where this is appropriate.

### ***Draft Parliamentary Bills***

82. The procedures described above relate to Bills before Parliament, but UKG departments should approach the WG on the same basis for Bills being published in draft. The Explanatory Notes to draft Bills must include a description of the devolution position. There is however no requirement to seek in-principle agreement to an LCM before publishing a draft Bill.

### ***Private Members' Bills (PMBs)***

83. Essentially the same procedures above should be followed for PMBs which the UK government is supporting, with some minor modifications to reflect the fact that procedures for PMBs are less certain than for UK government Bills.

84. UK government departments should consult the Welsh Government at an early stage about any PMB that the UK government is minded to support, if it includes devolved provision in Wales. Where a UK government-supported PMB includes devolved provision, support for an LCM should be sought from the Welsh Government. However, departments should note that the Assembly's Standing Orders only allow an LCM to be laid for a PMB after Committee stage in the House of introduction.

85. PMBs may also include non-devolved provision applying in relation to Wales. It is not necessary to obtain the consent of the Assembly or the Welsh Ministers in these circumstances but UK government departments should keep the Welsh Government informed, in the same way they would for the rest of the UK government's primary legislation programme.

86. The UK government may decide *not* to support a PMB that includes devolved provision. As soon as practicable after the UK government's opposition is confirmed, the relevant department should inform the Welsh Government if the Bill includes devolved provision. Even if the UK government does not oppose the Bill on policy grounds, it would normally resist devolved provisions if the Welsh Government has not given its consent, and would move any necessary amendments at Commons Committee or Report stage.

## **PART 3: MODIFYING THE ASSEMBLY'S LEGISLATIVE COMPETENCE**

### ***Section 109 Orders***

87. Section 109 of GoWA provides a mechanism for Schedules 7A and 7B of that Act to be modified by an Order in Council.
88. Whilst discussions are continuing on where powers that currently sit with the EU should best be exercised in future, the UKG does not otherwise intend to make further significant changes to the Assembly's legislative competence. However, minor and technical changes could be made on a case-by-case basis.
89. Modifications to the Assembly's legislative competence may be proposed by the UK government, the Welsh Government, Assembly Committees or individual Assembly Members. In practice, both the UK government and the Welsh Government would need to agree to the change in principle before work on an order could be taken forward.
90. It is important to note that s.109(4) requires the order to be subject to dual affirmative procedure: it must be approved by both Houses of Parliament and the Assembly. It therefore follows that both the UK government and the Welsh Government must agree on the terms of a s.109 Order before it can be brought forward. UK government departments should be mindful that any agreement to modify Schedule 7A or Schedule 7B may require complex inter-governmental negotiation, and should factor in considerable lead time for such negotiation in timetabling the delivery and implementation of the order.

### ***Section 116C Orders***

91. Section 116C of GoWA also provides a mechanism for amending the competence of the Assembly by adding new taxes to the definition of devolved taxes in the Act. An order under section 116C must be approved by both Houses of Parliament and the Assembly. UK government departments should speak to HM Treasury and the Wales Office if they receive any requests for new devolved taxes to be specified.

### ***Provisions in UK Parliament Bills***

92. Instead of using a s.109 Order, the UK government may seek to modify the legislative competence of the Assembly by amending Schedule 7A or 7B in a UK Parliament Bill. However, unlike s.109, this mechanism does not include a legal requirement for the Assembly to approve the changes being made to its legislative competence, but the LCM convention would normally apply. Departments should therefore presume in favour of a s.109 Order whenever feasible, rather than provisions in Parliamentary Bills, when the Assembly's legislative competence is to be modified.
93. Exceptionally, there may be occasions when it would be preferable to modify the Assembly's legislative competence in a Parliamentary Bill rather than by a s.109 Order. An example of this would be where the scope of a Bill covered a subject area in which the UK government and the Welsh Government had agreed legislative competence should be conferred on the Assembly. However, it would not be appropriate for the scope of a Bill to be widened simply to accommodate a provision modifying the Assembly's legislative competence. Any such provision should ideally be included in Bills on introduction.
94. Departments should seek the advice of the Wales Office on the most appropriate mechanism to use to modify the Assembly's legislative competence. Departments should

also consult the Wales Office and the Welsh Government if considering making consequential amendments to Schedule 7A or 7B through either primary or secondary legislation. Though the consent of the Assembly is not required in such cases, UK government departments should be mindful to ensure that making such consequential amendments would not fetter the Assembly's ability to exercise its legislative competence.

### ***Issues to consider before amending legislative competence***

95. Either the UK government or (more usually) the Welsh Government might identify a need to change the Assembly's legislative competence and modify Schedule 7A or 7B. Departments should seek the advice of their legal advisers as soon as any change to either Schedule 7A or Schedule 7B is proposed. They should also contact the Wales Office who can advise if any wider engagement with other UK government departments or interested parties may be necessary. Officials from the relevant department(s) and the Wales Office may wish to meet colleagues in the Welsh Government at the earliest opportunity to discuss a proposal in more detail.
96. Departments should bear in mind that amending or inserting reservations or exceptions into Schedule 7A may affect the interpretation of existing provisions in the Schedule by affecting the approach the courts would take to interpreting the Schedule. For example, adding detailed provisions to a reservation to make clear what it does and doesn't include could imply that the scope of other reservations which do not include similar detail is narrower. There is also a risk that defining a reservation in greater detail could inadvertently exclude areas that *should* be captured.
97. Section 109 Orders should not be used ordinarily as a means of clarifying the precise boundaries of the settlement; that should generally be a matter for the courts. It might however be appropriate for a reservation or exception to be clarified if the:
  - a. Welsh Government intends to bring forward legislation in the Assembly on the subject;
  - b. UK government and Welsh Government believe there is a significant risk of legal challenge to that legislation; and/or
  - c. UK government agrees it is appropriate to amend the devolution boundary in this way.
98. There may also be cases where new circumstances, such as technical innovations or new legal concepts, make it desirable to clarify or expand Schedule 7A or 7B. These cases should be determined on their merits following consultation with the Wales Office and the Welsh Government.
99. UK government departments may also wish to ensure that the Welsh Government has consulted any interested parties in England and other parts of the UK on the proposed change as well as those in Wales. UK government departments themselves may wish to consult interested parties (formally or informally) if a significant change is proposed, building on any engagement carried out by the Welsh Government.

### ***Procedure for making section 109 Orders***

100. Subject to reaching agreement at official level on the need for a s.109 Order, the First Minister (or the Welsh Minister with policy responsibility in the relevant area) would normally write to the Secretary of State for Wales to seek agreement to the changes

required, and the consequent modifications needed to Schedules 7A and/or 7B. The letter should be copied to the Secretary of State in the relevant UKG department, and to any other UKG departments with a policy interest in the Order.

101. Collective agreement by UK Ministers and the Welsh Ministers is needed for an order to be taken forward. The consent of UK Ministers is obtained via the Secretary of State for Wales and the Secretary of State in the relevant UK government department writing to seek clearance from the relevant Cabinet Committee.
102. Subject to clearance, the Secretary of State for Wales will reply formally to the First Minister (or relevant Welsh Minister) to confirm the UK government's agreement to the change. Agreement should be reached at official level on instructing on, and drafting the Order. There should be close working between officials and legal advisers in UK government departments, the Wales Office and the Welsh Government in drafting instructions.
103. Instructions should be agreed by all three parties before the Order is drafted, and should be as clear and straightforward as possible. It is crucial that all parties agree a procedure before instructions start to be drafted, and are clear about roles and deadlines. It would be sensible for the party proposing the change to lead on drafting instructions. For example, if the Welsh Government proposes a change, it would draft instructions for the lead UK government department and the Wales Office to agree.
104. Draft Orders must be approved by both Houses of Parliament and the Assembly before they are made at a meeting of the Privy Council. The Wales Office can advise on the detail of the processes for section 109 orders and the timeframes involved.

## **PART 4: MODIFYING THE WELSH MINISTERS' EXECUTIVE COMPETENCE**

105. UK government departments should be mindful that s.109 Orders are used only to modify the Assembly's legislative competence. Modifying the Welsh Ministers' executive competence can be done in a number of other ways, including:
  - a. Transfer of Functions Orders (TFOs), which are Orders in Council made under s.58 of GoWA. TFOs are generally used to transfer functions from Ministers of the Crown to the Welsh Ministers, and must be approved by both Houses of Parliament and the Welsh Ministers before they are made. The consent of the Assembly is also required given that Welsh Ministers are a DWA (see from paragraph 27). Departments should consult the Wales Office for guidance on the procedure for making TFOs.
  - b. Subordinate legislation other than a TFO, can also be used in certain cases to amend the Welsh Ministers' functions as set out in a Parliamentary Act or UK subordinate legislation.
  - c. Acts of the Assembly may confer functions on Welsh Ministers or modify their existing functions. Acts of the Assembly can also modify the functions of reserved authorities if the relevant UK government minister consents.<sup>16</sup> In such cases the modification could, for example, remove a function from a reserved authority and

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<sup>16</sup> See paragraphs 8-11 of Schedule 7B to GoWA.

confer a similar function on the Welsh Ministers. More detail of the process for seeking consent is set out from paragraph 34.

- d. Acts of Parliament may modify Welsh Ministers' functions. The UK government would not normally legislate in these ways (i.e. alter executive competence) without seeking an LCM.

106. Guidance on the need for Assembly consent when modifying Welsh Ministers' executive functions is set out in paragraphs 27-37.

107. Welsh Ministers also exercise common law type powers under s.58A of GoWA. These are the kind of legal powers exercised by a natural person, such as the powers to enter contracts, make payment or set up companies. Ministers of the Crown and Scottish Ministers also exercise common law powers as well as prerogative powers. However, Welsh Ministers do not exercise prerogative powers because no such powers exist in devolved areas under the Welsh devolution settlement.

## **PART 5: UKG SIs MODIFYING PRIMARY LEGISLATION WITHIN THE ASSEMBLY'S LEGISLATIVE COMPETENCE**

108. The consent of the Assembly is normally required where subordinate legislation introduced by the UK government amends primary legislation for which the Assembly has legislative competence. That consent is given by the Assembly through a Statutory Instrument Consent Motion (SICM).

109. There are however some exceptions to this general rule: for example, in the current session of Parliament several Bills relating to EU exit would enable UK Ministers to make SIs modifying Assembly legislation without the need for formal consent by the Assembly.

110. While UK Parliament Bills can be amended if an LCM is not passed by the Assembly, statutory instruments usually cannot. If a SICM is needed, Departments should allow adequate time to obtain the agreement of the Welsh Government before laying the secondary legislation in Parliament. The SICM should be passed in the Assembly before the SI is debated in Parliament. Departments should speak to the Wales Office if they are considering bringing forward subordinate legislation where an SICM may be required.

## **CONTACT DETAILS**

111. If you have any queries relating to this guidance please contact:

Jeff Lloyd, Head of Constitution, Wales Office:  
029 2092 4210 or [jeff.lloyd@walesoffice.gov.uk](mailto:jeff.lloyd@walesoffice.gov.uk)

Legal queries should be addressed to:

Sarah Stoney, Deputy Director, Wales Office Legal  
07712 410837 or [Sarah.Stoney@cabinetoffice.gov.uk](mailto:Sarah.Stoney@cabinetoffice.gov.uk)

For queries about Devolution Guidance Notes generally contact:

[Devolution@cabinetoffice.gov.uk](mailto:Devolution@cabinetoffice.gov.uk)

For queries relating to the Welsh Government contact:

The Constitutional Affairs and Intergovernmental Relations Team at  
[CAUmailbox@gov.wales](mailto:CAUmailbox@gov.wales)

Legal queries should be addressed to the Welsh Government legal adviser:

Jeff Godfrey, Director of Legal Services  
[Jeffrey.Godfrey@gov.wales](mailto:Jeffrey.Godfrey@gov.wales)

## ANNEX A – GLOSSARY OF TERMS

Application	The territory to which legislation applies in practice. Legislation that extends to England and Wales can apply only to England or only to Wales.
Assembly	The National Assembly for Wales as established by Part 1 of GoWA (also known as the Senedd or the devolved legislature in Wales).
DAs	Devolved Administrations i.e. the Welsh Government, the Scottish Government and the Northern Ireland Executive.
Devolved competence	Legislative competence plus executive competence i.e. the combined competence of the Assembly to pass Acts and the Welsh Ministers to make SIs.
Devolved provision (of an Act of Parliament or UKG SI)	A provision that would be within the legislative competence of the Assembly if it were included in an Act of the Assembly (ignoring any requirement for consent or consultation imposed under paragraph 8, 10 or 11 of Schedule 7B or otherwise). See s.108A(4) of GoWA.
DWAs or devolved Welsh authorities	Bodies whose functions etc. can be modified by the Assembly without UK government consent (see s.157A of GoWA). Contrast with “reserved authorities”.
Executive competence	The ability of the Welsh Ministers to make subordinate legislation. Note that executive competence and legislative competence are not identical e.g. the WMs may be able to make SIs in areas where the Assembly cannot pass Acts.
Extent	The legal jurisdiction(s) of which legislation forms a part. England and Wales is a single legal jurisdiction.
GoWA	The Government of Wales Act 2006.
LCM or Legislative Consent Motion	The mechanism through which the Assembly indicates its consent to a UK Parliamentary Bill which includes devolved provision or alters devolved competence.
LCM Convention (also known as the Sewel Convention)	A political convention as set out in s.107(6) of GoWA: “it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Assembly”.
Legislative competence	The ability of the Assembly to pass Acts in accordance with the tests set out in s.108A of GoWA.
Modify / modifying functions	Includes conferring, imposing, modifying or

	removing functions.
OPC	Office of the Parliamentary Counsel.
Reserved authorities	Bodies whose functions etc. cannot be modified by the Assembly unless the UK government gives consent (see paragraph 8 of Schedule 7B to GoWA). Contrast with “devolved Welsh authorities”.
SICM	Statutory Instrument Consent Motion. This is the formal mechanism by which the Assembly gives its consent to a UK government SI that makes provision within the Assembly’s competence.
TFO	A Transfer of Functions Order: an Order in Council made under s.58 of GoWA which transfers the functions of a UK government Minister to the Welsh Ministers.
TOs	Territorial Offices. These are the Wales Office, the Scotland Office and the Northern Ireland Office, all of which are UK government departments.
WMs	Welsh Ministers. This is the collective name for the First Minister (see ss. 46 and 47 of GoWA) and the Welsh Ministers (see s.48 of GoWA).