

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:

Committee Room 3 – Senedd

Meeting date: Monday, 4 July 2016

Meeting time: 14.30

For further information contact:

Gareth Williams

Committee Clerk

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1 Introduction, apologies, substitutions and declarations of interest

2 Papers to Note

(Pages 1 – 24)

CLA(5)–02–16 – Paper 1 – Letter from the First Minister to the Secretary of State for Wales, regarding Wales Bill Committee Stage (day 1) in the House of Commons including proposals for amendments.

CLA(5)–02–16 – Paper 2 – Letter from Nicholas Paines QC
Commissioner, Law Commission, 30 June 2016

3 Evidence in relation to the Wales Bill

(Pages 25 – 31)

Rt.Hon Carwyn Jones AM. First Minister;
Hugh Rawlings, Welsh Government

CLA(5)–02–16 – Research Service Briefing



4 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

(vi) the committee is deliberating on the content, conclusions or recommendations of a report it proposes to publish; or is preparing itself to take evidence from any person;

Consideration of Evidence

Ein cyf/Our ref: MA/L/FM/5082/16

Rt Hon Alun Cairns MP
Secretary of State for Wales
Wales Office
Gwydyr House
London SW1 2NP

29th June 2016

Dear Alun

Wales Bill Committee Stage (day 1)

I understand that the first day of Committee on the Bill will now take place next Tuesday 5 July, and that the intention is to take clauses 1-21 and associated Schedules (but excluding clause 3 and relevant Schedules) on that day.

You are already aware of my acute concern, which Kirsty and Leanne share, about the timetabling for this Bill. I hope, even if there can be no more time at Committee stage, that Report can be arranged so that there will be time for UK Government amendments to come forward following discussions with my officials over the summer on the many detailed issues on which we still have concerns. (For example, of the clauses to be considered on day 1, there are some issues around clause 4 that my officials would want to take up with yours).

However, we are where we are, and I have carefully considered what day one amendments it would be valuable, from a Welsh Government standpoint, to see debated to clauses 1-21 in the time available. I accept of course that the Welsh Government can have no formal role in bringing amendments forward for consideration, but I did think it would be helpful to make widely available some that the Welsh Government would wish to see considered, and I hope that there will be an opportunity for the House to consider them; naturally I would welcome you bringing them forward on behalf of the UK Government if you felt able to do so. I have enclosed both the texts of the proposed amendments and a short accompanying document explaining what each seeks to achieve. I look forward to seeing these amendments put down, and reading the ensuing debates.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

I am copying this letter to Jessica Morden MP; Hywel Williams MP; and Mark Williams MP, at Westminster; to the Presiding Officer, and to Huw Irranca Davies, (Chair of the Constitutional and Legislative Affairs Committee); and to Leanne Wood AM, Dafydd Elis Thomas AM, Andrew RT Davies AM, Neil Hamilton AM and Kirsty Williams AM.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carwyn Jones', written in a cursive style.

CARWYN JONES

WELSH GOVERNMENT

PROPOSALS FOR AMENDMENTS TO THE WALES BILL

COMMITTEE STAGE – DAY ONE

June 2016

INTRODUCTION

The House of Commons gave the Wales Bill its Second Reading on 14 June 2016. Immediately following that Debate, the House approved a motion providing for two days of Committee consideration for the Bill (and one day for Report and Third Reading).

The Welsh Government has considerable concerns that the time allocated for House of Commons scrutiny of this very important Bill will not be sufficient to enable the House effectively to discharge its scrutiny responsibilities, and has made representations to the Secretary of State for Wales accordingly. But of course we must accept that it is for the House to determine its allocation of time for the Bill.

We understand that the first day of Committee is likely to take place in July, that the Bill will be considered by a Committee of the Whole House, and that clauses 1-21, except clause 3, and Schedules 3 and 4 will be considered on that day.

While we will of course continue our dialogue with the UK Government about the Bill's detailed provisions, it is for Members of Parliament to put down amendments to the Bill, and the Welsh Government can have no formal role in that process. In this document we do nevertheless make some specific proposals for amendment of the clauses to be discussed on day one of Committee. (We will publish a similar document ahead of the Committee's second day of consideration). It must be for the Secretary of State, or individual MPs, to decide whether they wish formally to take these forward for consideration in the House.

THE AMENDMENTS

The Welsh Government wishes to propose amendments to clause 1; clause 2; clause 16; and clause 19. We further propose that clause 10 be omitted. In each case we provide a short explanation of the background to and purpose of the amendment; the amendment itself; and a draft of a Member's statement that might accompany it. Finally, we provide a text showing how each of the first four sets of amendments would appear on the Statute Book if the amendments were adopted. The amendment in respect of clause 10 would simply be to omit the clause, and so if this is agreed the clause would not appear on the face of the Act as it receives Royal Assent.

Clause 1

Clause 1 of the Bill as drafted would insert into the Government of Wales Act 2006 (“the 2006 Act”) two new sections: a new section 92A on the permanence of the Assembly and the Welsh Government as parts of the United Kingdom’s constitutional arrangements, and a new section 92B about the “Recognition of Welsh law”. The Welsh Government’s proposed amendment is in respect of the latter.

The new section 92B is in two parts. Sub-section (1) would state that *“There is a body of Welsh law made by the Assembly and the Welsh Ministers”*. Although this statement appears to serve no legal purpose, as a statement of fact it is true albeit incomplete, and we propose no amendment.

Sub-section (2) would provide:

“The purpose of this section is, with due regard to the other provisions of this Act, to recognise the ability of the Assembly to make law forming part of the law of England and Wales”.

In the Welsh Government’s view, it is entirely unclear that any practical consequences at all flow from this provision, and as such it should not be inserted into the 2006 Act. Moreover it seeks to preserve the profound oddity inherent in the current settlement, that laws applicable only in Wales and that have no effect in England continue to form part of the law of England (and Wales). According to the Explanatory Notes (ENs) published alongside the Bill

“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 forms part of the law of England and Wales”.

The Welsh Government observes that it is not clear whether the “declaratory statement” is that contained in sub-section (1) or (2), and that neither refers to the “single legal jurisdiction”; the reservation of justice, the courts and related matters is achieved by other provisions in the Bill.

The Welsh Government therefore believes that sub-section (2) serves no useful purpose and should be omitted. But the existence, as recognised in sub-section (1), of a discrete body of Welsh law made by the devolved institutions (and the reality, that, if this Bill reaches Royal Assent, this body of law is likely to grow both in subject-matter and extent) has implications which this Bill ought to address.

The UK Government has established an officials’ “Justice in Wales Working Group”, which acknowledges that there are issues here which require careful consideration. However, and perhaps contrary to the impression given in the Second Reading Debate, the Welsh Government has not received a formal invitation to participate in the work of this Group; nor was it asked to contribute to the Terms of Reference. The

Group is expected to report to UK Ministers only. Furthermore, its work is to be completed within a short time, and it is not clear how and with what resources it is expected to engage with civil society organisations such as the Law Society and other interested bodies. The Welsh Government does not believe that this Group is an appropriate mechanism to address, on a *continuing* basis, the issues that are bound to arise over the years as the substantive private and criminal law of Wales on the one hand, and England on the other, increasingly diverge.

We therefore propose new provisions in the Bill to replace the otiose and confusing sub-section (2), and to address the weaknesses of the Working Group. Our proposal is for a Commission, to be jointly appointed by the Lord Chancellor and the Welsh Ministers following consultation with the Lord Chief Justice, to keep the functioning of the justice system as it applies in relation to Wales under review, having regard to the divergence in the law and its administration (which will inevitably arise from the developing body of Welsh law recognised in sub-section (1)) as between England and Wales; the distinctive linguistic issues in the administration of justice in Wales; and other distinctive Welsh circumstances. The Commission is to perform its duties with a view to the development and reform of the justice system for Wales, “including keeping under review the question of whether the single legal jurisdiction...should be divided into a jurisdiction for Wales and a jurisdiction for England”. The Commission would produce Annual Reports, which would be laid before both Houses of Parliament and the Assembly.

In the Welsh Government’s view, these amendments, to replace the inadequate sub-section (2) and rectify the weaknesses inherent in the establishment of a non-statutory officials’ Working Group, give meaning to the recognition of a discrete body of Welsh law in sub-clause (1), and would if adopted provide an appropriate mechanism to address the issues which will inevitably arise in coming years in connection with the justice system in Wales as the Assembly develops and expands the distinctive body of Welsh statute law.

Clause 2

Clause 2 of the Bill as drafted would add a new section 107(6) to the 2006 Act. Under that Act (and under this Bill if it receives Royal Assent) the National Assembly has extensive legislative powers for Wales, but Parliament continues to be able to legislate for Wales on all matters, devolved and non-devolved. To avoid clashes between the two legislatures in relation to devolved issues, Parliament has adopted a self-denying ordinance, and will not normally legislate with regard to devolved matters without the consent of the Assembly. This arrangement has hitherto proceeded on the basis of a non-statutory (“Sewel”) convention, but clause 2 provides, in the new s.107(6) of the 2006 Act, a statutory underpinning to the convention.

The Welsh Government is content that that should be done, but is concerned that, as drafted, the new provision does not provide a complete statement of the circumstances when the Assembly's consent is required in respect of Parliamentary legislation. This is particularly important given the Secretary of State's suggestion in the Second Reading Debate on the Bill that questions about whether consent is required in any particular circumstances may be justiciable in the courts. As drafted, the Bill fails to mention the circumstance where proposed legislation modifies the legislative competence of the Assembly itself. The requirement for consent in such circumstances is not controversial; the UK Government has for example made clear that the Assembly's consent is required in respect of this Wales Bill. So our amendment, in the interests of clarity and transparency, sets out each of the circumstances when the Assembly's consent should "normally" be required.

Clause 10

Clause 10 specifies that the Assembly's Standing Orders must satisfy a new requirement, that a "Justice Impact Assessment" must be published in respect of any new Bill introduced into the Assembly. The Welsh Government believes that the clause is not needed, and we are proposing an amendment that it simply be omitted from the Bill. We say this because the clause goes against the thrust of other parts of the Bill, which (in a very welcome way) give the Assembly the ability to regulate its own procedure rather than having these provided for in legislation. Furthermore, the Assembly's Standing Orders already make detailed provision about what supporting documentation needs to be published alongside new Bills, and it ought to be for the Assembly both to make its own decisions as to the nature of that documentation and whether, in any given case, the Standing Order requirements have been satisfied. We would strongly advocate that the clause be taken out of the Bill as unnecessary and inappropriate.

Clause 16

The Welsh Government has two proposals for amendment of clause 16. The first relates to the removal by the Bill of the requirement for a referendum before partial devolution of income tax responsibilities to the Assembly can take effect. As the First Minister noted in a letter to the Secretary of State of 9 June, "with the removal of the referendum provisions, the Bill leaves it open to the Treasury to devolve income tax responsibilities by order, and without any requirements either for consultation with the Welsh Ministers or any form of Assembly procedure. I have made it clear that we will not accept these responsibilities without fair funding; the order-making powers should not be exercisable unless there is in place a fiscal framework (covering a fair block grant offset, a long term resolution of the issue of fair funding, and an increase in our capital borrowing limit to reflect the increase in independent revenues from devolved taxes, among other matters) agreed between the two governments and endorsed by the Assembly and Parliament". The amendments we propose would give effect to that policy. They do this by first placing a duty on the Secretary of State

to lay before both Houses of Parliament (and make available to the First Minister) a “fiscal framework” document explaining how the funding arrangements for the devolved institutions are to work as they move from a fully grant-funded regime to one of resources derived from both Treasury grant and tax revenues; and secondly providing that the order-making powers of the Treasury to bring partial income tax devolution into force may not be exercised until the “fiscal framework” has been approved by both Houses and by the Assembly.

Secondly, the Welsh Government is proposing an amendment that would enhance its capital borrowing powers. The 2014 Act also enables Welsh Minister to borrow to fund capital investment in Wales. Those powers will come into force alongside the current devolved taxes - Stamp Duty Land Tax and Landfill Tax – from April 2018. The Act sets the total capital borrowing limit at £500 million, based on approximately £200 million of revenue from the two devolved taxes. The Command Paper published in connection with the Act states that that capital borrowing limit will be reviewed in the light of economic and fiscal circumstances and the size of the independent revenue stream (emphasis added). With the partial devolution of income tax the size of the independent revenue stream from devolved taxes will increase by £2 billion. Given this significant increase in independent revenue it is appropriate that the capital borrowing limit is also increased.

There are a number of ways to calculate what an appropriate limit should be that should take account of both the size of the independent revenue stream and the ability to repay borrowing given existing funding commitments. The Holtham Commission recommended a capital borrowing limit of £2 billion and the Silk Commission recommended that the Welsh Government’s capital borrowing limit should be at least proportionate to the limit agreed for the Scottish Government. A total capital borrowing limit of £2 billion would be in line with the recommendation from the Holtham Commission and would also be proportionate to the capital borrowing limits agreed for the Scottish Government.

Clause 19

The amendment we are proposing to clause 19 is intended to secure a closer alignment between the Assembly’s legislative powers and the Welsh Ministers’ executive functions. Under the Scotland Act 1998, a key policy objective was to secure such an alignment by way of a general transfer of Minister of the Crown functions exercisable in relation to matters within the legislative competence of the Parliament. Such an approach was not of course possible at that time for the Welsh devolution settlement, as the Assembly did not have any primary legislative competence. Accordingly, Transfer of Functions Orders have played a significantly more important role in giving Welsh Ministers substantial executive responsibilities, and Parliamentary and Assembly legislation has also created new executive responsibilities, regardless of how the Assembly’s legislative competence has

developed. (In addition, Schedule 11 of the 2006 Act reallocated many functions from the “old” Assembly to the Welsh Ministers).

In the Welsh Government’s view, given the substantially enhanced legislative competence the Assembly will be able to exercise in future, there is a good case now for securing that closer alignment between the devolved institutions’ legislative and executive responsibilities which is a beneficial feature of the Scottish settlement. The amendment seeks to achieve this by making new provision which would be inserted at the appropriate place in the 2006 Act. Some minor amendments are also proposed in consequence.

**THE WELSH GOVERNMENT'S PROPOSED AMENDMENTS TO THE WALES BILL
(COMMITTEE STAGE, HOUSE OF COMMONS, DAY 1)**

1

- 5 Clause 1, page 2, line 3, at end insert –
- “(2) There is to be a body of Commissioners to be known as the Justice in
Wales Commission (but referred to in this section as the
“Commission”).
- 10 (3) The Commission must keep the functioning of the justice system in
relation to Wales under review with a view to its development and
reform, including keeping under review the question of whether the
single legal jurisdiction of England and Wales should be divided into
a jurisdiction for Wales and a jurisdiction for England.
- 15 (4) In exercising its duty in subsection (3) the Commission must have
regard to –
- (a) divergence in the law and its administration as between
England and Wales,
 - (b) the need to treat the Welsh and English languages on the basis
of equality, and
 - 20 (c) any other circumstances in Wales affecting operation of the
justice system.
- (4) In exercising its duty in subsection (3) the Commission may, in
particular –
- (a) examine any aspect of the justice system,
 - 25 (b) formulate and publish proposals for reform of the justice
system by means of draft Bills or otherwise, and
 - (c) provide advice and information to the Lord Chancellor, the
Welsh Ministers and other public authorities concerned with
the justice system.
- 30 (5) The Commission is to be a body corporate consisting of five
commissioners appointed jointly by the Lord Chancellor and the
Welsh Ministers after consultation with the Lord Chief Justice.
- (6) One of the commissioners is to be appointed to chair the Commission.
- 35 (7) The Commission must make an annual report to the Lord Chancellor
and the Welsh Ministers on its proceedings.
- (8) The Welsh Ministers must lay the report before the National
Assembly for Wales with such comments (if any) as the Welsh
Ministers think fit.
- 40 (9) The Lord Chancellor must lay the report before both Houses of
Parliament with such comments (if any) as the Lord Chancellor thinks
fit.

(10) The Lord Chancellor and the Welsh Ministers acting jointly may by regulations make further provision about the Commission, including, in particular, provision about—

- (a) the status and functions of the Commission;
- (b) the tenure and salary of commissioners;
- (c) staffing;
- (d) financial and accounting arrangements.

(11) The power to make regulations under subsection (10) is exercisable by statutory instrument and such regulations may not be made unless a draft of the instrument containing them has been laid before and approved by a resolution of each House of Parliament and of the Assembly.”

Member's explanatory statement

The new section 92B(1) inserted by clause 4 recognises the existence of a body of Welsh law made by the Assembly and the Welsh Ministers. The new subsections to be inserted after that provision by this amendment provide for the establishment of a Justice in Wales Commission, to be appointed jointly by the Welsh Ministers and the Lord Chancellor. The purpose of the Commission is to keep the justice system as it applies in relation to Wales under review with a view to its development and reform, having regard in particular to divergence in the law as between England and Wales.

2

Clause 1, page 1, leave out line 8 and insert “CONSTITUTIONAL ARRANGEMENTS FOR WALES”.

Member's explanatory statement

This amendment amends the title of the new Part 2A inserted by clause 1 in consequence of the proposal in amendment 1 to establish a Justice in Wales Commission.

3

Clause 1, page 2, line 1, after “law” insert “and review of the justice system in Wales”

Member's explanatory statement

This amendment amends the heading of clause 1 in consequence of the proposal in amendment 1 to establish a Justice in Wales Commission.

4

Clause 1, page 2, leave out lines 4 to 6.

Member's explanatory statement

This amendment removes subsection (2) of the new section 92B of the Government of Wales Act 1996 (recognition of Welsh law) to be inserted by this clause. Subsection (2) of the new section 92B seeks to explain the purpose of subsection (1) of that section.

5

Clause 2, page 2, line 13, at end insert—

“(7) For the purpose of subsection (6), a provision relates to a devolved matter if the provision –

- (a) applies in relation to Wales and does not relate to a reserved matter,
- (b) modifies the legislative competence of the Assembly, or
- (c) confers a function on, or removes or modifies a function of, any member of the Welsh Government.”

Member’s explanatory statement

This amendment defines the meaning of “devolved matters” for the purpose of the statutory recognition of the convention about Parliament legislating on devolved matters proposed by clause 2.

6

Clause 2, page 2, line 12, leave out “legislate with regard” and insert “enact provisions relating”.

Member’s explanatory statement

This amendment is a consequence of of amendment 5, which defines the meaning of “devolved matters”.

7

Page 11, line 38, leave out clause 10.

Member’s explanatory statement

This amendment removes clause 10, which would requiring justice impact assessments to be made on or before introduction of an Assembly Bill.

8

Clause 16, page 14, leave out lines 30 to 31 and insert –

“(a) for subsection (1) substitute –

“(1) Before the commencement of sections 8 and 9, the Secretary of State must lay a statement (“a fiscal framework”) before each House of Parliament setting out the arrangements for calculating and making payments into the Welsh Consolidated Fund under section 118 of GOWA 2006 following the commencement of those sections.

(1A) The Secretary of State must send a copy of the fiscal framework to the First Minister for Wales and the First Minister must lay it before the Assembly.”

(b) after subsection (2) insert –

“(2A) But an order may not be made under subsection (2) until a fiscal framework laid under this section has been approved by resolution of both Houses of Parliament and of the Assembly.”

- (c) for the heading substitute “Fiscal framework and commencement of income tax provisions.”

Member’s explanatory statement

Clause 16(3)(a) omits section 14(1) of the Wales Act 2014, which applies the power of the Treasury to commence the income tax provisions of that Act by order where the majority of the voters in a referendum in Wales vote in favour of the income tax provisions coming into force. This amendment omits the same provision, but replaces it with provision for a fiscal framework to be prepared by the Secretary of State which must be approved by the Assembly and each House of Parliament before the income tax provisions may be commenced by order made by the Treasury.

9

Clause 16, page 14, line 38, at end insert –

- “(6) In section 122A(1) and (3) of the Government of Wales Act 2006 (lending for capital expenditure), for “£500 million” substitute “£2 billion”.”

Member’s explanatory statement

Section 122A of the Government of Wales Act 2006 (inserted by section 20(10) of the Wales Act 2014) makes provision for limits on borrowing by the Welsh Ministers for capital expenditure. This amendment changes the limit on the aggregate at any time outstanding from £500 million to £2 billion.

10

Clause 16, page 14, line 22 after “follows” insert “in subsections (2) to (5)”.

Member’s explanatory statement

This amendment is a necessary drafting change in consequence of the amendment 9.

11

Clause 53, page 40, line 8, at end insert –

- “(4) Section 16(6) comes into force on the day appointed by the Treasury by order under section 14(2) of the Wales Act 2014 for the coming into force of sections 8 and 9 of that Act.”

Member’s explanatory statement

The new limits proposed by amendment 9 on borrowing by the Welsh Ministers are calculated by reference to the financial consequences of commencing the income tax provisions of the Wales Act 2014. This provision ensures that the new borrowing limits come into effect at the same time as commencement of the income tax provisions.

12

Clause 19, page 17, line 27, at end insert –

- “(2) After section 58A of that Act (inserted by section 17(1) of this Act) insert –

“58AB Transfer of functions within devolved competence

- 5 (1) Functions conferred on a Minister of the Crown by virtue of any pre-commencement enactment or pre-commencement prerogative instrument, so far as they are exercisable within devolved competence by a Minister of the Crown, are to be exercisable by the Welsh Ministers instead of a Minister of the Crown.
- 10 (2) Provision for a Minister of the Crown to exercise a function with the agreement of, or after consultation with, any other Minister of the Crown ceases to have effect in relation to the exercise of the function by a member of the Welsh Government by virtue of subsection (1).
- 15 (3) In this section—
 “pre-commencement enactment” means—
 (a) an Act passed before or in the same session as this Act and any other enactment made before the passing of this Act;
 20 (b) an enactment made, before the commencement of this section, under such an Act or such other enactment;
 “pre-commencement prerogative instrument” means a prerogative instrument made before or during the session in which this Act was passed.”

Member’s explanatory statement

30 *Clause 19 makes provision about transfer of Ministerial functions. The amendment provides for the transfer of all functions currently exercisable by Ministers of the Crown within devolved competence to the Welsh Ministers.*

13

Clause 17, page 15, leave out lines 29 to 31.

Member’s explanatory statement

35 *This amendment and amendment 14 makes provision for the definition of devolved competence in clause 17 to be applied for the purpose of the amendments made to clause 19 by amendment 12.*

14

Clause 17, page 15, line 35, at end insert—

- 40 () In this section and section 58AB “within devolved competence” and “outside devolved competence” are to be read in accordance with subsections (7) and (8); but for the purposes of section 58AB no account is to be taken of the requirement to consult the appropriate Minister in paragraph 11(2) of Schedule 7B.

Member's explanatory statement

See the explanatory statement for amendment 13.

15

Clause 20, page 18, line 8, at end insert –

5

“(ab) section 58AB,”.

Member's explanatory statement

10

Clause 20 amends the power in section 58 of the Government of Wales Act 2006 to make provision by Order in Council for the transfer of functions to the Welsh Ministers to authorise provision to be made in respect of “previously transferred functions”. This amendment extends the definition of “previously transferred functions” to include functions transferred by the general transfer proposed by amendment 12.

THE WELSH GOVERNMENT'S PROPOSED AMENDMENTS TO THE WALES BILL
AS TRACKED CHANGES TO CLAUSES IN THE BILL

(COMMITTEE STAGE, HOUSE OF COMMONS, DAY 1)

1 ~~Permanence of the National Assembly for Wales and Welsh~~
5 ~~Government~~ Constitutional arrangements for Wales¹

In the Government of Wales Act 2006, after Part 2 (the Welsh Government) insert—

“PART 2A

~~PERMANENCE OF THE ASSEMBLY AND WELSH~~
GOVERNMENT CONSTITUTIONAL ARRANGEMENTS FOR WALES

10 **92A Permanence of the Assembly and Welsh Government**

- 15
- (1) The Assembly and the Welsh Government are a permanent part of the United Kingdom's constitutional arrangements.
 - (2) The purpose of this section is, with due regard to the other provisions of this Act, to signify the commitment of the Parliament and Government of the United Kingdom to the Assembly and the Welsh Government.
 - (3) In view of that commitment it is declared that the Assembly and the Welsh Government are not to be abolished except on the basis of a decision of the people of Wales voting in a referendum.

20 **92B Recognition of Welsh law and review of the justice system in Wales**

- 25
- (1) There is a body of Welsh law made by the Assembly and the Welsh Ministers.
 - (2) There is to be a body of Commissioners to be known as the Justice in Wales Commission (but referred to in this section as the “Commission”).
 - (3) The Commission must keep the functioning of the justice system in relation to Wales under review with a view to its development and reform, including keeping under review the question of whether the single legal jurisdiction of England and Wales should be divided into a jurisdiction for Wales and a jurisdiction for England.
 - (4) In exercising its duty in subsection (3) the Commission must have regard to—
 - (a) divergence in the law and its administration as between England and Wales,
- 30

1 Printing change

- (b) the need to treat the Welsh and English languages on the basis of equality, and
- (c) any other circumstances in Wales affecting operation of the justice system.
- 5 (4) In exercising its duty in subsection (3) the Commission may, in particular –
- (a) examine any aspect of the justice system,
- (b) formulate and publish proposals for reform of the justice system by means of draft Bills or otherwise, and
- 10 (c) provide advice and information to the Lord Chancellor, the Welsh Ministers and other public authorities concerned with the justice system.
- (5) The Commission is to be a body corporate consisting of five commissioners appointed jointly by the Lord Chancellor and the Welsh Ministers after consultation with the Lord Chief Justice.
- 15 (6) One of the commissioners is to be appointed to chair the Commission.
- (7) The Commission must make an annual report to the Lord Chancellor and the Welsh Ministers on its proceedings.
- (8) The Welsh Ministers must lay the report before the National Assembly for Wales with such comments (if any) as the Welsh Ministers think fit.
- 20 (9) The Lord Chancellor must lay the report before both Houses of Parliament with such comments (if any) as the Lord Chancellor thinks fit.
- 25 (10) The Lord Chancellor and the Welsh Ministers acting jointly may by regulations make further provision about the Commission, including, in particular, provision about –
- (a) the status and functions of the Commission;
- (b) the tenure and salary of commissioners;
- 30 (c) staffing;
- (d) financial and accounting arrangements.
- (11) The power to make regulations under subsection (10) is exercisable by statutory instrument and such regulations may not be made unless a draft of the instrument containing them has been laid before and approved by a resolution of each House of Parliament and of the Assembly.
- 35 ~~(2) The purpose of this section is, with due regard to the other provisions of this Act, to recognise the ability of the Assembly and the Welsh Ministers to make law forming part of the law of England and Wales.”~~

*Convention about Parliament legislating on devolved matters***2 Convention about Parliament legislating on devolved matters**

In section 107 of the Government of Wales Act 2006 (Acts of the National Assembly for Wales), after subsection (5) insert—

“(6) But it is recognised that the Parliament of the United Kingdom will not normally ~~legislate with regard~~ enact provisions relating to devolved matters without the consent of the Assembly.

(7) For the purpose of subsection (6), a provision relates to a devolved matter if the provision—

- (a) applies in relation to Wales and does not relate to a reserved matter,
- (b) modifies the legislative competence of the Assembly, or
- (c) confers a function on, or removes or modifies a function of, any member of the Welsh Government.”

~~10 Introduction of Bills: justice impact assessment~~

~~After section 110 of the Government of Wales Act 2006 insert—~~

~~“110A Introduction of Bills: justice impact assessment~~

~~—(1) The standing orders must include provision requiring the person in charge of a Bill, on or before the introduction of the Bill, to make a written statement setting out the potential impact (if any) on the justice system in England and Wales of the provisions of the Bill (a “justice impact assessment”).~~

~~—(2) The form of the justice impact assessment and the manner in which it is to be made are to be determined under the standing orders.~~

~~—(3) The standing orders must provide for the justice impact assessment to be published.”~~

Welsh rates of income tax: ~~removal of referendum requirement and borrowing by the Welsh Ministers~~²

16 Welsh rates of income tax: ~~removal of referendum requirement and borrowing by the Welsh Ministers~~³ [j700]

(1) The Wales Act 2014 is amended as follows in subsections (2) to (5).

(2) Omit—

- (a) section 12 and Schedule 1 (referendum about commencement of income tax provisions),
- (b) section 13 (proposal for referendum by Assembly), and
- (c) the italic heading before section 12.

² Printing change

³ Printing change.

(3) In section 14 (commencement of income tax provisions etc if majority in favour) –

(a) ~~omit subsection (1);~~ for subsection (1) substitute –

“(1) Before the commencement of sections 8 and 9, the Secretary of State must lay a statement (“a fiscal framework”) before each House of Parliament setting out the arrangements for calculating and making payments into the Welsh Consolidated Fund under section 118 of GOWA 2006- following the commencement of those sections.

(1A) The Secretary of State must send a copy of the fiscal framework to the First Minister for Wales and the First Minister must lay it before the Assembly.”;

(b) after subsection (2) insert –

“(2A) But an order may not be made under subsection (2) until a fiscal framework laid under this section has been approved by resolution of both Houses of Parliament and of the Assembly.”.

(c) ~~in the heading omit “etc if majority in favour”~~ for the heading substitute “Fiscal framework and commencement of income tax provisions.

(4) In section 23 (reports on the implementation and operation of Part 2) omit subsection (8).

(5) In section 29 (commencement) –

(a) in subsection (2)(b) for “referendum-related” substitute “income tax”;

(b) in subsection (4) –

(i) for “referendum-related” substitute “income tax”;

(ii) omit “(commencement if majority in favour at referendum)”.

(6) In section 122A(1) and (3) of the Government of Wales Act 2006 (lending for capital expenditure), for “£500 million” substitute “£2 billion”.

17 Functions of Welsh Ministers

(1) After section 58 of the Government of Wales Act 2006 insert –

“58A Executive ministerial functions

(1) Executive ministerial functions, so far as exercisable within devolved competence, are exercisable by the Welsh Ministers.

(2) Executive ministerial functions that are ancillary to a function of the Welsh Ministers exercised outside devolved competence are also exercisable by the Welsh Ministers.

(3) Functions exercisable by the Welsh Ministers under subsection (1) or (2) are not exercisable by a Minister of the Crown unless they are functions to which subsection (4) applies.

If they are functions to which subsection (4) applies, they are exercisable by the Welsh Ministers concurrently with any relevant Minister of the Crown.

(4) This subsection applies to –

- (a) functions ancillary to a function of the Welsh Ministers that is exercisable concurrently or jointly with a Minister of the Crown;
- (b) functions ancillary to a function of a Minister of the Crown;
- (c) functions that are not ancillary to another function;
- (d) functions in relation to observing and implementing obligations under EU law.

(5) In this section—

“executive ministerial function” means a function of Her Majesty of a kind that is exercisable on Her behalf by a Minister of the Crown (including a function involving expenditure or other financial matters), but not a function conferred or imposed by or by virtue of any legislation or the prerogative. ~~“within devolved competence” and “outside devolved competence” are to be read in accordance with subsections (7) and (8).;~~

(6) For the purposes of this section a function is “ancillary to” another function if or to the extent that it is exercisable with a view to facilitating, or in a way that is conducive or incidental to, the exercise of the other function.

(7) ~~In this section and section 58AB “within devolved competence” and “outside devolved competence” are to be read in accordance with subsections (8) and (9); but for the purposes of section 58AB no account is to be taken of the requirement to consult the appropriate Minister in paragraph 11(2) of Schedule 7B.~~

(87) It is outside devolved competence—

- (a) to make any provision by subordinate legislation that would be outside the legislative competence of the Assembly if it were included in an Act of the Assembly (see section 108A), or
- (b) to confirm or approve any subordinate legislation containing such provision.

(98) In the case of a function other than a function of making, confirming or approving subordinate legislation, it is outside devolved competence to exercise the function (or to exercise it in a particular way) if or to the extent that a provision of an Act of the Assembly conferring the function (or conferring it so as to be exercisable in that way) would be outside the legislative competence of the Assembly.”

(2) In section 70 of that Act (financial assistance)—

(a) in subsection (1)—

- (i) for “The Welsh Ministers” substitute “The First Minister”;
- (ii) for “the Welsh Ministers consider” substitute “the First Minister considers”;

- (iii) for “they aim” substitute “the Minister aims”;
- (iv) for “their functions” substitute “the Minister’s functions”;
- (b) in subsection (2) –
 - (i) for “The Welsh Ministers” substitute “The First Minister”;
 - (ii) for “by them” substitute “by the Minister”;
- (c) for subsection (3) substitute –

“(3) This section applies in relation to the Counsel General as in relation to the First Minister.

(As regards the Welsh Ministers, see section 58A.)”

- (3) In section 71 of that Act (incidental etc powers of Welsh Ministers etc), for subsection (2) substitute –

“(2) This section applies to the First Minister and the Counsel General.

(As regards the Welsh Ministers, see section 58A.)”

19 Transfer of Ministerial functions

- (1) In section 58 of the Government of Wales Act 2006 (transfer of Ministerial functions), in subsection (1)(b), for “concurrently with the Minister of the Crown,” substitute “ –

- (i) concurrently or jointly with a Minister of the Crown, or
- (ii) only with the agreement of, or after consultation with, a Minister of the Crown,”.

- (2) After section 58A of that Act (inserted by section 17(1) of this Act) insert –

“58AB Transfer of functions within devolved competence

- (1) Functions conferred on a Minister of the Crown by virtue of any pre-commencement enactment or pre-commencement prerogative instrument, so far as they are exercisable within devolved competence by a Minister of the Crown, are to be exercisable by the Welsh Ministers instead of a Minister of the Crown.
- (2) Provision for a Minister of the Crown to exercise a function with the agreement of, or after consultation with, any other Minister of the Crown ceases to have effect in relation to the exercise of the function by a member of the Welsh Government by virtue of subsection (1).
- (3) In this section –

“pre-commencement enactment” means –

- (a) an Act passed before or in the same session as this Act and any other enactment made before the passing of this Act;
- (b) an enactment made, before the commencement of this section, under such an Act or such other enactment;

“pre-commencement prerogative instrument” means a prerogative instrument made before or during the session in which this Act was passed.”

- (3) In Part 2 of Schedule 3 to that Act (exercise of transferred functions), in paragraph 6(a) and (b) omit “in relation to a cross-border body or an English border area”.
- (4) After section 59 of that Act insert –

“59A Shared powers

Schedule 3A, which sets out functions of Ministers of the Crown and others that are exercisable concurrently or jointly with the Welsh Ministers, has effect.”

- (5) After Schedule 3 to that Act insert the Schedule 3A set out in Schedule 3 to this Act.

20 Transferred Ministerial functions

In section 58 of the Government of Wales Act 2006, after subsection (2) insert –

“(2A) An Order in Council under this section may make in relation to a previously transferred function –

- (a) provision increasing or reducing (whether geographically or otherwise) the extent of the previous transfer;
- (b) provision to the effect that the function is exercisable –
- (i) concurrently or jointly with a Minister of the Crown, or
- (ii) only with the agreement of, or after consultation with, a Minister of the Crown.

(2B) In subsection (2A) “previously transferred function” means a function exercisable by the Welsh Ministers, the First Minister or the Counsel General by virtue of –

- (a) a previous Order in Council under this section,
- (ab) section 58AB,
- (b) Schedule 3A, or
- (c) an Order in Council under section 22 of the Government of Wales Act 1998 and –
- (i) paragraph 30 of Schedule 11 to this Act, or
- (ii) an Order in Council under paragraph 31 of that Schedule;

and “previous transfer” is to be read accordingly.”

53 Commencement

- (1) The following provisions come into force on the day on which this Act is passed –
- (a) section 51(2) to (8);
- (b) section 52 and Schedule 6;

- (c) this section;
- (d) section 54.

(2) The following provisions come into force at the end of the period of two months beginning with the day on which this Act is passed –

- (a) sections 1 and 2;
- (b) section 15;
- (c) section 16;
- (d) section 17.

(3) Section 3 and Schedules 1 and 2 come into force on the day appointed by the Secretary of State by regulations under this subsection (“the principal appointed day”).

Before making regulations under this subsection the Secretary of State must consult the Welsh Ministers and the Presiding Officer of the National Assembly for Wales.

(4) Section 16(6) comes into force on the day appointed by the Treasury by order under section 14(2) of the Wales Act 2014 for the coming into force of sections 8 and 9 of that Act.

(5) The other provisions of this Act come into force on whatever day or days the Secretary of State appoints by regulations.

Regulations under subsection (3) may appoint the principal appointed day for any of those provisions.

(6) The power to make regulations under this section is exercisable by statutory instrument.

(7) The principal appointed day, or a day appointed under subsection (4), must be after the end of the period of four months beginning with the day on which the regulations appointing that day are made.

(8) Regulations under this section (other than regulations bringing into force section 3 and Schedules 1 and 2) may appoint different days for different purposes.



**Law
Commission**
Reforming the law

Nicholas Paines QC
Commissioner
Law Commission
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30 June 2016

Dear Stakeholder,

Form and Accessibility of the Law Applicable in Wales – Final Report

I am delighted to announce that the Law Commission's final report and recommendations on the Form and Accessibility of the Law Applicable in Wales was laid before Parliament and published today. The paper and other supporting documents can be accessed at the following link: <http://www.lawcom.gov.uk/project/the-form-and-accessibility-of-the-law-applicable-in-wales/> in both English and Welsh.

The recommendations in this report represent the Law Commission's conclusions about how the law and practice should be reformed in order to make the law accessible to the people of Wales and anyone else looking at the law applicable in Wales. We recommend a programme of codification of Welsh law, as well as the formulation of legislative standards. In addition, we recommend the development and maintenance of an up to date online source of legislation and other law applicable in Wales.

Yours sincerely

Nicholas Paines

Nicholas Paines QC

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