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Swyddfa Cymru

Rt Hon Stephen Crabb MP
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David TC Davies MP
Chair, Welsh Affairs Committee
House of Commons
SW1A 0AA

Ref: 481SUB 15

5th November 2015

Dear David,

DRAFT WALES BILL

During my appearance before the Committee last week I promised to write on a number of points.

Firstly, I enclose the Wales Office's response to the question of how many Assembly Acts could have been made under the new model. The table of Assembly Acts attached in the First Minister's 7 September letter to me provides the basis for this response. The First Minister has subsequently published this correspondence.

Our analysis has determined that 20 of the 25 Assembly Acts the First Minister has identified as being blocked by the new model could in fact have been made in exactly the same way – that is, either without any requirement for UK Government consent or with the same consents being required as now.

The remaining five include the need for UK Government consent for the Assembly to modify the functions of a reserved body. I strongly believe that the new reserved powers model should be underpinned by the principle of a clear separation between devolved and reserved powers.

It is right that the UK Government consents to any changes in the functions of reserved bodies that the Welsh Government wishes to make, just as the UK Government seeks the consent of the Assembly (through a Legislative Consent Motion) if Parliament seeks to legislate in devolved areas.

As requested I have also enclosed my correspondence to the First Minister on the draft Bill from June onwards. I have not formally responded to the First Minister's letters of the 7th or 22nd September as these issues are subject to ongoing discussions.



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Rt Hon Carwyn Jones AM
First Minister of Wales
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Our Ref: 69SOS 15

2nd July 2015

Dear Carwyn -

Wales Bill

Thank you for your letters of 11 June and 24 June on the Wales Bill. I will reply to your 23 June letter on Ministers' powers separately.

We share a common goal of ensuring that that Wales' constitutional settlement is clear, robust and durable for the long term. Full engagement between the UK Government and Welsh Government on the new reserved powers model will be important as we prepare the Wales Bill to deliver this.

My aim is to publish the Bill in draft for Pre-Legislative Scrutiny (PLS) in the autumn, and to introduce the Bill into Parliament in early 2016.

I am also aiming to share an early draft of the reserved powers model with the Welsh Government in late July. This would enable us to discuss the draft during the summer, and for me to consider the Welsh Government's views before publishing the Bill in draft. Discussions between the UK and Welsh Governments could continue during the autumn, alongside the PLS process.

Turning to specific points in your 11 June letter, the UK Government is committed to implementing the St David's Day Agreement in full. The Wales Bill will implement those parts of the Agreement that require primary legislation. As you know, the Agreement was founded on political consensus and I have no plans to include in the Bill those Silk Commission recommendations which have no consensus.

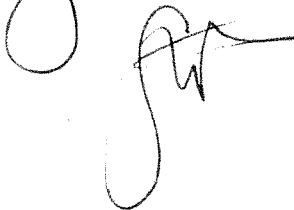
You will be aware that work on a revised Memorandum of Understanding is being taken forward by the four UK administrations under the auspices of the JMC. The case for establishing a Welsh Intergovernmental Committee, and several other Silk II recommendations relating to inter-governmental machinery, is being considered as part of that work.

Our analysis of the Smith Commission's non-fiscal recommendations is ongoing. You are right to point to the St David's Day Agreement as the basis for that work. As we made clear in that document, I will need to see a strong case for implementing any further Smith Commission recommendations for Wales. I would need to be satisfied that doing so is in the best interests of Wales and of the United Kingdom as a whole. I would welcome a discussion with you on Smith before we break for the summer.

Our analysis of Smith is not considering welfare or fiscal matters. The position in Wales on both issues is quite different to that in Scotland. We share the view that welfare devolution would not be in Wales's best interests at this time, and our expectation is that the Welsh Government will call an income tax referendum in light of the UK Government's commitment to introduce a funding floor at the Spending Review.

The UK Government's position on Air Passenger Duty has not changed since our St David's Day announcement. We committed to consider the case and options for devolving further powers to the Assembly over APD. We also said that in advance of this we would review the potential options to mitigate the impacts of APD devolution on regional airports. As part of this review, HM Treasury will publish a discussion paper later in the summer examining the devolution and variation of APD rates within England, and the provision of aid for regional airports, including Bristol Airport.

It would be useful for us to discuss the other issues raised in your letters at our next bilateral.

Kind regards,


Rt Hon Stephen Crabb MP
Secretary of State for Wales



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Ref: 78SOS 15

13th July 2015

Dear Carwyn,

Wales Bill

Thank you for your letter of 23 June, discussing Welsh Ministers' powers under the new reserved powers model. As you know our officials are having discussions on executive functions, and I hope to be able to share early draft clauses with you alongside the working draft of the reserved powers model at the end of this month.

The St David's Day Command Paper made clear that the current arrangements for pre-commencement Minister of the Crown functions should continue. The Assembly and Welsh Ministers may legislate to remove or modify any pre-commencement function of a Minister of the Crown in a devolved area only with the consent of the Secretary of State. Any requests made to the Secretary of State should be considered promptly, to deadlines agreed between the two Governments, and with a presumption in favour of consent.

I am committed to implementing the St David's Day package in full, including in relation to Minister of the Crown functions, and expect the Wales Bill to reflect this.

You also raised the issue of Ministerial responsibility for implementing European Directives. This is an issue we are yet to consider in detail, and will turn our attention to it over the summer.

I am copying this letter to the Assembly's Presiding Officer.

Yan.

Rt Hon Stephen Crabb MP
Secretary of State for Wales



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Ref: 357SUB 15

31 July 2015

Dear Carwyn,

Implementing a reserved powers model is a key commitment in the St David's Day Agreement and the new model will form the centrepiece of the forthcoming Wales Bill.

We share the view that close working between the UK Government and the Welsh Government will be key to putting in place a stable and lasting devolution settlement for Wales, and I enclose an early draft of the new reserved powers model on which I would welcome the Welsh Government's comments.

The draft model provides a clearer, more complete devolution boundary than is currently in place. In developing the model to date we have applied three key principles:

- i. It reflects the current devolution boundary. It does not devolve or reserve powers inadvertently and identifies clearly where we believe the boundary lies in areas on which the current settlement is silent;
- ii. It uses the Scotland framework as the broad structure for the model, and departs from that framework only where bespoke provision needs to be made for Wales; and
- iii. It safeguards UK Government and Welsh Government interests, for example by providing a clear demarcation in terms of legislative competence between devolved and reserved bodies.

You will appreciate that this is a working draft. A significant number of changes will be made to it before the model is included in the draft Wales Bill, which will be published in October for pre-legislative scrutiny. This includes, for example, reflecting in the draft Schedule the commitments on further devolution made in the St David Day Agreement.

I am sharing our early thinking on a confidential basis. I am sure you will agree the importance of conducting our discussions in confidence on this early draft, and trust that you closely manage its circulation within the Welsh Government.

My officials are briefing Welsh Government and Assembly Commission colleagues next week on the content of the draft model. I look forward working with you over the summer and autumn to finalise the model, and to hearing your thoughts on the current draft when we next meet in September.

I am writing in similar terms to the Presiding Officer in the Assembly.

Yours,

A handwritten signature in black ink, appearing to read 'Stephen Crabb'.

Rt Hon Stephen Crabb MP
Secretary of State for Wales



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First Minister
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Email: ps.firstminister@wales.gsi.gov.uk

28 August 2015

Dear Carwyn,

The next few months will be an enormously important period as we seek to put in place a new, coherent and enduring devolution settlement for Wales. As you know, I am keen to deliver a settlement that allows us to move beyond debates about devolution and focus on issues which are important to people, such as a growing and prosperous Welsh economy.

As part of that, I am writing to all party leaders in the National Assembly to discuss the progress we have made to date and the work that lies ahead.

We are next meeting on 16 September, where I hope we can also continue our discussions on the new settlement, and how the three elements of a funding floor, income tax devolution, and a reserved powers model, can be taken forwards.

I am writing in similar terms to all party leaders in the National Assembly.

Rt Hon Stephen Crabb MP
Secretary of State for Wales



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Ref: 385SUB 15

3 September 2015

Dear Carwyn,

WALES BILL

I am writing in reply to your two letters of 7 August relating to the Wales Bill: one sets out your early views on the working draft of the reserved powers model and the other proposes matters arising from Smith Commission recommendations which you believe should be taken forward for Wales.

We share a commitment for a clearer, stronger and fairer devolution settlement for Wales. The discussions now underway between our Governments on the Wales Bill (including the new reserved powers model of Welsh devolution) form part of a wider package of reforms to deliver the new settlement, which also includes implementing a funding floor for Wales and taking forward income tax devolution.

In this context, I believe our discussions should encompass both Welsh Government comments on the draft reserved powers model and your proposals for further devolution (whether arising from Smith or elsewhere). Conversations with the Chief Secretary will of course be the right place to address any questions about fiscal issues. I note that in September you will be sending me your detailed comments on the working draft of the reserved powers model and a number of papers requesting further devolution in specific areas. We will both wish to see swift and early progress in our discussions from that point so that the Welsh Government is able to support the Wales Bill on its introduction in Parliament.

There is however unlikely to be sufficient time to reflect any progress in the draft Bill I intend to publish in October for pre-legislative scrutiny. I expect our discussions to continue alongside pre-legislative scrutiny, and to remain confidential. Clearly there will be a need to inform the relevant parliamentary committees that inter-governmental discussions are ongoing.

Turning to each letter in turn, I look forward to receiving your detailed comments on the working draft of the reserved powers model, and note your early views on aspects of the model we shared. I must say I am surprised by the response to the new *test of necessity*. I believe it is crucial that the new model sets a very clear boundary between what is devolved and what is reserved.

The test of necessity is a key aspect of that delineation, and ensures that ancillary provision made by the Assembly does no more than is necessary to give effect to the provision. This test has operated for the last sixteen years as part of the Scottish settlement without any significant issue. It will ensure a much sharper boundary than the current appropriateness test. I do not agree that it would lead to any curtailment of the Assembly's competence in practical terms; the implication of arguing that it would is that the Assembly would wish to do more than is necessary to enforce its legislation.

The provisions relating to 'pre-commencement' Minister of the Crown functions merely give legislative expression to the policy position set out in the St David's Day Command Paper. I do not recognise the 'triple lock' you see being introduced, and I have asked my officials to discuss your concern with Welsh Government colleagues and report back.

I note your acknowledgement that the partial devolution of income tax may be initiated without a referendum and I am aware of the arguments being made in Wales. As the Prime Minister said during his recent visit to the Royal Welsh Show, it is the outcome of having a strong and responsible Assembly that matters. I think we all want to see a funding floor for Wales and that should be accompanied by the devolution of income tax powers.

I am grateful for your confirmation that the Welsh Government does not wish to pursue the fiscal aspects of Smith. Your support for devolution of APD is already a matter of record, and we will be considering the responses to our discussion paper on supporting English regional airports from the impacts of APD devolution once the deadline for submissions passes early next month.

With regards to the devolution of Aggregates Levy, the Wales Act 2014 includes a mechanism to specify additional taxes as devolved taxes. I understand now that the European Commission has concluded its investigation into the levy's exemptions, the original legal challenges to the lawfulness of the levy can be heard. I have discussed with the Treasury and I know that Treasury Ministers will be happy to discuss taking the issue forward.

I note the Welsh Government's proposals for devolving some non-fiscal matters arising from Smith. To fulfil our *St David's Day* commitment UK Government Departments have been giving careful thought to Smith non-fiscal recommendations and your proposals form a useful basis for further discussion in September.

I share your view that it would be undesirable to generally re-open discussion on Silk recommendations around which there was no consensus. I will of course reply separately to Edwina, but I do not intend to revisit the question of devolving Network Rail funding given the discussions on the issue during the St David's Day process.

I am however prepared to give further consideration to the devolution of teachers pay and conditions. While I am not clear whether you will include this proposal in your September papers, I am content to consult colleagues on the matter.

Finally, I note your concerns that a discussion about the Silk recommendation on a Welsh Intergovernmental Committee has not taken place during official level work to review the Memorandum of Understanding. I can confirm that I am happy for the issue to be explored further if your officials wish to raise it with UK Government officials in future discussions.

A handwritten signature in black ink, appearing to read 'Stephen Crabb'.

Rt Hon Stephen Crabb MP
Secretary of State for Wales



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Ref: 457Sub 15

20th October 2015

Dear Carwyn.

DRAFT WALES BILL

I enclose a copy of the Draft Wales Bill Command Paper. This draft Bill sets out in detail how the UK Government plans to deliver the St David's Day commitments to create a stronger, clearer and fairer devolution settlement for Wales that will stand the test of time.

The draft Bill includes a reserved powers model, forming the basis of a new devolution settlement for Wales and providing a clear boundary between reserved and devolved powers. It also devolves further powers to the National Assembly over energy, transport and local government and Assembly elections. The draft Bill will now be subject to pre-legislative scrutiny by the House of Commons Welsh Affairs Committee.

We share the aim of establishing a strong and lasting devolution settlement for Wales. I welcome the positive discussions to date between our officials on the content of the reserved powers model, and look forward to these continuing alongside pre-legislative scrutiny. I am confident that these discussions, and the scrutiny provided by the Welsh Affairs Committee, will allow us to get the Bill ready for introduction early next year. It is vital that we get the Welsh devolution settlement right and build a settlement which keeps pace with the appetite for devolution in Wales.

Kind regards.

Rt Hon Stephen Crabb MP
Secretary of State for Wales

Carolyn Harris asked me about the definition of reserved body. The draft Bill defines a reserved authority¹ as a Minister of the Crown or (UK) government department or any other public authority, apart from a Welsh public authority. It further defines a Welsh public authority as one whose functions are exercisable only in relation to Wales and are wholly or mainly functions that do not relate to reserved matters. This definition ensures that bodies which are currently devolved, such as local authorities, continue to be under the new model.

In response to a question from Carolyn Harris, I also committed to providing some examples of reserved authorities. They would include: Police Forces, Competition and Markets Authority, Civil Aviation Authority, Driver and Vehicle Licensing Agency and the Pensions Regulator

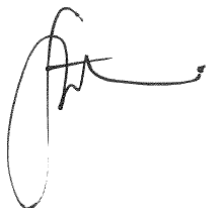
You asked whether the Welsh Government could set a different strike price for projects below 350MW following devolution of energy consents in the Wales Bill. The UK Government is responsible for Contract for Difference (CfD) policy in Great Britain. Contracts for Difference are allocated through a competitive, GB-wide process and the costs associated with them are socialised across all GB consumers. For these reasons, administrative strike prices will continue to be set at a GB level.

The Committee also sought clarification about how Wales Office commissioned Whitehall Departments to develop the reserved powers model. Departments were asked initially to map out the existing legislative competence that has been conferred on the National Assembly for Wales. Then, considering appropriate reservations to capture this within the model, departments were also invited to consider issues such as the terms of any equivalent reservation in the Scotland Act 1998, whether the Assembly has legislated in a subject area in which Departments were considering reservations, whether the UK Government has transferred powers to Welsh Ministers via a Transfer of Functions or Designation Order, and any Legislative Consent Motions tabled in the Assembly. This formed a starting point for an iterative process between the Wales Office, government departments and Parliamentary Counsel to develop the reservations.

I wish the Committee well in its forthcoming evidence sessions and look forward to providing additional oral evidence if and when required.

For the convenience of all Members and Peers I will place this letter and its attachments in the libraries of both Houses.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'S Crabb', written in a cursive style.

Rt Hon Stephen Crabb MP
Secretary of State for Wales

¹ In paragraph 8(2) of new Schedule 7B (schedule 2 to the Bill).

Assembly Acts the Welsh Government Claim Could Not Be Made Under the New Reserved Powers Model: UK Government Analysis

Key:

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| Acts which we believe would be passed under the new model, requiring no greater consents than at present | Acts where new consenting requirements apply under the new model, or where provision could not be made under the new model |
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| Assembly Act or Measure | Relevant provision(s) | Welsh Government’s analysis of why the same provision could <u>not</u> be made under the Draft Wales Bill settlement | Wales Office Legal Advisers’ analysis of whether or not the same provision <u>could</u> be made under the Draft Wales Bill settlement |
|---------------------------------------|---|--|---|
| 1. Control of Horses (Wales) Act 2014 | Section 7 (dispute resolution procedure for disagreements between horse owners and the local authority) | Arguably would engage reservation 184 (arbitration) | <p>The purpose¹ of this Act is a devolved one - animal welfare. It does not “relate to” arbitration, nor have that as its purpose.</p> <p>The creation of a dispute resolution procedure is “ancillary”² to the Act’s purpose, and therefore within the Assembly’s legislative competence.</p> <p>The arbitration reservation in para 184 is designed to prevent the Assembly from legislating about the subject of, and the law and procedures relating to, arbitration (e.g. the subject matter of the Arbitration Act 1996).</p> <p>That reservation does not have the effect of preventing the Assembly from applying a dispute resolution mechanism of its choosing.</p> |

¹ The “purpose test” in the new model states that the question of whether a provision of an Act of the Assembly relates to a reserved matter is to be determined by reference to the purpose of the provision, having regard (amongst other things) to its effect in all the circumstances. This is similar to the current test, but expressed in terms of relating to reserved matters rather than conferred subjects.

² An Assembly Act provision is **“ancillary”** if it provides for the enforcement of another provision; or is otherwise appropriate for making that provision effective; or is otherwise incidental to, or consequential on, that provision (clause 3 of the draft bill). Throughout this table, where a provision is said to satisfy the “ancillary test”, it should be read as also satisfying the additional “no greater effect” requirement, as it appears in new section 108A(3) and paras 2, 3 and 4 of new Schedule 7B, as appropriate.

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| <p>2. Planning (Wales) Act 2015</p> | <p>Section 50 and paragraph 27 of Schedule 5</p> | <p>Engagement of reservation 183 (inquiries under or by virtue of an enactment)</p> <p>Section 50 of the Planning (Wales) Act 2015 inserts new section 323A into the Town and Country Planning Act 1990. This section confers power on the Welsh Ministers to make regulations prescribing the procedure to be followed in connection with planning hearings and inquiries. Planning hearings and inquiries take place under powers contained in section 320 TCPA 1990.</p> <p>WG relied on conferred subjects in S7 (paragraph 18 - town and country planning) and paragraph 14 (inquiries in respect of matters in relation to which the Welsh Ministers exercise functions).</p> <p>MoC consent was received so far as the provision removed or modified functions of the Lord Chancellor under section 9 Tribunals and Inquiries Act 1992.</p> <p>This provision would not be possible under reservation 183.</p> <p>Also, paragraph 27 of Schedule 5 to the Planning (Wales) Act made an</p> | <p>Section 50 is for the enforcement of a provision with a devolved planning purpose.</p> <p>This section required SofS consent because it modified Lord Chancellor functions. Consent was given on 17 September 2014. Had this provision been made under the new reservation model, it would similarly have required consent which would likely have been given.</p> <p>The reservation for the subject matter of the Inquiries Act 2005 in para 183 is intended to reserve the framework under which inquiries, set up by Ministers into events of public concern, can operate effectively to deliver recommendations.</p> <p>Planning inquiries, on the other hand, are a necessary component part of the planning regime and would satisfy the ancillary test.</p> |
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| | | amendment to the definition of “statutory inquiry” in the Tribunals and Inquiries Act 1992, to exclude Planning Act inquiries in Wales. | |
| 3. Planning (Wales) Act 2015 | Section 288 creates a right of challenge to the High Court. | These amendments were consequential on changes in Part 5 P(W)A. Depending on the view taken of the meaning of “civil proceedings” and “judicial review of administrative action”, it is possible/ likely that these reservations if in force would have inhibited the Assembly’s ability to pass paragraphs 15 and 16 Schedule 4 P(W)A. | <p>Rights of appeal are for the enforcement of devolved provisions. The section 288 right of appeal would satisfy the ancillary test and be within competence.</p> <p>Proper application of the purpose test would not result in section 288 ‘relating to’ civil proceedings or judicial review of administrative action, because those subjects are designed to protect the fundamental principles of those areas of law and to prevent the Assembly from legislating about them directly. They would not prevent the Assembly creating normal rights of appeal such as section 288.</p> |
| 4. Local Government (Democracy) (Wales) Act 2013 | Section 49(7) | <p>Creation of Offences would be considered ancillary but Minister of the Crown consent would be needed.</p> <p>Also confers functions on the Independent Remuneration Panel for Wales (IRP) to make recommendations to relevant authorities about proposed changes to salaries of heads of paid service and any policies about such pay. This may not be possible depending on the interpretation of proposed reservation 154 (Employment and Industrial Relations).</p> | <p>SofS consent is not required to create offences if the offence is being created in order to enforce Assembly provision in a devolved area. Section 49(7) would satisfy the ancillary test.</p> <p>The IRP is a Welsh public authority. The purpose of the provisions relating to the IRP is to enable it to review local authority policies and practice in relation to heads of paid service. Applying the purpose test, this provision relates to the devolved subject of local authorities, rather than employment law. It does not fall within any of the listed enactments in the employment reservation.</p> |

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| <p>5. Local Government Byelaws (Wales) Act 2012</p> | | <p>Creation of Offences in the Act were not ancillary so question whether they would be competent. Minister of the Crown consent would also be needed.</p> | <p>The purpose of this Act was to reform the process for confirming byelaws and to enable local authorities to make byelaws themselves (i.e. it has a devolved purpose).</p> <p>This Act also enables fixed penalties to be imposed for breach of byelaws. This satisfies the ancillary test in relation to the power to create byelaws (and thus a permissible modification of criminal law under para 4 of Schedule 7B).</p> <p>The Supreme Court decided that the power of the SofS to confirm byelaws was a default power exercisable as a consequence of the conferral of powers on Welsh Ministers. Were a comparable default power, exercisable by the SofS in a devolved area, to be modified by the Assembly in future the Supreme Court judgement would apply and so there would be no requirement for SofS consent.</p> |
| <p>6. Public Audit (Wales) Act 2013</p> | <p>Generally</p> | <p>It is difficult to be certain that the entirety of the WAO and/or the AGW's functions would clearly fall (although if the provisions remain, arguments could perhaps be made) within the definition of functions "exercisable only in relation to Wales" for the purposes of meeting the definition of a "Welsh public authority" in the draft reservation 215 of Schedule 7A and paragraph 8 of Schedule 7B.</p> | <p>Both the WAO and AGW are Welsh public authorities under the new model. It seems WG has overlooked the provision in para 8(4) of Schedule 7B which states that in deciding whether a body is a Welsh public authority, ignore any function which is exercisable otherwise than in relation to Wales. No SoS consent would be necessary.</p> |

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| | Specifically: Schedule 4, paragraph 24 | <p>If the AGW or WAO did not meet the definition of a “Welsh public authority” this would mean that the Minister of the Crown consent would have been required for huge parts (if not all of the 2013 Act) under the proposed new settlement, but which was not needed under Part 4 of GoWA 2006.</p> <p>It would also mean that the Assembly would not have been able to rely on the provisions of paragraph 215 in passing the Act.</p> <p>The Employment reservations may consequently have made certain provisions within the Act difficult.</p> <p>Minister of the Crown consent would have been needed for this provision as offence removed from under section 19 of the Public Audit (Wales) Act 2004.</p> | <p>Schedule 4 makes minor and consequential amendments including to the Public Audit Wales Act 2004. This includes repeal of an offence of failing to provide information to local authority auditors. This offence is an enforcement provision for the audit of Welsh local authorities by private sector auditors; the 2013 Act prescribes such audits by the WAO. Not only is this offence therefore otiose, but enforcement provisions like this, in relation to devolved matters fall within the definition of ancillary and do not require SofS consent.</p> |
| 7. Education (Wales) | Sections 9 to 16 | These provisions gave the Special Educational Needs Tribunal for Wales | SENTW is a Welsh public authority set up using the competence for education. This Measure gives the tribunal the power to hear |

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| Measure 2009 | | (SENTW) jurisdiction to hear disability discrimination claims. As these provisions made amendments to the Equality Act 2010, they may well have related to reservation 202 which includes – the subject matter of the Equality Act 2010. | appeals against SEN provision and also disability discrimination in schools. It does not modify the test for when such discrimination occurs, which would engage the equalities reservation. Its purpose is to provide a local enforcement forum relating to the devolved purpose of education. |
| 8. School Standards and Organisation (Wales) Act 2013 | Section 61 | Local inquiries on proposals submitted or proposed in relation to education provision. It is arguable that this provision may now relate to reservation 183 – Inquiries under or by virtue of an enactment. | As with para 27 of Sch 5 to the Planning (Wales) Act 2015, which is referred to above, it is not correct to interpret the reservation of the subject matter of the Inquiries Act 2005 as reserving local, devolved inquiries like the one in section 61 of the SSO(W)A 2013. A normal application of the purpose test would result in this provision being within competence by virtue of its devolved education purpose. |
| 9. Qualifications (Wales) Act 2015 | Section 35 | This provision excludes Ofqual’s conditions of recognition from applying in relation to qualifications awarded in Wales. Depending on the finalised legal position, this may amount to a modification of Ofqual’s functions and therefore require consent under paragraph 8 of Schedule 7B. No consent was required during the passage of the Act. | Although this provision would require SofS consent under the new model (para 8 of Sch 7B) such consent would likely be forthcoming. This is evidenced by the Wales Office and DfE working closely with the WG in readiness to take forward any section 150 Order that will be required in consequence of this Act. |
| 10. Mobile Homes (Wales) Act 2013 | e.g sections 17, 21, 22 | Confers jurisdiction on the court to consider certain questions arising under the Act, this would fall within the reservation in paragraph 6, as there is no exception that it could relate to | These provisions relate to enforcement of the licensing system for mobile homes sites, which is a devolved matter. We consider rights of appeal to the upper-tier tribunal to be part of the enforcement regime and would therefore satisfy |

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| | | devolved matters. Minister of the Crown consent is also likely to be required as the right of appeal is to the upper tribunal by virtue of section 231 of the Housing Act 2004. | the ancillary test. It is not the intention for SofS consent to be required. |
| 11, The Agricultural Sector (Wales) Act 2014 | Section 24 (of the National Minimum Wage Act 1998) provides that “A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 23 | Minister of the Crown consent would be needed for this provision. | <p>Section 5 of the 2014 Act modifies a number of provisions of the National Minimum Wage Act 1998 (“NMWA”), including its section 24.</p> <p>It would clearly satisfy the purpose test because it ‘relates to’ the express exception for the 2014 Act in Section H1 (i.e. agricultural wages are devolved in the new model). The existence of the exception means it would not relate to the NMWA reservation.</p> <p>It would also be a permissible modification to ‘the law on reserved matters’ (for the purposes of para 2 of Sch 7B) because it satisfies the test of being ancillary to a devolved provision.</p> <p>It would not modify the functions of a ‘reserved authority’ under para 8 of Sch 7B, because complaints to employment tribunals would simply be part of the tribunal’s ordinary functions and not amount to the imposition of a new duty. SofS consent would therefore not be required.</p> |
| 12. NHS Redress (Wales) Measure 2008 | The whole Measure | The preamble to the Measure provides that the purpose of the Measure is to: “to make provision about arrangements for redress <i>in relation to liability in tort</i> in connection with services provided as part of the health | The purpose of this Measure relates to funding of the NHS by providing an ADR mechanism for complaints relating to medical negligence (a head of tort) to be dealt with before the complainant goes to court. The NHS in Wales, as in England, self-insures and a redress process could potentially save on the costs of lawyers representing claimants. |

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| | | <p>service in Wales; and for connected purposes.” Arguably the whole Measure is outside competence as a result of the restriction on modifying the private law in paragraph 3 of Schedule 7B.</p> <p>In addition, section 6 of the Measure (suspension of limitation periods) arguably relates to Reservation 6(2) (g) (Single legal jurisdiction of England and Wales- limitation of actions) and Reservation 180 (Claims management services).</p> <p>As the effect of the Measure is to impose functions on NHS bodies in England, Minister of the Crown consent would also have been needed (paragraph 8 of Schedule 7B).</p> | <p>S.6 of the Measure does modify the private law but would satisfy the ancillary test. No SofS consent would be necessary.</p> <p>Similarly, the Assembly can legislate for England (clause 3 of the draft Bill introducing new s108A(3)) and so NHS and private sector bodies providing services to the NHS in Wales can be covered by this Measure because it would also satisfy the ancillary test.</p> |
| 13. Food Hygiene Rating (Wales) Act 2013 | Section 14 | The imposition of functions on the Food Standards Agency (FSA) would have breached the restriction on imposing functions on reserved authorities (paragraph 8 of Schedule 7B). Minister of the Crown consent would have been needed. | The FSA would be a reserved authority in the new model (paragraph 8, Schedule 7B). SofS consent would therefore be needed for provisions such as s.14, which would likely be given. |
| 14. Human | Section 15 | The imposition of functions on the | Although this provision would require SofS consent under para |

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| Transplantation (Wales) Act 2013 | | Human Tissue Authority would have breached the restriction on imposing functions on reserved authorities (paragraph 8 of Schedule 7B). Minister of the Crown consent would have been needed. | 8 of Sch 7B, such consent would likely have been forthcoming. This is evidenced by the fact the SofS for Wales took forward the Human Transplantation (Wales) Act 2013 (Consequential Provision) Order 2015 so that tissue collected from patients in Wales could be used elsewhere in the UK, even though the consent provisions differ, and vice versa. |
| 15. Welsh Language (Wales) Measure 2011 | The whole Measure | If the purpose of the Measure is to promote equality for Welsh language speakers and to prevent Welsh language speakers from discrimination, then the Measure will engage the equal opportunities reservation (202) and would be outside competence under the proposed new settlement. | The purpose of the Measure would be within competence under the reserved powers model published in the draft Bill because it relates to the devolved subjects of Welsh language; not any reserved matter. |
| 16. Welsh Language (Wales) Measure 2011 | Part 4 (standards) | The imposition of standards on certain bodies will relate to the named bodies reservation (216) and/or breach the restriction on imposing functions on reserved authorities (paragraph 8 of Schedule 7B) for which Minister of the Crown consent will be required under the proposed new settlement, but which was not obtained under Part 3 of GoWA 2006. | The Measure provides that standards can only be imposed on MoC with consent (thus mirroring the Welsh Language Act 1993), but it also lists Named Authorities, such as the Bank of England, and reserved authorities, such as government departments and the Charity Commission, as being subject to the standards. Named Authorities in the new model could not have functions imposed on them by the Assembly, and thus could not be subject to the standards if the Bill were passed under the new model. In future, an Order made by the Secretary of State under s.150 of GoWA 2006 would be the appropriate mechanism to modify the standards regime as it applies to Named Authorities. It would now be necessary to obtain SofS |

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| | | | consent to impose duties (standards) on reserved authorities. |
| 17. Social Services and Well-being (Wales) Act 2014 | Section 134 | Section 134 designates the chief officer of police as a partner on safeguarding boards. This would be outside competence as a result of one or more of reservations 33-35. | <p>The reservations for crime, public order and policing prevent the Assembly from creating provisions that have those matters as their purpose. Creating safeguarding boards and specifying the partners thereof however, would be within competence for the purposes of section 108A(2)(c) because the purpose of the provision is a devolved one - social welfare.</p> <p>It was necessary to obtain SofS consent to membership of such boards by probation services and NOMs.</p> <p>However, because of the way the SofS policing functions are expressed in statute, they were not being modified and so no SofS consent was necessary. As police forces are reserved authorities under the new model, SoS consent would now be necessary for compulsory membership and contributions to the funding of boards by police forces in Wales (para. 8 of Sch 7B).</p> |
| 18. Violence Against Women, Domestic Abuse and Sexual Violence (Wales) act 2015 | Various provisions | <p>The stated purposes of the Act are set out in section 1: (a) arrangements for the prevention of gender-based violence, domestic abuse and sexual violence;</p> <p>(b) arrangements for the protection of victims of gender-based violence, domestic abuse and sexual violence;</p> <p>(c) support for people affected by gender-based violence, domestic abuse and sexual violence.</p> <p>The Act could be outside competence</p> | <p>The reservation for anti-social behaviour in the draft Bill as published refers to the subject matter of Parts 1 to 6 of the Anti-social behaviour, Crime and Policing Act 2014. However, proper application of the purpose test means the 2015 Act would not relate to this reservation and would be within the Assembly's competence under the new model.</p> |

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| | | under the new settlement due to the “anti-social behaviour” reservation (36). | |
| 19. Housing (Wales) Act 2014 | Section 95 | Paragraph 8 of Schedule 7A would mean that Minister of the Crown consent would be required for the conferral of the function of co-operation of local authorities and other public bodies in England. Was not needed under current settlement. | Section 95 of this Act confers functions on certain bodies in England which would be reserved authorities in the new model (para. 8, Sch 7B). As such, section 95 would need SofS consent but this would likely have been forthcoming. |
| 20. Housing (Wales) Measure 2011 | Part 2 | Minister of the Crown consents would be needed when not required under current settlement. RSLs can be charities and therefore provisions within Part 2 of the Measure which impose functions in relation to RSLs which are charities may now have been outside competence due to the Charities reservation. | The reservation for charities is intended to reserve charities law. It is not intended to prevent the Assembly from imposing housing functions on bodies in Wales , some of whom may be registered charities. Housing remains a devolved subject. |
| 21. Well-being of Future Generations (Wales) Act 2015 | s.30 in relation to bullet point 1. | <ul style="list-style-type: none"> • Section 30 authorises a public services board to invite the participation of the relevant PCC and chief constable. This would be outside competence as a result of one or more of reservations 33-35. • Highly likely that provisions of the Act would constitute ‘regulation’ therefore falling outside the | <p>We do not consider that any of WG’s concerns would prevent the Assembly from legislating.</p> <p>Invitations to PCCs and Chief Constables to participate in public services boards would not relate to crime, public order or policing reservations. The creation of public service boards and their possible membership does not have these reservations as their purpose.</p> |

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| | | <p>competence of the Assembly in respect of the first exception in reservation 202.</p> <ul style="list-style-type: none"> • The narrower definition of ‘Welsh Public Authority’ would also restrict competence. • Minister of the Crown consent would now be required • Reservation 58 (charities) would have caused difficulties. | <p>We do not consider that reservation 202 would apply because the exceptions in relation to the devolved areas of equal opportunities would be relevant.</p> <p>We do not see the relevance of the “Welsh public authority” definition and therefore do not see that it would limit competence in relation to s.30.</p> <p>Police and crime commissioners are “Named Authorities” in the new model, and so the Assembly would not be able to impose duties on them (even with SofS consent). Chief constables are reserved authorities. However, we do not consider an <i>invitation</i> to participate (without any obligation to do so) amounts to the conferral of a function. Therefore, neither the Named Authority nor the reserved authority restriction would apply.</p> <p>The charities reservation would not apply because that is not the purpose of section 30.</p> |
| 22. Children and Families (Wales) Measure 2010 | Part 2 | Offences relating to regulation of child minding and day care services may relate to reservation 36 on detection and investigation of crime. | <p>Social welfare, including the protection and care of children, is a devolved subject. Applying the purpose test in new subsection 108A(5), it seems clear that the purpose of the Measure, which is to create a framework of regulation is a devolved one – social welfare.</p> <p>The Assembly may enforce provisions in an Assembly Act by creating offences and imposing penalties (so long as those provisions are for a devolved purpose).</p> |
| 23. Further and Higher | Section 4 and section 9 | We have concerns around the definition of ‘business association’ in | Further and Higher Education institutions would not be caught by the exception to the C1 business associations |

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| <p>Education (Governance and Information) (Wales) Act 2014</p> | | <p>section C1 (reservations 60 and 61). This may catch designated institutions (a type of further education institution – usually companies limited by guarantee) which may not satisfy the exception relating to public bodies. This may have complicated the passage of section 4 of the Bill which deals with the governance of designated institutions.</p> | <p>reservation because they are Welsh public authorities.</p> <p>The C1 business associations reservation relates to the law about such bodies and the benefits and responsibilities of incorporation. It does not apply to specific classes of such corporate bodies such as those in the further and higher education sector (which are devolved).</p> |
| <p>24. Higher Education (Wales) Act 2015</p> | <p>Entire Act</p> | <p>Questionable whether the Higher Education Funding Council for Wales (HEFCW) is a 'Welsh public authority' for the purposes of paragraph 8 of Schedule 7B, as it exercises some functions in England. The Assembly may therefore have required Secretary of State consent, which it did not require under the existing settlement.</p> | <p>HEFCW would fall within the “Welsh public authority” definition because, even though it may have some functions exercisable in England, its functions are wholly or mainly exercisable in relation to institutions whose main establishment is in Wales (para 8(3)(b)(i) of Sch 7). SofS consent would not be required.</p> |
| <p>25. Social Services and Well Being (Wales) Act 2014</p> | <p>Sections 34, 78, 85, 127, 138, 139 and Part 11.</p> | <p>Section 127 (adult protection orders) and section 78 (protecting members of the public from serious injury) may now relate to reservation 36 (anti social behaviour) and therefore fall outside competence.</p> <p>Section 85 and Schedule 1 (payments in respect of care from those with</p> | <p>The purpose of section 78 is to create an intervention power for local authorities to take action in respect of looked-after children. On that basis, it does not relate to the antisocial behaviour reservation.</p> <p>Similarly, section 127 is an enforcement mechanism for the purpose of protecting vulnerable adults.</p> <p>Section 85 and Schedule 1 make provision for payments where a</p> |

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| | | <p>parental responsibility) may now be found to relate to reservations 141 and 142 on child support.</p> <p>Part 4 - elements of duties relating to those detained in secure estate may relate to reservation 192 - Offender Management.</p> <p>Section 138 and 139 (safeguarding board partners) would have required Secretary of State consent under paragraph 8 of Schedule 7B.</p> | <p>local authority is looking after a child. In that sense, it is a local authority funding mechanism. In contrast, the child support maintenance reservation in Section F2 reserves the Child Support Agency and the payment obligations <i>between</i> parents in respect of a child's living costs following the parents' separation. This reservation is therefore not engaged.</p> <p>The Part 4 provisions relate to social welfare and the provision of social care to those in need in Wales. None of the provisions have as their purpose the management of offenders.</p> <p>S.138 and 139 would continue to require SofS consent pursuant to para 8 of Sch 7B, which would again likely have been forthcoming.</p> |
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