

Draft Order in Council laid before Parliament under section 109(4) of the Government of Wales Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2021 No.

**EXITING THE EUROPEAN UNION
CONSTITUTIONAL LAW
DEVOLUTION, WALES**

The Government of Wales Act 2006 (Amendment) Order 2021

Made - - - - - ***

Coming into force - - - - - ***

At the Court at Buckingham Palace, the *** day of ***

Present,

The Queen's Most Excellent Majesty in Council

A draft of this Order has been laid before, and approved by a resolution of, each House of Parliament and Senedd Cymru in accordance with section 109(4) of the Government of Wales Act 2006(1).

Her Majesty, in exercise of the powers conferred by section 109 of that Act, is pleased, by and with the advice of Her Privy Council, to order as follows:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Government of Wales Act 2006 (Amendment) Order 2021 and comes into force on the day after the day on which it is made.

(2) In this Order, “the 2006 Act” means the Government of Wales Act 2006.

Amendment of Schedule 7A to the 2006 Act

2.—(1) Schedule 7A (reserved matters) to the 2006 Act is amended as follows.

(2) In paragraph 10(3)(a) of Schedule 7A to the 2006 Act(2)—

(1) 2006 c. 32. Section 109 was amended by paragraphs 1 and 3 of Schedule 6 to the Wales Act 2017 (c. 4) (“the 2017 Act”) and paragraph 2(1) and (19) of Schedule 1 to the Senedd and Elections (Wales) Act 2020 (anaw 1).

(2) Schedule 7A was inserted by Schedule 1 to the 2017 Act.

- (a) for the comma after “international obligations”, substitute “and”; and
- (b) omit “and obligations under EU law”.
- (3) In the heading of paragraph 20, omit “and the European Parliament”.
- (4) In paragraph 20, omit “and the European Parliament”.
- (5) In paragraph 26(b), omit “or the European Parliament”.
- (6) In the definition of “Existing elections Acts” that follows paragraph 27, omit sub-paragraph (f).
- (7) Omit paragraph 30.
- (8) In the definition of “psychoactive substances” that follows paragraph 54, for “2015” substitute “2016”.

Amendment of paragraph 7 of Schedule 7B to the 2006 Act

- 3.**—(1) Paragraph 7 (restrictions on modifications of provisions of the 2006 Act) of Schedule 7B (general restrictions)(3) to the 2006 Act is amended as follows.
- (2) In sub-paragraph (2)—
 - (a) in paragraph (a), omit sub-paragraph (xviii); and
 - (b) in paragraph (b)(i), after “sections” insert “51,”.

Amendment of paragraph 9 of Schedule 7B to the 2006 Act

- 4.**—(1) Paragraph 9 (exceptions to the restrictions in paragraph 8) of Schedule 7B to the 2006 Act is amended as follows.
- (2) After sub-paragraph (2)(h), insert—
 - (i) the Controller of Plant Variety Rights(4)
 - (3) In sub-paragraph (4)(a), omit “(within the meaning of paragraph 6 of Schedule 7A)”.
 - (4) After sub-paragraph (4), insert—
 - “(4A) In sub-paragraph (4)(a), a “devolved function” is a function involving deciding an application or an appeal in relation to a matter that is not a reserved matter, but this does not include the function of deciding an appeal from a court or from a tribunal to which paragraph 9 of Schedule 7A applies (tribunals other than devolved tribunals).”.
 - (5) After sub-paragraph (7), insert—
 - “(8) Paragraph 8(1)(c) does not apply to a provision of an Act of the Senedd which removes, or confers power by subordinate legislation to remove, a function specifically exercisable in relation to a Minister of the Crown where that function is the giving of consent by the Welsh Ministers and that function—
 - (a) exists to any extent by virtue of regulations made under sections 8 to 8C of the European Union (Withdrawal) Act 2018(5); or
 - (b) is conferred by, or by regulations made under—

(3) Schedule 7B was inserted by Schedule 2 to the 2017 Act.

(4) See section 2 of the Plant Varieties Act 1997 (c. 66).

(5) >2018 c. 16. Section 8 was amended by section 27 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) (“the 2020 Act”). Section 8A was inserted by section 3 of the 2020 Act, section 8B was inserted by section 18 of the 2020 Act and section 8C was inserted by section 21 of the 2020 Act.

- (i) the European Union (Withdrawal Agreement) Act 2020⁽⁶⁾;
- (ii) the Direct Payments to Farmers (Legislative Continuity) Act 2020⁽⁷⁾;
- (iii) the Coronavirus Act 2020⁽⁸⁾;
- (iv) the Agriculture Act 2020⁽⁹⁾;
- (v) the Fisheries Act 2020⁽¹⁰⁾; or
- (vi) an Act of Parliament resulting from the Trade Bill that was introduced into the House of Commons on 19th March 2020.

(9) Paragraph 8(1)(c) does not apply to a provision of an Act of the Senedd which removes, or confers power by subordinate legislation to remove, a function specifically exercisable in relation to a Minister of the Crown where that function is the seeking of consent, or consultation, by the Welsh Ministers, in relation to the exercise by the Welsh Ministers of a function that is to any extent exercisable concurrently with a Minister of the Crown, and is conferred by, or by regulations made under—

- (a) the European Union (Withdrawal Agreement) Act 2020;
- (b) the Fisheries Act 2020; or
- (c) an Act of Parliament resulting from the Trade Bill that was introduced into the House of Commons on 19th March 2020.”.

Amendment of paragraph 10 of Schedule 7B to the 2006 Act

5.—(1) Paragraph 10 (removal or modification of functions of a public authority) of Schedule 7B to the 2006 Act is amended as follows.

(2) After sub-paragraph (2)(m), insert—

“(n) the Controller of Plant Variety Rights.”.

(3) In sub-paragraph (4)(a), omit “(within the meaning of paragraph 6 of Schedule 7A)”.

(4) After sub-paragraph (6), insert—

“(7) In this paragraph “devolved function” has the same meaning as in paragraph 9(4A).”.

Amendment of paragraph 11 of Schedule 7B to the 2006 Act

6.—(1) Paragraph 11 (removal or modification of Minister of the Crown functions) of Schedule 7B to the 2006 Act is amended as follows.

(2) After sub-paragraph (2), insert—

“(2A) Where sub-paragraph (1)(a) does not apply by virtue of sub-paragraph (6) or (7), a provision of an Act of the Senedd cannot remove, or confer power by subordinate legislation to remove, any function unless the Welsh Ministers have consulted the appropriate Minister about the provision.”.

(3) After sub-paragraph (5), insert—

“(6) Sub-paragraph (1)(a) does not apply to a provision of an Act of the Senedd which removes, or confers power by subordinate legislation to remove, any function of a Minister of the Crown that is to any extent exercisable concurrently where that function—

(6) 2020 c. 1.
(7) 2020 c. 2.
(8) 2020 c. 7.
(9) >2020 c. 21.
(10) 2020 c. 22.

- (a) exists to any extent by virtue of regulations made under sections 8 to 8C of the European Union (Withdrawal) Act 2018; or
- (b) is conferred by, or by regulations made under—
 - (i) the European Union (Withdrawal Agreement) Act 2020;
 - (ii) the Direct Payments to Farmers (Legislative Continuity) Act 2020;
 - (iii) the Coronavirus Act 2020;
 - (iv) the Agriculture Act 2020;
 - (v) the Fisheries Act 2020; or
 - (vi) an Act of Parliament resulting from the Trade Bill that was introduced into the House of Commons on 19th March 2020.

(7) Sub-paragraph (1)(a) does not apply to a provision of an Act of the Senedd which removes, or confers power by subordinate legislation to remove, any function of a Minister of the Crown, where that function concerns consent or agreement to, or consultation about, the exercise of a function that is to any extent exercisable concurrently with a Minister of the Crown and is conferred by, or by regulations made under—

- (a) the European Union (Withdrawal Agreement) Act 2020; or
- (b) the Fisheries Act 2020; or
- (c) an Act of Parliament resulting from the Trade Bill that was introduced into the House of Commons on 19th March 2020.

(8) Sub-paragraphs (6) and (7) do not have effect in relation to a function of a Minister of the Crown to regulate British fishing boats in the Welsh zone.

(9) In sub-paragraph (8), the reference to British fishing boats does not include Welsh fishing boats; and “British fishing boat” and “Welsh fishing boat” have the same meaning as in section 52 of the Fisheries Act 2020.”.

Name
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Schedules 7A and 7B to the Government of Wales Act 2006 (c. 32) (“the 2006 Act”). It comes into force on the day after the day on which the Order is made. The provisions fall into three categories.

The first category of amendments corrects deficiencies that arise as a result of leaving the EU (see article 2(2) to (7)).

The second category of amendments corrects errors in the 2006 Act (see articles 2(8), 3, 4(2) to (4) and 5).

The third category of amendments disapplies some of the restrictions in paragraphs 8 and 11 of Schedule 7B to the 2006 Act in relation to concurrent functions that exist as a result of certain specified legislation (see articles 4(5) and 6).

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.